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

Date of Decision: 23rd March, 2022

+ **CM(M)-IPD 2/2021 & CM APPL. 27383/2020**

AKHIL BHARTIYA KAYASTHA MAHASABHA Petitioner
Through: None.
versus

**AKHIL BHARTIYA KAYASTHA MAHASABHA
& ANR.** Respondents
Through: None.

**CORAM:
JUSTICE PRATHIBA M. SINGH**

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through hybrid mode.
2. None appears for the parties.
3. The present petition challenges the order dated 23rd January, 2020 in **CS(COMM) 181/2019** titled *Akhil Bhartiya Kayastha Mahasabha v. Yogendra Nath Srivastava* passed by the Ld. District Judge (Commercial Court), Dwarka Courts, New Delhi (*hereinafter "Commercial Court"*). Vide the said order, the Commercial Court has held that the dispute raised in the suit is not a commercial dispute within the meaning of section 2(1)(c) of the Commercial Courts Act, 2015 (*hereinafter "Act"*). The Commercial Court reasoned that since the Petitioner/Plaintiff society is not involved in any trade or commercial activities and is only rendering social services there would be no transaction in the present suit which would fall in the category of commercial dispute. The relevant extract of the impugned order reads as under:



“A conjoint reading of Section 2(c)(i) with Section 2(c)(xvii) and the statement of objects and reasons shows that the commercial courts are to deal with the commercial dispute especially those engaged in trade and commerce. The plaintiff is not stated to be involved in any trade and commerce. In the present case, there is no such transaction, which would fall in the category of commercial transaction or commercial dispute.

*In view of above, the suit is not a commercial dispute within the meaning of Section 2(1)(c) of the Commercial Courts Act, 2015. The file be sent back to the court of Ld. ADJ-02/SW/Dwarka Courts for disposal in accordance with law. Plaintiff to appear before the court of Ld. ADJ-02/SW/Dwarka Courts on **30.01.2020 at 10.00 am**, the date as prayed for.”*

4. In this matter, notice was issued to Respondent No.2 & 3 vide order dated 19th November, 2020. However, till date the Plaintiff has not taken steps to serve the Respondents/Defendants and Process fee has also not been filed.
5. A perusal of the suit itself shows that the Plaintiff seeks protection of its mark ‘*Akhil Bhartiya Kayastha Mahasabha*’ and an injunction is sought against the Defendant from using the said mark/name.
6. The suit was instituted on 4th November, 2019 and a perusal of the order sheets of the Commercial Court would show that the matter was adjourned on a few occasions and summons/notice was not issued to the Defendants. Finally, vide the impugned order the Commercial Court has held that in terms of the Act, the dispute in the suit is not a commercial dispute.



7. A perusal of Section 2(c)(xvii) Act shows that all disputes which are raised covering intellectual property rights relating to registered, and unregistered trademark, copyright, patent, design, domain names, geographical identifications, and semiconductor integrated circuits are commercial disputes.

8. The Plaintiff, in the present case, claims rights in respect of the mark '*Akhil Bhartiya Kayastha Mahasabha*'. It is the case of the Plaintiff that it helps disabled and physically challenged persons and renders various social services. The dispute in question is related to the name/mark '*Akhil Bhartiya Kayastha Mahasabha*' itself which is pending before the Trade Mark Registry bearing Application No. 3651016 for the registration of a device mark. The Defendants have adopted the mark/name '*Akhil Bhartiya Kayastha Mahasabha*' which is an identical name, because of which the Plaintiff is aggrieved. The substance of the dispute is clearly an intellectual property rights dispute relating to an unregistered mark/name. Irrespective of the constitution of the Plaintiff or the Defendants, the same would be a commercial dispute in terms of Section 2(c)(xvii) of the Commercial Courts Act, 2015. Clearly, the Commercial Court has erred in holding that the same is not a commercial dispute as the Plaintiff was not involved in trade and commerce.

9. Under such circumstances, the impugned order is not sustainable in the opinion of the Court. The same is set aside.

10. The suit ***CS (COMM) No. 181/2019*** titled ***Akhil Bhartiya Kayastha Mahasabha v. Mr. Yogendra Nath Srivastava***, shall now be restored to its original number and shall be listed before the concerned District Judge, Commercial Court, Dwarka Courts in New Delhi. The suit shall proceed



further from the stage at which it was prior to the impugned order dated 23rd January, 2020.

11. Copy of this order be communicated to Ms. Dhurjati Verma, Id. Counsel for the Petitioner by the Registry on *email id- dhurjativerma@yahoo.com* and *Mobile No- 9811667456*.

12. The appeal is allowed in the above terms. The suit shall now be listed on 12th April, 2022 before the concerned District Judge.

13. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as the certified copy of the order for the purpose of ensuring compliance. No physical copy of orders shall be insisted by any authority/entity or litigant.

PRATHIBA M. SINGH, J.

MARCH 23, 2022

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