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

+ FAO(OS) 42/2018 & CM Nos. 9693-9694/2018

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Date of decision : 17th July, 2018

CITICORP BUSINESS & FINANCIAL SERVICES PVT LTD

..... Appellant

Through : Mr Ram Ekbal Roy, Adv.

versus

CITI GROUP INC & ANR

..... Respondents

Through : Mr. Karan Bajaj and

Mr. Dhruv Nayar, Advs.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

GITA MITTAL, ACTING CHIEF JUSTICE

FAO(OS) 42/2018

1. By way of this appeal, the appellant has assailed an order dated 9th January, 2018 passed by the learned Single Judge in CS(OS) No. 1789/2013 *Citi Group Inc.& Anr. v. Citicorp Business & Financial Services Pvt. Ltd.*, a suit filed by the present respondent against the appellant/defendant complaining of infringement of its registered trademarks/name *Citi* and *Citi Group* by the appellants as well as passing off and unfair trade competition.

Premised on these assertions in the plaint, the respondent had made a prayer for grant of permanent prohibitory injunction as well as damages.

2. The respondent claimed to be registered proprietors of the marks as follows:

Trade Mark	Registration No.	Registration Date	Class/Classes
<i>CITI</i>	<i>1237079</i>	<i>16/09/2003</i> <i>User Claim:</i> <i>30/01/1979</i>	<i>35,36,42</i>
Services <i>Class 35:</i> <i>Advertising, business management, business administration, office functions</i> <i>Class 36:</i> <i>Insurance; financial affairs; monetary affairs; real estate affairs</i> <i>Class 42:</i> <i>Scientific and technological services and research and design related thereto; industrial analysis and research services; design and development of computer hardware and software; legal services</i>			
<i>CITI</i>	<i>1642935</i>	<i>18/01/2008</i>	<i>9</i>
Goods: <i>Scientific, nautical, severing and electric, photographic, cinematographic, optical weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments apparatus for transmission for reproduction of sound of images images magnetic data carriers, recording discs; automatic vending machines and mechanisms for coin-operated apparatus cash registers, calculating machines, data</i>			

<i>processing equipment and computer, fire extinguishing apparatus.</i>			
<i>CITICORP</i>	<i>1237075</i>	<i>16/09/2003</i> <i>User Claim:</i> <i>31/12/1972</i>	<i>36,42,35</i>
Services <i>Class 35:</i> <i>Advertising, business management, business administration, office functions included in class 35.</i> <i>Class 36:</i> <i>Insurance; financial affairs; monetary affairs; real estate affairs included in class 36.</i> <i>Class 42:</i> <i>Scientific and technological services and research and design related thereto; industrial analysis and research services; design and development of computer hardware and software; legal services</i>			
<i>CITICORP</i> <i>(word)</i>	<i>303697</i>	<i>14/03/75</i>	<i>16</i>
Goods: <i>Paper & paper articles; printed matter, newspapers and periodicals, books, cheques and travellers cheques</i>			

2. The word *Citi Corp* was registered in Class 16 as back as on 14th March, 1975.
3. The respondent had claimed use of the *Citi Corp* mark since 31st December, 1972 and registration from 16th December, 2003. Detailed assertions with regard to the extensive business being carried on by the plaintiff/respondents and the reputation attached to these trademarks was asserted in the plaint.

4. An ex parte interim injunction order dated 23rd September, 2013 against the appellants came to be passed by the learned Single Judge, which was confirmed by an order dated 24th November, 2014. On the same date, the learned Single Judge granted six months time to the appellants/defendants to change their corporate name from *Citi Corp* to some other name.

5. The appellants admittedly have not bothered to comply with the said order.

6. We may note that no appeal was preferred against these two orders.

7. The appellants also did not comply with the directions of the court. In this background, on 1st November, 2017, the learned Single Judge recorded the following order :

“Present case has been listed for directions in pursuance to the order dated 25th September, 2017 passed by the Joint Registrar. In the said order, the Joint Registrar has opined that the defendants are deliberately delaying the proceedings and have deliberately not complied with the order of payment of cost also. He has also held that the ground pleaded by the defendants for adjournment is not sustainable in law and the defendants are not entitled for any indulgence.

A perusal of the file reveals that the defendants have been repeatedly changing their counsel to take adjournments.

Learned senior counsel for the plaintiffs states that the injunction order dated 24th November, 2014 has not been complied with till date.

Keeping in view the conduct of the defendants, Mr.Dinesh Kumar Patnia, Director of the defendants is directed to be personally present in Court on the next date of hearing.

List on 09th January, 2018. ”

8. On the 9th of January, 2018, Mr. Dinesh Kumar Patnia, Director of the defendant company appeared personally before the court as directed and informed the court that the injunction orders had not been complied with because they were not brought to the notice of the defendants by their counsel. This explanation was not believed by the learned Single Judge who noted the fact that the defendants were continuously represented in the proceedings on the original side; that the appellants/defendants kept changing their counsels frequently as well as the ‘*combative*’ manner in which the proceedings had been contested. The court was of the view that these facts established that the defendants were aware of the court proceedings.

9. On 9th January, 2018, as the orders passed by the court were not complied with, the learned Single Judge was of the view that the provisions of Order XXXIX Rule 2A were attracted to the facts of the case; that the properties of the defendants were liable to be attached and the person(s) guilty of disobeying the Court’s orders were liable to be detained in a civil prison for three months.

10. In this background, by the order dated 9th January, 2018, the bank accounts of the appellants company including that of Mr. Dinesh Kumar Patnia were directed to be attached forthwith.

11. We find that the order dated 9th January, 2018 records the assurance given by the counsel for the defendant to the court “*that the injunction orders shall be complied within one month*”. The court accepted the statement made by the counsel for the defendant in the presence of Mr. Dinesh Kumar Patnia, Director of the company. Premised on this concession was the order of the learned Single Judge had ordered that the direction to take Mr. Dinesh Kumar Patnia under custody was kept in abeyance for one month. Mr. Patnia was directed to personally remain present in court on the next date of hearing. A further injunctive relief was granted with regard to operation of the bank account of the defendant companies.

This order has been assailed by the respondents by way of the present appeal.

12. The appellants have filed the present appeal (FAO(OS) No. 42/2018) on 9th March, 2018. The appellants did not comply with the statement made by the counsel on their behalf on the 9th of January, 2018. Instead on the 12th of March, 2018, after the expiry of the period of 30 days granted by the learned Single Judge they filed the present appeal assailing the order dated 9th January, 2018.

13. Learned counsel for the respondents has submitted that the suit wherein this order was passed was a commercial suit within the meaning of the expression under Section 2(c)(xvii) of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015. As per Section 2(c)(xvii), the following

disputes arising out of the following are covered within the definition of Commercial Disputes :

“(xvii) intellectual property rights relating to registered and unregistered trademarks, copyright, patent, design, domain names, geographical indications and semiconductor integrated circuits;”

14. So far as the appeals from a decision of the Commercial Courts are concerned, Section 13 of the Act elucidates the decisions against which appeals would lie. For expediency, we extract Section 13 of the Enactment hereafter which reads thus :

“13. Appeals from decrees of Commercial Courts and Commercial Divisions.—

(1) Any person aggrieved by the decision of the Commercial Court or Commercial Division of a High Court may appeal to the Commercial Appellate Division of that High Court within a period of sixty days from the date of judgment or order, as the case may be: Provided that an appeal shall lie from such orders passed by a Commercial Division or a Commercial Court that are specifically enumerated under Order XLIII of the Code of Civil Procedure, 1908 (5 of 1908) as amended by this Act and section 37 of the Arbitration and Conciliation Act, 1996 (26 of 1996).

(2) Notwithstanding anything contained in any other law for the time being in force or Letters Patent of a High Court, no appeal shall lie from any order or decree of a Commercial Division or Commercial Court otherwise than in accordance with the provisions of this Act.”

15. In a pronouncement rendered by a Division Bench of this court dated 14th February, 2017 in ***FAO(OS) (Comm) No. 12/2017 HPL***

(India) Limited & Ors. v. QRG Enterprises & Anr., similar objections with regard to maintainability of a challenge against the decisions passed in a commercial suit, were taken on the ground that the challenge was not permitted under Section 13 of the Act. The issues were examined by the court, and dealt with in the following terms :

“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.

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*47. On going through **Khimji's** case (supra), it is evident that the word judgment as used in the Letters Patent of the High Courts, is much wider and goes beyond the orders specifically enumerated under Order XLIII of the CPC. But, what must not be forgotten is that the word judgment in **Khimji's** case (supra) has been interpreted as appearing in and in the context of the Letters Patent of High Courts (which would also by analogy include Section 10 of the Delhi High Court Act, 1966). However, the meaning of the word —judgment as appearing in the CPC, as defined in Section 2(9) thereof is clearly linked with the definition of a —decree. The word judgment' in Section 13(1) of the said Act has to be considered not in the context of any Letters Patent of a High Court or a provision such as Section 10 of the Delhi High Court Act, 1966 but, in the context of the Code of Civil Procedure inasmuch as (1) the Commercial Division and the Commercial Court are enjoined by Section 16 to follow the provisions of the CPC,*

as amended by the said Act, in the trial of a suit in respect of a Commercial dispute of a specified value; (2) Section 13(2) of the said Act specifically excludes the operation of the provisions contained in the Letters Patent of a High Court or any other law for the time being in force (which includes Section 10 of the Delhi High Court Act, 1966) insofar as appeals from any order or decree of a Commercial Division or a Commercial Court are concerned. We have already indicated that the word —judgment‡ as appearing in Section 13(1) of the said Act is actually a misnomer and the said word has to be construed as a reference to a decree.

Therefore, in our view, the wider meaning ascribed to the word —judgment under the Letters patent of High Courts or under a provision, such as Section 10 of the Delhi High Court Act, 1966, cannot be imported into Section 13(1) of the said Act.

48. We now come to the consideration of the decision of the Supreme Court in **Arun Dev Upadhyaya** (supra) which was relied upon by the appellants. First of all, that was a case pertaining to an appeal from a judgment of a single Judge in relation to an international arbitration. The question posed before the Supreme Court was whether an appeal against the judgment of a single Judge in an international arbitration matter was appealable to the Division Bench. This question was examined in the context of the Letters Patent of a High Court. While noticing the earlier decision in **Fuerst Day Lawson Limited v. Jindal Exports Limited: 2011 (8) SCC 333**, the Supreme Court in **Arun Dev Upadhyaya** (supra) noted that the High Court derives its intra-court appeal jurisdiction under the Charter by which it was established and its powers under the Letters Patent were recognised by Article 225 of the Constitution of India. It was further noted that the High Court could not be divested of its Letters Patent jurisdiction unless provided for expressly or by necessary intendment by some special statute. Moreover, if the pronouncement of the single Judge qualified as a judgment, in the absence of any

bar created by a statute either expressly or by necessary implication, it would be subject to appeal under the relevant clause of the Letters patent of the High Court. It is evident that the court considered that the intra-court appeal jurisdiction was derived by a High Court under the Charter or enactment by which it was established. The question that arises in the present case is whether an appeal filed against an order of a Commercial Division of the High Court before the Commercial Appellate Division of that High Court is one under Section 13(1) of the said Act or under a Letters Patent of a High Court or under any other law for the time being in force, including a provision such as Section 10 of the Delhi High Court Act, 1966 ? It is evident that Section 13(1) not only provides for a forum of appeal in respect of a decision of a Commercial Court or a Commercial Division of a High Court, but, as pointed out above, also prescribes a specific period of limitation for such an appeal. Section 13(2) expressly stipulates that no appeal would lie from any order or decree of a Commercial Division or a Commercial Court otherwise than in accordance with the provisions of the said Act. Thus, the right of appeal as well as the forum of appeal has been specifically provided under the said Act and in this regard, the application of the Letters Patent or any other law dealing with the appeals has been excluded.”

16. Clearly, no appeal is provided against an order passed under Order XXXIX Rule 2A of the Code of Civil Procedure, 1908.

17. Apart from the statutory prohibition, a statement was made on behalf of the appellants before the learned Single Judge on 9th January, 2018 that they would comply with the order of injunction within a period of 30 days. Having given such statement, the present appeal is a completely dishonest attempt by the appellants to avoid compliance

with the orders of the court. It also manifests that the statement made before the learned Single Judge on 9th January, 2018 was with the malafide intent of evading the direction by the learned Single Judge for the director of the appellant to undergo civil imprisonment.

18. In view of the above, the present appeal is completely misconceived and is not maintainable.

19. Dismissed.

CM Nos. 9693-9694/2018

In view of the order passed in the appeal, the applications do not survive for adjudication. The same are hereby dismissed.

ACTING CHIEF JUSTICE

C.HARI SHANKAR, J

JULY 17, 2018/kr