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

% *Date of Decision: 04.05.2026*

\+ FAO (COMM) 295/2025

SHIV BALAK GOSWAMI .....Appellant

Through: Ms. Anjalika Sharma and Mr. Narender Goswami, Advs.

versus

PANKAJ PURI .....Respondent

Through: Mr. Satish Kumar, Mr. Rakesh Tiwari and Mr. Shiv Kumar Yadav, Advs.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

MANMEET PRITAM SINGH ARORA, J*(ORAL)*

1. This is an appeal under Section 13 of the Commercial Courts Act, 2015 ['Act of 2015'], against the order dated 06.06.2025 in CS(COMM) 193/2020 ['impugned order'], passed by the District Judge, Commercial Court, West District, Tis Hazari, returning the plaint for being presented before the Court of appropriate jurisdiction.

2. The brief factual matrix as set out in the appeal is as follows:

3. The Appellant is a manufacturer, wholesaler, retailer, and distributor of automobile oils and other lubricants. One of the marks under which the Appellant has been selling its products is LAIMAX and SUPER LAIMAX 4T. The Appellant has also filed Trademark applications bearing nos.

4387812 and 4386053 for the said marks, which are still pending registration. It is stated that the Appellant has built a substantial reputation and goodwill in the mark LAIMAX in view of its continuous use since 2009.

4. The Respondent is also engaged in the manufacturing and supplying of engine oils and lubricants under the mark LAIMAX. The Appellant learnt about the Respondent's use of the mark LAIMAX in January 2020. From further search, the Appellant learnt that the Respondent has a registration for the mark LAIMAX bearing TM no. 3200528, dated 25.01.2018, and claiming use since 02.03.2016, which is much later than the Appellant's adoption of the said mark.

5. The Appellant, to protect its mark LAIMAX, instituted a suit bearing no. CS(COMM) 193/2020, seeking relief of permanent injunction to restrain the Respondent from using the mark LAIMAX, passing off, rendition of accounts, and other ancillary reliefs.

6. The District Judge *vide* order dated 17.02.2021 passed an order granting an interim injunction in favour of the Appellant, restraining the Respondent from using the marks LAIMAX and SUPER LAIMAX 4T, subject to liquidation of old stock in view of the Respondent's registration.

7. Thereafter, issues were framed, and both parties filed their list of witnesses and affidavits by way of evidence. After the conclusion of the recording of evidence of the plaintiff and the defendant, the matter was listed for final arguments on 09.05.2025.

8. That District Judge heard final arguments on 09.05.2025 and 21.05.2025. During the arguments, it was noticed by the said Court that the

suit was not properly valued, hence the District Judge on 21.05.2025 framed a preliminary issue "**whether the plaint of the present suit is liable to be returned for want of pecuniary jurisdiction**".

9. Thereafter, the District Judge passed the impugned order returning the plaint on the ground that it lacked pecuniary jurisdiction, holding that the suit value did not cross the specified value as necessary to institute a suit before the Commercial Court.

10. In these facts, the Appellant has preferred the said appeal.

COURT'S FINDINGS

11. Learned counsel for the Appellant states that after the District Judge had concluded that the suit was undervalued, it ought to have granted an opportunity to the Appellant to amend the plaint and pay the requisite Court fee.

11.1. She relies upon the judgment of the Supreme Court in **Marg Limited v. Sushil Lalwani and Others**[1] and more specifically paragraph '33' which reads as under: -

> "33. A plain and conjoint reading of clauses (b) and (c) of Order VII Rule 11 of the Code makes it abundantly clear that the power to reject a plaint on the grounds enumerated therein, is not to be exercised in the first instance, without affording an opportunity to the plaintiff. The statutory scheme contemplates a two-step process. <u>Firstly, the Court must form an opinion that the relief claimed is undervalued or that the court fee paid is insufficient. Secondly, upon such determination, the Court is obligated to require the plaintiff to correct the valuation and/or supply the requisite court fee within a time to be fixed by it. It is only upon failure of the plaintiff to comply with such direction within the stipulated time, that the consequences of rejection of the plaint can ensue</u>. Thus, the rejection of a plaint under Order VII Rule 11(b) or (c) is not automatic upon a finding of undervaluation or deficit court fee; rather, it is conditional upon non-compliance with the opportunity so granted by the Court."

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[1] 2026 SCC OnLine SC 647

[Emphasis Supplied]

12. In response, learned counsel for the Respondent states that Appellant had sufficient time from 2020 to 06.06.2025 to file an application for amendment of the plaint to ensure that the reliefs in the suit are valued above Rs. 3 lakhs so as to bring the suit within the pecuniary jurisdiction of the Court as per Section 2(1)(i) of the Act of 2015.

12.1. He states that the commercial suit was filed with an insufficient Court fee and therefore the plaint has been rightly rejected by the District Judge.

13. This Court has heard the learned counsel for the parties and perused the record.

14. Section 21(2) of the Code of Civil Procedure 1908 ['CPC'] prescribes the stage of the proceedings until when an objection with respect to the pecuniary jurisdiction of a Court can be raised, which reads as under: -

> "**21. Objections to jurisdiction.** — (1) No objection as to the place of suing shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, and unless there has been a consequent failure of justice.
>
> (2) <u>No objection as to the competence of a Court with reference to the pecuniary limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity, and, in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice.</u>
>
> (3) No objection as to the competence of the executing Court with reference to the local limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the executing Court at the earliest possible opportunity, and unless there has been a consequent failure of justice.
>
> [Emphasis Supplied]

15. It is trite law and also evident on a plain reading of Section 21(2) of

CPC that an objection with respect to pecuniary limits of the jurisdiction of a Court has to be raised at the earliest possible opportunity, and, in all cases where issues are settled, at or before such settlement. The Court is precluded from returning the plaint on this ground at the stage of final hearing, if no such objection was raised or deficiency noted prior to settlement of issues.

16. In the facts of this case, admittedly, neither the Respondent [i.e., defendant] raised any objection to the pecuniary jurisdiction of the trial Court in its written statement, nor was any issue in this regard framed. The Respondent rather filed an application challenging the territorial jurisdiction of the District Court, which was dismissed by the District Court *vide* order dated 17.02.2021. The parties thereafter proceeded to trial and led evidence. It is thus apparent that the Respondent had no objection to the pecuniary jurisdiction of the Court. It was only at the stage of final arguments that the District Judge, on its own, raised this issue, raised by the Respondent. In our considered opinion, the District Judge could not have on its own accord raised this issue at the stage of final arguments and in fact, no objection could have also been entertained by the District Judge even at the instance of the Respondent.

17. In this regard, we find it apposite to refer to the dicta of the Supreme Court in the case of **Harshad Chiman Lal Modi v. D.L.F. Universal Ltd.**[2], wherein the Supreme Court reiterated that issues in relation to pecuniary jurisdiction of the trial Court have to be raised at the earliest possible opportunity and not later than the stage of settlement of issues. The relevant paragraph of the judgment reads as follows: -

[2] (2005) 7 SCC 791

"30. We are unable to uphold the contention. The jurisdiction of a Court may be classified into several categories. The important categories are (i) Territorial or local jurisdiction (ii) Pecuniary jurisdiction; and (iii) Jurisdiction over the subject matter. **So far as territorial and pecuniary jurisdictions are concerned, objection to such jurisdiction has to be taken at the earliest possible opportunity and in any case at or before settlement of issues**. **The law is well settled on the point that if such objection is not taken at the earliest, it cannot be allowed to be taken at a subsequent stage.** Jurisdiction as to subject matter, however, is totally distinct and stands on a different footing. Where a court has no jurisdiction over the subject matter of the suit by reason of any limitation imposed by statute, charter or commission, it cannot take up the cause or matter. An order passed by a court having no jurisdiction is nullity."

[Emphasis Supplied]

18. An earlier judgment of the Supreme Court in **Kiran Singh v. Chaman Pawan**[3] also settles the law as regards the reasons of non-dismissal of a suit on the technical ground of pecuniary jurisdiction beyond the stage contemplated under Section 21 of CPC. The relevant paragraphs read as follows: -

"6. The answer to these contentions must depend on what the position in law is when a court entertains a suit or an appeal over which it has no jurisdiction, and what the effect of Section 11 of the Suits Valuation Act is on that position. It is a fundamental principle well established that a decree passed by a court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the court to pass any decree, and such a defect cannot be cured even by consent of parties. If the question now under consideration fell to be determined only on the application of general principles governing the matter, there can be no doubt that the District Court of Monghyr was coram non judice, and that its judgment and decree would be nullities. The question is what is the effect of Section 11 of the Suits Valuation Act on this position.

7. Section 11 enacts that notwithstanding anything in Section 578 of the Code of Civil Procedure an objection that a court which had no jurisdiction

[3] AIR 1954 SC 340

over a suit or appeal had exercised it by reason of overvaluation or undervaluation, should not be entertained by an appellate court, except as provided in the section. Then follow provisions as to when the objections could be entertained, and how they are to be dealt with. The drafting of the section has come in—and deservedly—for considerable criticism; but amidst much that is obscure and confused, there is one principle which stands out clear and conspicuous. It is that a decree passed by a court, which would have had no jurisdiction to hear a suit or appeal but for overvaluation or undervaluation, is not to be treated as, what it would be but for the section, null and void, and that an objection to jurisdiction based on overvaluation or undervaluation, should be dealt with under that section and not otherwise. The reference to Section 578, now Section 99 CPC, in the opening words of the section is significant. That section, while providing that no decree shall be reversed or varied in appeal on account of the defects mentioned therein when they do not affect the merits of the case, excepts from its operation defects of jurisdiction. Section 99 therefore gives no protection to decrees passed on merits, when the courts which passed them lacked jurisdiction as a result of overvaluation or undervaluation. It is with a view to avoid this result that Section 11 was enacted. It provides that objections to the jurisdiction of a court based on overvaluation or undervaluation shall not be entertained by an appellate court except in the manner and to the extent mentioned in the section. It is a self-contained provision complete in itself, and no objection to jurisdiction based on overvaluation or undervaluation can be raised otherwise than in accordance with it. With reference to objections relating to territorial jurisdiction, Section 21 of the Civil Procedure Code enacts that no objection as to the place of suing should be allowed by an appellate or revisional court, unless there was a consequent failure of justice. It is the same principle that has been adopted in Section 11 of the Suits Valuation Act with reference to pecuniary jurisdiction. The policy underlying Sections 21 and 99 CPC and Section 11 of the Suits Valuation Act is the same, namely, that when a case had been tried by a court on the merits and judgment rendered, it should not be liable to be reversed purely on technical grounds, unless it had resulted in failure of justice, and the policy of the legislature has been to treat objections to jurisdiction both territorial and pecuniary as technical and not open to consideration by an appellate court, unless there has been a prejudice on the merits. The contention of the appellants, therefore, that the decree and judgment of the District Court, Monghyr, should be treated as a nullity cannot be sustained under Section 11 of the Suits Valuation Act."

19. It would also be apposite to refer to the judgment of the full bench of

this Court in **Subhashini Malik v. S.K. Gandhi & Ors.**[4] wherein the full bench, while discussing Section 21 of CPC, explained that in case of territorial or pecuniary jurisdiction, the want of jurisdiction can be remedied by waiver, consent or acquiescence of the parties, and therefore a party is precluded from raising such objections at the appellate stage. The relevant findings are as follows: -

> "151. Secondly, a distinction must be drawn between subject-matter jurisdiction and pecuniary or territorial jurisdiction. In each situation, the question relates to the jurisdiction of the court, but in the case of territorial or pecuniary jurisdiction, the want of jurisdiction of this kind may be remedied by waiver, consent or acquiescence. These are treated as jurisdictional defects which can be cured. Thus, in spite of lack of jurisdiction, a party can be precluded from raising an objection even at the stage of appellate proceedings. There is case law which suggests that the Bootstrap Doctrine, without statutory backing, cannot give binding effect to a judgment by a Court that had no subject matter jurisdiction."
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> [Emphasis Supplied]

20. The rationale for not permitting a party to raise an objection after the settlement of issues is not far to find. As held by the Supreme Court, the issue of pecuniary jurisdiction does not affect the inherent jurisdiction of the Court over the subject matter; therefore, it does not affect the competence of the Court to adjudicate the dispute and does not prejudice the defendant. However, as in this case, if an objection is permitted to be raised for the first time during final arguments, after the parties have already concluded recording of evidence, it will not only entail wasteful expenditure for the parties who have completed pleadings and recording of evidence, but also the judicial time taken up in trying the suit till that stage.

21. Section 21(2) of CPC, however, stipulates an exception, as regards

[4] 2016 SCC OnLine Del 5058

entertaining an objection to pecuniary jurisdiction, even when such an objection is raised after the settlement of issues. The said exception is that entertaining the suit will result in failure of justice. However, there is no such failure of justice recorded in the impugned order, so as to justify the suo moto exercise of jurisdiction of Order VII Rule 10 of CPC by the District Judge at the stage of final hearing.

22. In our considered opinion, in view of the bar of Section 21(2) of CPC, in the facts of this case, the District Judge could not have rejected the plaint on the grounds of lack of pecuniary jurisdiction while hearing final arguments. The impugned order is hereby set aside on this finding alone.

23. We may also note the submission of the Appellant that it is willing to amend the plaint so as to value the reliefs appropriately and pay the required Court fee.

24. Learned counsel for the Appellant states that in view of the judgment of the learned Single Judge of this Court in **Vishal Pipes Ltd. v. Bhavya Pipe Industries**[5]**,** the District Judge could have granted the Appellant an opportunity to amend the plaint. Relevant paragraphs of the judgment read as follows: -

> "65. This Court is cognizant of the fact that the valuation of intellectual property is by itself a very complex process. It is clarified that the Commercial Court is not expected to value the specific IP on the basis of any mathematical formulae but to broadly take into consideration whether the said IP would be worth more than Rs. 3 lakhs, which is the threshold for the Commercial Court to exercise jurisdiction.
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> 66. In light of the above discussion, the following directions are issued:
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> (i) Usually, in all IPR cases, the valuation ought to be Rs. 3 lakhs and

[5] 2022 SCC OnLine Del 1730

above and proper Court fee would have to be paid accordingly. All IPR suits to be instituted before District Courts, would therefore, first be instituted before the District Judge (Commercial).

(ii) In case of any IPR suits valued below Rs. 3 lakhs, the Commercial Court shall examine the specified value and suit valuation to ensure it is not arbitrary or unreasonable and the suit is not undervalued.

(iii) Upon such examination, the concerned Commercial Court would pass appropriate orders in accordance with law either directing the plaintiff to amend the plaint and pay the requisite Court fee or to proceed with the suit as a non-commercial suit."

[Emphasis Supplied]

25. The Appellant, if so advised, will be at liberty to file the amendment application within two [2] weeks, which will be decided in accordance with the law.

26. The impugned order is hereby set aside, and the appeal is allowed. The interim injunction order dated 17.02.2021 is also hereby restored.

27. The parties are directed to appear before the learned District Judge on 18.05.2026.

28. The registry is directed to send a copy of this order to the concerned Court through e-mail for the listing of the suit.

MANMEET PRITAM SINGH ARORA, J

V. KAMESWAR RAO, J

MAY 04, 2026/mt/aa