

**Nikita**

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.13127 OF 2023**

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Kirloskar Proprietary Ltd. ... Petitioner

**V/s.**

Sardesai Auto Parts Pvt. Ltd. and Ors. ... Respondents

Mr. Nikhil Sakhardande Senior Counsel a/w Mr. Rohan Kelkar- Counsel a/w Mr. Tushar Ajinkya a/w Mr. Saahil Bijliwala a/w Mr. Vedant Chhajer – Advocates i/b ThinkLaw Advocates for the petitioner.

Mr. Venkatesh Dhond Sr. Adv. a/w Mr. Harish Raman a/w Alhan Kyser i/b Avesh Kayser for Respondent Nos. 1, 2 and 3.

Ms. Ankita Nishad i/b Ms. Vrushali Maindad for Respondent No.4.

**CORAM : AMIT BORKAR, J.**

**DATED : NOVEMBER 3, 2023**

**PC.:**

**1.** By this petition under Article 227 of the Constitution of India the Principal District Judge in exercise of power under Section 24 of the Code of Civil Procedure, 1908, transferred the Civil Suit No. 3 of 1993, Civil Suit No.4 of 1993, and Civil Suit No.5 of 1993 from the Court of District Judge-2 to the Court of District Judge-1.

**2.** On reading of averments in the suit, it appears that the suits

are filed for enforcement of rights conferred under the provisions of Trademarks Act, 1958. Therefore, the Court not below District Judge shall be the Court which is entitled to try and decide such Suit.

**3.** The defendants filed an application under Section 24 before the Principal District Judge on the ground that the suits were substantially heard by the District Judge-1 as before his re-designation, he was having power to adjudicate such suit. The principal District Judge, therefore allowed the application and transferred all suits to District Judge -1 who had substantially heard of the suit.

**4.** The plaintiff has, therefore, challenged the order on the ground after coming into force of Commercial Courts Act, 2015 and in view of Section 15 of the said Act, all suits covered by Section 2(c) needs to be transferred to the Court designated by notification under Section 3(1) of the Commercial Courts Act, 2015. Reliance is placed on notification dated 3<sup>rd</sup> July 2019 which designates Civil Judge Senior Division in the District to be a Commercial Court for disputes up to Rs.1,00,00,000/-. The valuation of the suit is 10,00,000/- and according to petitioner the order of principal District Judge transferring the suit to District Judge-1 suffers from legal infirmity as the order transfers suit to, Court which has no jurisdiction to entertain commercial disputes under Section 2(c) of the Commercial Courts Act, 2015.

**5.** Per contra, according to respondents, provisions of Commercial Courts Act, 2015 are applicable to only such suits

which are covered by Section 2(c) and Section 2(i) of the Commercial Courts Act 2015. Unless twin conditions under Section 2(c) and 2(i) are fulfilled, provisions of the Commercial Courts Act 2015 in relation to Section 15 are not applicable.

**6.** For the purpose of adjudicating issue involved it is necessary to set out relevant provisions of the Commercial Courts Act 2015.

**7.** Section 2(c)(xvii) reads as under:

“Intellectual property rights relating to registered and unregistered trademarks, copyright, patent, design domain, names, geographical indications and semi-conductor integrated circuits.”

**8.** Section 2(c)(i) reads as under:

“ commercial dispute” means a dispute arising out of-  
(i) ordinary transactions of merchants, bankers, financiers and traders such as those relating to mercantile documents, including enforcement and interpretation of such documents;”

**9.** Notification dated 3<sup>rd</sup> July 2019 specifies pecuniary value of Rs.50,00,000/- as specified minimum value of the commercial disputes as per Section 2(c)(i).

**10.** Undisputedly valuation of suits is Rs.10,00,000/- which is below minimum specified value prescribed under Section 2(c)(i). Hence, in absence of compliance with condition No.2(c)(i). The suit filed by the plaintiff cannot be decided by the Courts notified under Section 3(1) of the Commercial Court Act 2015.

**11.** Once it is held that the provisions of the Commercial Courts

Act, 2015 are not applicable to the facts of the case, only the Court governed by Section 105 of the Trademarks Act, 1958 will have jurisdiction to try, entertain and decide the suit. The Court to whom the suit is transferred, satisfies requirements of Section 105 of the Trademarks Act, 1958. Hence District Judge-1 has jurisdiction to try, entertain and decide the suit. Once it is held that the transferred Court has jurisdiction to decide the suit, the transfer on the ground of suit having been substantially heard by the Judge designated as District Judge-1 does not suffer from any legal infirmity.

**12.** Hence, the writ petition stands dismissed. No costs.

**(AMIT BORKAR, J.)**