

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8048 OF 2020

- 1] M/s Vikram Tea Processors Pvt. Ltd.,
through its authorized signatory
Kishore S/o Sarjerao Khaire
age major occupation : Service
Having its office at Bhaishree Chambers,
Veer Savarkar Chowk, Jalna 431 003 .. Petitioner

Versus

- 1] Mr. Anant S/o Tukaram Teke
Age : Adult, Occupation : Business,
Proprietor, M/s. Onkar Tea Having
its Office at Shukrawar Peth,
Beed - 431 122
- 2] Mr. Ashok S/o Tukaram Teke
Age : Adult, Occupation : Business
Authorized Manager, M/s. Onkar Tea
Having its office at Shukrawar Peth,
Beed - 431 122
- 3] Mr. Ashok S/o Vasantryao Kulkarni
Age Adult, Occupation : Business,
Business Manager, M/s Onkar Tea
Having its office at Shukrawar Peth,
Beed - 431 122

**[Deleted vide Court's order dated
22-03-2021 and 27-07-2021]**

.. Respondents

...
Advocate for petitioner : Mr. Shreyas S. Deshpande
None present for the respondents though served
Respondent no. 3 deleted as per Courts order dated 27-07-2021
...

CORAM : MANGESH S. PATIL, J.

DATE : 1 JULY 2022

ORAL ORDER :

Heard learned advocate Mr. Deshpande for the petitioner.

2. The respondents have been duly served with a notice for final disposal but have not appeared.

3. The only question which crops up for the decision by this court is as to whether the suit filed under the Trade Marks Act, 1999 under section 27, 28 and 103 would be maintainable before the Court of Civil Judge Senior Division merely because it simultaneously falls under the definition of commercial dispute under the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (“**Commercial Courts Act**”).

4. By the order under challenge the learned civil judge has rejected the application of the petitioner to transfer the suit to the District Court.

5. Going by the reasoning given by the learned Civil Judge in the order under challenge, it seems to have been overawed by the provision contained in section 21 of the Commercial Courts Act which declares that the provisions of that Act have overriding effect over other enactments.

6. There cannot be any dispute about the provisions of section 134 of the Trade Marks Act which requires any suit filed under that Act to be tried by a Court not inferior to District Court. It reads as under :-

134. Suit for infringement etc., to be instituted before District Court.—

(1) No suit—

(a) for the infringement of a registered trade mark; or

(b) relating to any right in a registered trade mark; or

(c) for passing off arising out of the use by the defendant of any trade mark which is identical with or deceptively similar to the plaintiff's trade mark, whether registered or unregistered,

shall be instituted in any court inferior to a District Court having jurisdiction to try the suit.

(2) For the purpose of clauses (a) and (b) of sub-section (1), a "District Court having jurisdiction" shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908) or any other law for the time being in force, include a District Court within the local limits of whose jurisdiction, at the time of the institution of the suit or other proceeding, the person instituting the suit or proceeding, or, where there are more than one such persons any of them, actually and voluntarily resides or carries on business or personally works for gain.

Explanation.—For the purposes of sub-section (2), "person" includes the registered proprietor and the registered user.

It is quite apparent that any suit covered by section 134 would lie before the District Court and not before any inferior Court.

7. It is true that section 21 of the Commercial Courts Act gives overriding effect to the provisions of the Act to the extent the provisions in the other Act are inconsistent with the provisions of that Act. However, section 21 will have to be read simultaneously with the provisions contained in section 11 which prescribes bar to the jurisdiction of Commercial Courts Act. These provisions read as under :-

11. Bar of jurisdiction of Commercial Courts and Commercial Divisions.-

Notwithstanding anything contained in this Act, a Commercial Court or a Commercial Division shall not entertain or decide any suit, application or proceedings relating to any commercial dispute in that respect of which the jurisdiction of the Civil Court is either expressly or impliedly barred under any other law for the time being in force.

...

21. Act to have overriding effect.- Save as otherwise provided, the provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effected by virtue of any law for the time being in force other than this act.

If both these provisions are read simultaneously, it is quite apparent that though Section 21 provides for overriding effect, Section 11 is a *non obstante* clause and clearly lays down that a Commercial Court or Commercial Division shall not have jurisdiction to decide a commercial dispute if the jurisdiction of the civil court is either expressly or impliedly barred. In that sense, Section 11 constitutes a sort of exception to what has been laid down in Section 21.

8. If the provisions of section 134 of the Trade Marks Act and the provisions contained in section 11 of the Commercial Courts Act are read simultaneously, the former would govern the issue regarding the jurisdiction. If a suit under the Trade Marks Act is triable by a Court not inferior to the District Court, merely because it falls under the definition of commercial dispute, the dispute would not lie before the Court inferior to the District Court.

9. The learned Judge seems to have got swayed away by the fact that the Commercial Courts Act is a latter legislation. The provision

contained in section 11 of that Act makes it abundantly clear that the suit under Section 134 of the Trade Marks Act would lie before a District Court even if it is covered by the definition of commercial dispute.

10. The impugned order is quashed and set aside. The suit stands transferred to the District Court at Beed for decision in accordance with law.

11. Writ petition is disposed of.

[MANGESH S. PATIL]
JUDGE

arp/