



Transfer Appl. No.1 of 2021

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE **R.SUBRAMANIAN**

AND

THE HONOURABLE MR.JUSTICE **R.SAKTHIVEL**

Transfer Appl. No.1 of 2021
and CMP No.6806 of 2021

Uyir Agriculture Private Limited,
Rep by its Managing Director,
Thirunganasambandam,
AB Block, Door No.34,
5th Street, Plot No.4872,
Anna Nagar, Chennai 600 040.

Also at:

No.42, Bhuvanam Illam,
Pariyanna Street,
Erode 638 001.

.. Applicant/Plaintiff

Vs.

1. Ueir Organic Foods Private Limited,
Rep. by its Managing Director,
No.38, Main Street, Kalipalayam,
Elavanatham Post, Arachalur,
Erode 638 101.

2. Mrs. Thiruselvi,
Managing Director,
Ueir Organic Foods Private Limited,
No.38, Main Street, Kalipalayam,
Elavanatham Post, Arachalur,
Erode 638 101.



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3. Mrs. G.Suganya

Director,

Ueir Organic Foods Private Limited,
No.38, Main Street, Kalipalayam,
Elavanatham Post, Arachalur,
Erode 638 101.

4. Mr.Manoharan

Director,

Ueir Organic Foods Private Limited,
No.38, Main Street, Kalipalayam,
Elavanatham Post, Arachalur,
Erode 638 101.

5. Senthilnathan

..Respondents/Defendants

Prayer: Transfer Application filed under Section 15(5) of the Commercial Courts Act, 2015, to withdraw OS No.406 of 2020 on the file of Principal District Court, Erode and transfer the same to be tried as a Commercial Suit under Section 2(1)(C)(XVII) of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (Act 4 of 2016) and Order VII Rule 1 of the Code of Civil Procedure, 1908 read with Order IV Rule 1 of the Original side Rules of the Madras High Court and Section 134 of the Trademarks Act, 1999 in the same Court.

For Applicant

: Mr.K.Ashok Kumar

For Respondents

: Mr.S.Umasankar
for M/s.M.Guruprasad
for RR1, 2 & 4



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ORDER

*(Order of the Court was made by **R.SUBRAMANIAN,J.**)*

This transfer application has been filed seeking transfer of the suit in OS No.406 of 2020 from the file of the Principal District Court, Erode to the Commercial Court to be tried as a commercial suit.

2.. The suit is one for infringement of a trade mark. It was originally filed on the Original Side of this Court and it was valued at Rs.12,000/-. Upon a decision of this Court to the effect that this Court has no jurisdiction to try the suit rendered on 05.10.2020, the suit was returned to be presented before the proper Court having jurisdiction. The plaintiff therefore, represented the suit before the District Court, Erode. The suit was numbered as an ordinary suit, in view of the fact that the value of the suit was less than the specified value as defined under Section 2(i) of the Commercial Courts Act. The plaintiff objected to the same and since the objection was over ruled it has come forward with this application for transfer.



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3. We have heard Mr.K.Ashok Kumar, learned counsel appearing for the applicant and Mr.S.Umasankar, learned counsel appearing for M/s.M.Guruprasad, for the respondents 1, 2 and 4.

4. Mr.K.Ashok Kumar, learned counsel appearing for the applicant would vehemently contend that the Trial Court was not right in numbering the suit as an ordinary suit, he would seek to support his argument by referring to Section 12(d) of the Commercial Courts Act, which deals with determination of specified value. According to the learned counsel, once Section 12(d) invests the right to value the suit in the plaintiff and once the dispute is shown to be a commercial dispute within Section 2(xvii) of the Commercial Courts Act, irrespective of the valuation, the said suit has to be tried only by the Commercial Court and not by the regular District Court. We are unable to accept the submissions of the learned counsel appearing for the applicant.

Section 2(xvii) of the Commercial Courts Act, which reads as follows:

*2(xvii): intellectual property rights relating
to registered and unregistered trademarks,*



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*copyright, patent, design, domain names,
geographical indications and semiconductor
integrated circuits;*

makes disputes relating to intellectual property as commercial disputes.

However, Section 2(i) of the Commercial Courts Act, which reads as follows:

*(i) “Specified Value”, in relation to a
commercial dispute, shall mean the value of the
subject matter in respect of a suit as determined in
accordance with section 12 [which shall not be less
than three lakh rupees] or such higher value, as may
be notified by the Central Government.*

defines specified value. Therefore, any suit which falls within Section 2(c)(i) to 2(c)(xxii) of the Commercial Courts Act, in order to qualify as a Commercial Suit must be of the specified value. If the valuation of the suit is less than the specified value, it will not qualify to be a commercial dispute, to decide which the jurisdiction is invested in a Commercial Court.



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5. Section 6 of the Commercial Courts Act, 2015 which deals with jurisdiction reads as follows:

“6. Jurisdiction of Commercial Court.—The Commercial Court shall have jurisdiction to try all suits and applications relating to a commercial dispute of a Specified Value arising out of the entire territory of the State over which it has been vested territorial jurisdiction. (emphasis supplied)

Explanation.—For the purposes of this section, a commercial dispute shall be considered to arise out of the entire territory of the State over which a Commercial Court has been vested jurisdiction, if the suit or application relating to such commercial dispute has been instituted as per the provisions of sections 16 to 20 of the Code of Civil Procedure, 1908 (5 of 1908).”



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6. A reading of the said provision would show that in order that a Commercial Court could exercise jurisdiction, the value of the suit must be over and above the specified value, otherwise a Commercial Court will not have a jurisdiction to entertain a suit even if it falls within one of the Clauses viz. Clauses 2(c)(i) to 2 (c)(xxii) of the Commercial Courts Act.

7. Section 7 of the Commercial Courts Act, which deals with jurisdiction of commercial divisions of High Courts reads as follows:

“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



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*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.”*

The first proviso to Section 7 of the Commercial Courts Act, enables the Commercial Division of a High Court to deal with the suit as a Commercial suit even if the value is less than the specified value, if the suit is to be tried by a Court not inferior to the District Court by an Act of the legislature/parliament. Similar proviso is conspicuously absent in Section 6 of the Commercial Courts Act. Therefore, the District Court was right in numbering the suit as an ordinary suit. We see no reason to transfer the same.



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8. For the foregoing reasons, the Transfer Application is **dismissed**.

There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

9. Mr.Ashok Kumar, learned counsel appearing for the applicant would submit that if the plaintiff chooses to amend the plaint and increase the value of the suit then it has to be tried as a commercial suit. If the plaintiff chooses to amend the plaint and increase the value and thereby the value of the suit exceeds the specified value, the suit will automatically be tried as a Commercial Suit and while hearing the application for amendment, the District Court will not be influenced by any of our observations made hereunder.

(R.SUBRAMANIAN, J.) (R.SAKTHIVEL, J.)
08.07.2024

jv
Index : Yes
Internet : Yes



Neutral Citation : Yes
Speaking order

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and
R.SAKTHIVEL, J.

jv

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