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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO(OS) No. 315/2016**

Date of decision: 21st July, 2017

SAMSUNG LEASING LTD & ORS. Appellants

Through Mr. Mohan Vidhani, Mr. Rahul
Vidhani, Mr. Ashish Singh & Ms. Subhadra
Shuuklaa, Advocates.

versus

SAMSUNG ELECTRONICS CO LTD.& ANR..... Respondents
Through Mr. Praveen Anand, Advocate.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE NAVIN CHAWLA

SANJIV KHANNA, J. (ORAL):

Samsung Leasing Limited, Samsung Overseas Limited, Samsung Electro Products Private Limited and Samsung Impex Private Limited, who are defendants in CS(OS) No. 303/2004 filed by Samsung Electronics Company Limited and Samsung India Electronics Limited, have filed the present intra-Court appeal impugning the order dated 30th August, 2016 allowing application IA No. 11621/2009 for amendment of the plaint.

2. The application for amendment had stated that due to inadvertent mistake on the part of the plaintiffs, who are respondents

before us, claim for infringement of trademark Samsung was not prayed for in the prayer clause. Accordingly, amendments were sought in the prayer clause and also other paragraphs of the plaint, including the title.

3. The impugned order dated 30th August, 2016 allows the amendment application rejecting the contention of the appellants that the trial had commenced and, therefore, the proviso to Order VI, Rule 17 of the Code of Civil Procedure, 1908 (Code, for short) would be applicable. The single Judge has relied upon decision of a Division Bench of this Court in FAO (OS) No. 51/2009, ***Man Mohan Singh versus Veena Sehdev***, decided on 16th February, 2009, which refers to the case law on the subject, including decision of the Supreme Court in ***Baldev Singh versus Manohar Singh***, AIR 2006 SC 2832 to hold that the “trial has commenced” in the context of the provision means and refers to examination of witnesses and not merely filing affidavit by way of evidence on behalf of the plaintiff. In the present case, even affidavit by way of evidence has not been filed by the respondents. Further, the proviso to Order VI, Rule 17 of the Code does not create an absolute bar, and in the facts of the case, the amendment should be allowed keeping in view the technical nature of the amendment. Plea based upon Order II or constructive *res judicata* was rejected after referring to the Division Bench judgment of this Court in ***Vaish Cooperative Adarsh Bank Limited versus Geetanjali Despande***, 102(2003) DLT 570.

4. Learned Counsel for the Respondents has raised an objection as to the maintainability of the appeal in view of the provisions of the Commercial Courts, Commercial Division and Commercial Appellate Division of the High Courts Act, 2015 (hereinafter referred to as the Commercial Courts Act) and reference is made to the Division Bench Judgment of this Court dated 14th February, 2017 in FAO (OS) (COMM) No. 12/2017, ***HPL (India) Limited and Others versus QRG Enterprises and Another.***

5. Learned Counsel for the Appellants, however, submits that the Commercial Courts Act would not be applicable as Registry has not registered and treated the present suit as a commercial suit. Hence, the present appeal would be maintainable.

6. We have considered the submission, and find merit in the preliminary objection raised by the respondents. The Commercial Courts Act defines “commercial dispute” under Clause (c) to Section 2. As per sub-clause (xvii) of clause(c) to Section 2, intellectual property rights relating to registered and unregistered trademarks, copyright, patent, design, domain names, geographical indications and semi-conductor integrated circuits are commercial disputes. The present suit relates to intellectual property rights covered by sub-clause (xvii) to clause (c) of Section 2 of the Commercial Courts Act and this cannot really be challenged and disputed. Indeed, no attempt was made.

7. With regard to the question of jurisdiction of the Commercial Courts, we would like to refer to Section 4 of the Commercial Courts Act, which reads as under:-

“4. Constitution of Commercial Division of High Court.- (1) In all High Courts, having ordinary civil jurisdiction, the Chief Justice of the High Court may, by order, constitute Commercial Division having one or more Benches consisting of a single Judge for the purpose of exercising the jurisdiction and powers conferred on it under this Act.

(2) The Chief Justice of the High Court shall nominate such Judges of the High Court who have experience in dealing with commercial disputes to be Judges of the Commercial Division.”

It is an admitted and accepted position that the High Court has constituted Commercial Division in the Delhi High Court and we have Commercial Division Courts on the Original Side of this Court. The impugned order has been passed by the designated Commercial Division Court, as notified.

8. Section 7 of the Commercial Courts Act reads as under:-

“7. Jurisdiction of Commercial Divisions of High Courts.- All suits and applications relating to commercial disputes of a Specified Value filed in a High Court having ordinary original civil jurisdiction shall be heard and disposed of by the Commercial Division of that High Court:

Provided that all suits and applications relating to commercial disputes, stipulated by an Act to lie in a court not inferior to a District Court, and filed or pending on the original side of the High Court, shall be heard and disposed of by the Commercial Division of the High Court:

Provided further that all suits and applications transferred to the High Court by virtue of sub-section (4) of section 22 of the Designs Act, 2000 (16 of 2000) or section 104 of the Patents Act, 1970 (39 of 1970) shall be heard and disposed of by the Commercial Division of the High Court in all the areas over which the High Court exercises ordinary original civil jurisdiction.”

Section 7 of the Act in clear and categorical terms states that Commercial Division of the High Court has jurisdiction to hear and dispose of all suits and applications relating to commercial disputes of a specified value, having ordinary original civil jurisdiction. Thus, Section 7 confers exclusive jurisdiction to the Commercial Division of the High Court in respect of commercial disputes of specified value. This condition is satisfied in the present case.

9. Section 15 (1) of the Commercial Courts Act relates to transfer of pending cases and sub-section reads:-

“15. (1) All suits and applications, including applications under the Arbitration and Conciliation Act, 1996, relating to a commercial dispute of a Specified Value pending in a High

Court where a Commercial Division has been constituted, shall be transferred to the Commercial Division.”

Thus, all suits and applications, including applications under the Arbitration and Conciliation Act, 1996, relating to a commercial dispute of a specified value pending in the High Court, where a Commercial Division has been constituted, shall be transferred to the said Commercial Division. This provision is not applicable to a suit or application where final judgment has been reserved.

10. Sub-section (5) to Section 15 reads as under:-

“15.(5) In the event that such suit or application is not transferred in the manner specified in sub-section (1), sub-section (2) or sub-section (3), the Commercial Appellate Division of the High Court may, on the application of any of the parties to the suit, withdraw such suit or application from the court before which it is pending and transfer the same for trial or disposal to the Commercial Division or Commercial Court, as the case may be, having territorial jurisdiction over such suit, and such order of transfer shall be final and binding.”

The aforesaid provision stipulates that in the event such suit or application is not transferred in the manner specified in sub-sections (1), (2) and (3), the Commercial Appellate Division of the High Court, on an application of any of the parties to the suit, withdraw such suit or application or transfer the same for trial or disposal to the

Commercial Division or Commercial Court, as the case may be, and such order of transfer shall be final and binding.

11. Section 21 of the Commercial Courts Act states that the said Act would have an overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any other instrument having effect by virtue of any law for the time being in force “other than this Act”.

12. The plaint raises a commercial dispute. This is undisputed. The application for amendment was decided by the Commercial Division of the High Court as notified. The error made by the Registry in not making necessary corrections and notifying the suit as a commercial dispute could not, therefore, be of any consequence. At best, it would be a technical objection. For the said lapse and failure of the Registry, we would not negate the effect and consequence of the Commercial Courts Act.

13. This being the position, we do not think the present appeal would be maintainable as it has been held in ***HPL (India) Limited and Others*** (supra), as under:-

“35. Reading the entire section 13 of the said Act the clear position is that an appeal lies from an order which is specifically enumerated under Order XLIII CPC. Furthermore, no appeal would lie from an order not specifically enumerated in Order XLIII CPC because of the incorporation of the expression “from no other orders” appearing in section 104 CPC (which is clearly applicable

by virtue of section 16(2) of the said Act). And, Section 10 of the Delhi High Court Act, 1966 would not come to the rescue because of the non obstante provision contained in section 13(2) of the said Act.

36. Therefore, as the impugned order does not find place in the orders specifically enumerated in Order XLIII CPC, no appeal could lie against it and the present appeal is not maintainable. But, as the learned counsel for the appellants have made several submissions to the contrary we shall have to deal with them.”

An order allowing the application under Order VI, Rule 17 for amendment of the plaint has not been specifically made appealable under Order XLIII of the Code. Even otherwise, looking at the nature of the amendment, we are not satisfied that the matter requires consideration.

14. In view of the aforesaid position, we dismiss the present appeal as not maintainable. This order would not affect the right of the appellants to challenge the impugned order in accordance with law at an appropriate stage, if required and necessary (see Rule 1A to Order XLIII of the Code). No costs.

SANJIV KHANNA, J.

NAVIN CHAWLA, J.

JULY 21, 2017
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