Azadi Ka Amrit Mahotsav

OFFICE OF THE PRINCIPAL DISTRICT & SESSIONS JUDGE: ROHINI COURTS, DELHI

No. .....14986-89.....Genl.I/F. 3(A)/N-W & N/RC/2023 Delhi, dated 17/11/23

Sub: Judgment dated 02.11.2023 passed by Hon'ble High Court of Delhi in FAO (Comm) 98/2023 & CM Appl. 20261/2023 (Stay), CM Appl. 20262/2023 (Addl. Document) titled " Pankaj Ravjibhai Patel Trading as Rakesh Pharmaceuticals Versus SSS Pharmachem Pvt. Ltd. "

Copy of letter bearing No. 41802-X dated 08.11.2023, received from Hon'ble High Court of Delhi, along with a copy of judgment dated 02.11.2023 passed by Hon'ble Mr. Justice Yaashwant Varma & Hon'ble Mr. Justice Dharmesh Sharma of Delhi High Court in FAO (Comm) 98/2023 & CM Appl. 20261/2023 (Stay), CM Appl. 20262/2023 (Addl. Document) titled " Pankaj Ravjibhai Patel Trading as Rakesh Pharmaceuticals Versus SSS Pharmachem Pvt. Ltd. " is being forwarded for information and necessary action/compliance to :-

1. Court of the Ld. Pr. District & Sessions Judge (N-W), Rohini Courts, Delhi.

2. Both the Ld. District Judges (Commercial Court) (N-W), Rohini Courts, Delhi.

3. The Dealing Official, Computer Branch, Rohini Courts, Delhi for uploading the same on WEBSITE.

4. The Dealing Official, R & I Branch, Rohini Courts, Delhi for uploading the same on LAYERS.

(VINOD YADAV)
District Judge, Comm. Court-02 (N/W)
Officer In-charge, General Branch
North-West & North District
Rohini Courts Complex, Delhi

FINAL DRAFT **D-5**

IN THE HIGH COURT OF DELHI AT NEW DELHI

No. 41802-X Dated 08-11-23

From

The Registrar General
High Court of Delhi
New Delhi.

To

1. The Principal District & Sessions Judge (Headquarters),
   Central District , Tis Hazari Courts, Delhi.

2. The Principal District & Sessions Judge,
   New Delhi District, Patiala House Courts, Delhi.

3. The Principal District & Sessions Judge,
   North-West District, Rohini Courts, Delhi.

4. The Principal District & Sessions Judge,
   South-West District, Dwarka Courts, Delhi

5. The Principal District & Sessions Judge,
   West District, Tis Hazari Courts, Delhi.

6. The Principal District & Sessions Judge,
   East District, Karkardooma Courts, Delhi.

7. The Principal District & Sessions Judge,
   South District, Saket Courts, Delhi.

8. The Principal District & Sessions Judge,
   Shahdara District, Karkardooma Courts, Delhi.

9. The Principal District & Sessions Judge,
   North-East District , Karkardooma Courts, Delhi.

10. The Principal District & Sessions Judge,
    North District, Rohini Courts, Delhi.

11. The Principal District & Sessions Judge-cum-Special Judge,
    (PC Act) (CBI), RACC.

12. The Principal District & Sessions Judge,
    South-East District , Saket Courts, Delhi.

FAO (COMM) No. 98/2023 & CM Appl. 20261/2023 (Stay), CM Appl. 20262/2023 (addl. Document)

PANKAJ RAVJIBHAI PATEL TRADING AS RAKESH PHARMACEUTICALS

.....Appellant/s

Vs

SSS PHARMACHEM PVT. LTD. .....Respondent/s

Appeal against the order dated 21.02.2023 passed by Mr. Surinder S. Rathi, District Judge, Commercial Court-03, Shahdara District , Karkardooma Courts, Delhi in case no. CS (COMM). No. 340/21.

Sir,

I am directed to forward herewith for information and immediate compliance /necessary action a copy of the Judgment dated **02.11.2023** passed by the Division Bench comprising **Hon'ble Mr. Justice Yashwant Varma & Hon'ble Mr. Justice Dharmesh Sharma** of this Court in the above noted case.

Please acknowledge the receipt.

Yours faithfully,

Encl:- 1.Copy of Judgment dt. **02.11.2023**
2.Memo of parties.

7/11/23

Admn. Officer (J) C-IV
For Registrar General

IN THE HIGH COURT OF DELHI AT NEW DELHI

(COMMERCIAL APPELLATE JURISDICTION)

FAO (COMM) No. of 2023

IN THE MATTER OF:

Pankaj Ravjibhai Patel Trading As
Rakesh Pharmaceuticals ....Appellant

VERSUS

SSS Pharmachem Pvt. Ltd. ....Respondent

MEMO OF PARTIES

Pankaj Ravjibhai Patel Trading As
Rakesh Pharmaceuticals
C – 1/158, G.I.D.C. Estate, Kalol,
Dist. Gandhinagar, Gujarat State,
India - 382721

Also At:

2/16, Kabool Nagar, Shahdara,
Delhi – 110032
Email: info@lexfons.com .....Appellant

Versus

SSS Pharmachem Pvt. Ltd.
216, Sahjanand Estate,
Sarkhej, Ahmedabad – 382210

Also at:

242, Sahjanand Estate,
Sarkhej, Ahmedabad – 382210
Email: info@ssspharmachem.com

.....Respondent

Vikas Khera
Advocate for the Appellant
M/s LEXFONS
E-40, LGF, Kalkaji,
New Delhi– 110019
PH: 011- 49058450
E-MAIL: info@lexfons.com

Place: New Delhi
Date: /3 .04.2023

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

% **Judgment reserved on: 12 October 2023**
Judgment pronounced on: 02 November 2023

\+ **FAO (COMM) 98/2023**

PANKAJ RAVJIBHAI PATEL TRADING AS RAKESH PHARMACEUTICALS ..... Petitioner

Through: Mr. Vikas Khera and Mr. Ved Prakash, Adv.

Versus

SSS PHARMACHEM PVT. LTD. ..... Respondent

Through: Mr. Neeraj Gogia, Mr. Manu Prabhakar and Mr. Avinash Kumar, Advs.
Mr. Sandeep Sethi, Sr. Adv. with Ms. Swathi Sukumar, Adv. (Amicus Curiae)

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE DHARMESH SHARMA

JUDGMENT

FAO (COMM) 98/2023 & CM APPL 20261/2023 (Stay), CM APPL. 20262/2023 (Addl. Document)

1. The present appeal impugns the order dated 21 February 2023 passed by the District Judge (Commercial) who has for reasons assigned and recorded in that order, vacated the ex parte injunction which had been granted in favour of the plaintiff/ appellant on 25 September 2021 and called upon it to furnish additional material in

support of the Chartered Accountant's ["**CA**"] certificate which had been presented in respect of the "specified value" of the suit.

2. We find from the order dated 25 April 2023 passed on this appeal that the Court while entertaining the challenge had placed the impugned order in abeyance and restored the ad interim ex parte injunction which had operated on the suit. While considering the questions which were canvassed for consideration, the Division Bench also expressed reservation with respect to the correctness of the view expressed by a learned Single Judge of the Court in **Vishal Pipes Limited vs. Bhavya Pipe Industry**[1]. It accordingly appointed Ms. Swathi Sukumar, learned counsel, as the Amicus Curiae to assist the Court in examining the questions which arose.

3. The doubts which were expressed by the Court with respect to the judgment in *Vishal Pipes* essentially appear to have arisen in light of the following facts. The proceedings in *Vishal Pipes* emanated from a suit for injunction which had been instituted alleging infringement of a registered trademark and copyright. The plaintiff had valued the suit at below Rs. 3 lakhs as a result of which it came to be placed before a District Judge who was not designated as a commercial court. The learned Single Judge found that in light of the suit having been valued at below Rs. 3 lakhs, notwithstanding the same raising issues of infringement of trademarks and copyright, it was liable to be tried as a regular civil suit and thus not be regulated by the provisions of the **Commercial Courts Act, 2015**[2]. It was in the aforesaid backdrop that

[1] 2022 SCC OnLine Del 1730
[2] CCA

the learned Single Judge in *Vishal Pipes* formulated the question which arose to be whether IPR suits valued below Rs. 3 lakhs ought to be listed before District Judges manning commercial courts and thus be tried in accordance with the provisions of the CCA or by District Judges (Non-Commercial) as ordinary suits. The learned Single Judge noted that unscrupulous plaintiffs appeared to be deliberately undervaluing IPR suits leading to a situation where they were not only choosing the court before which those matters would be listed but also avoiding the proceedings being governed by the provisions of the CCA. On an analysis of the provisions of the CCA, the **Court Fee Act, 1870**[3] and decisions rendered by this Court as well as other High Courts, the learned Single Judge proceeded to hold as under:

> "**62.** To answer the above, first, the discussion in paragraph 25 above is pertinent, as it clearly shows that IPR disputes are a set of disputes which lie only before the District Court. Thus, in that sense, such disputes are an exception to the rule of institution of cases at the Court of the lowest level having jurisdiction. With the enactment of the CCA, the subject-matter jurisdiction over IPR disputes now vests with the Commercial Courts, at the District Court Level. Therefore, can litigants and lawyers escape the rigors of the provisions of the CCA by valuing the suits below Rs. 3 lakhs? The answer ought to be a clear 'NO'. This is due to the following reasons:
>
> (i) The application of the judicial principles that the plaintiff is *dominus litis* and is free to value the suit in the manner it so chooses, has to be in the context of enactment of the CCA. The principles cannot be stretched to justify undervaluation of IPR disputes and payment of lower Court fee.

[3] Court Fees Act

(ii) Not ascribing a 'specified value' in the suit would be contrary to the scheme of the CCA which requires every suit to have a 'specified value', if the subject matter of the suit is a 'commercial dispute'. A perusal of Section 12(1)(d) of the CCA does offer some guidance, that the 'specified value' in case of intangible rights would be the market value of the said rights as estimated by the plaintiff.

(iii) In IPR disputes, the relief of injunction or damages may be valued by the plaintiff, at an amount lower than the sum of Rs. 3lakhs and Court fee may be paid on that basis. If such valuation is permitted, despite some objective criteria being available for valuing IPR - in the CCA - it would defeat the very purpose of the enactment of special provisions for IPR statutes and the CCA. These statutes would have to be harmoniously construed i.e., in a manner so as to further the purpose of the legislation and not to defeat it. Thus, it would be mandatory for IPR suits to be ascribed a 'specified value', in the absence of which the valuation of the suit below Rs. 3 lakhs would be arbitrary, whimsical and wholly unreasonable. In this view, intellectual property rights being intangible rights, some value would have to be given to the subject matter of the dispute as well. The Court would have to take into consideration the 'specified value' based upon not merely the value of the relief sought but also the market value of the intangible right involved in the said dispute.

(iv) The subject matter of IPR disputes is usually trademarks, rights in copyrightable works, patents, designs and such other intangible property. The said amount of Rs. 3 lakhs is the estimation of the legislature as being the lowest threshold in any 'commercial dispute' in India which deserves to benefit from speedier adjudication, owing to the economic progress in the country. The intention of the Legislature in keeping a lower threshold in a 'commercial dispute' of Rs. 3 lakhs cannot be rendered meaningless. It would only be in exceptional cases that valuation of IPR disputes below Rs. 3 lakhs could be justified. Accordingly, Section 12(1)(d) has been included in the CCA, where the subject matter of "intellectual property" has been contemplated by the Legislature to

be an intangible right, in respect of which the market value has to be estimated by the plaintiff, for determining the 'specified value'.

(v) The average Court fee paid in Delhi in any civil suit is approximately 3% to 1% of the pecuniary value ascribed to the suit. In fact, Delhi is one of the territories where *ad valorem* Court fee is paid beyond a particular threshold. When seen from this perspective, i.e., that at Rs. 3 lakhs, the Court fee payable is minimal, it is apparent that the only reason for which IPR disputes may be valued below Rs. 3 lakhs by litigants or lawyers would be to indulge in forum shopping and bench hunting and not merely to exercise the option of the forum where relief is sought. The purpose would also be to escape the rigors of the provisions of the CCA. Such a practice would constitute abuse by plaintiffs of their rights, at the very least.

(vi) Usually, IPR disputes are filed by business entities. However, considering the Court fee payable even if such suits are valued at a minimum of Rs. 3,00,000/-, even individual IPR owners would be easily able to afford the Court fee at the rate of 1-3%. There thus appears to be no valid or justifiable cause to value an IPR suit below Rs. 3 lakhs except for oblique motives. Thus, the discretion vested in the plaintiff to value the suit as it pleases, ought not to be extended or stretched to an extent that it encourages malpractice, misuse, abuse and forum shopping.

XXXX XXXX XXXX

64. Therefore, in Delhi, in order to avail of its remedies provided under the various IPR statutes, a plaintiff ought to usually institute the suit before the District Court having jurisdiction i.e., District Judge(Commercial) by valuing it at Rs. 3 lakhs or above, and pay the basic required Court fee to invoke the jurisdiction of the said Court. However, acknowledging the plaintiff's reasonable discretion in valuing its suit, it is held that in case a plaintiff values an IPR suit below the threshold of Rs. 3 lakhs, such suits would be listed before the District Judge(Commercial) first, in order to determine as to whether the valuation is arbitrarily whimsical or deliberately undervalued.

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66. In light of the above discussion, the following directions are issued:

(i) Usually, in all IPR cases, the valuation ought to be Rs. 3 lakhs and 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.

(iv) In order to however maintain consistency and clarity in adjudication, even such suits which may be valued below Rs. 3lakhs and continue as non-commercial suits, shall also continue to be listed before the District Judge (Commercial), but may not be subjected to the provisions of the CCA.

(v) All pending IPR suits before the different District Judges (non-Commercial) in Delhi shall be placed before the concerned District Judges (Commercial) for following the procedure specified above. plaintiffs who wish to amend the Plaint would be permitted to do so in accordance with law."

4. As would be evident from the aforesaid extracts of the decision in *Vishal Pipes*, the learned Single Judge essentially went on to prescribe the following procedure for IPR suits in general:

(a) "Usually", the valuation of all IPR cases "ought to be" valued at Rs. 3 lakhs and above and court fee paid accordingly.

(b) In case an IPR suit be valued below Rs. 3 lakhs, the same be

placed before a designated commercial court to enable it to examine the specified value and suit valuation at the outset and to ascertain and ensure that it had not been deliberately undervalued.

(c) If the commercial court were to ultimately come to the conclusion that the suit had been undervalued, appropriate orders be framed for the plaint being amended and requisite court fee being demanded.

(d) For the purposes of maintaining "consistency" and "clarity in adjudication" even if the commercial court be satisfied with respect to the declarations made in relation to specified value and the suit being found to have been legitimately valued at below Rs. 3 lakhs, the matter be listed before the commercial court to be tried as a non-commercial litigation and thus not bound by the provisions of the CCA.

(e) All pending IPR suits presently being tried by different non-commercial courts be also placed before the District Judges (Commercial) for following the procedure noted above.

5. The judgment in *Vishal Pipes* essentially proceeded on the assumption that IPR suits in Delhi were being deliberately undervalued so as to escape the rigors of the CCA. The learned Single Judge further appears to have proceeded on the premise that bearing in mind the nature of disputes which arise in IPR litigation, it would only be in exceptional cases that valuation would stand pegged at below Rs. 3 lakhs. The learned Single Judge further observed that bearing in

mind the rate of court fee which would be applicable in case a suit was valued at below Rs. 3 lakhs, there would exist no valid or justifiable cause to value IPR suits as such *"except for oblique motives"*.

6. It becomes relevant to note that undisputedly the pecuniary jurisdiction of commercial courts in Delhi ranges from Rs. 3 lakhs to Rs.2 crores. Suits which are valued at above Rs. 2 crores are to be placed before the Commercial Division of this Court. It is also the admitted position that insofar as specified value under the CCA is concerned, that too has been notified as Rs. 3 lakhs. Thus, the minimum pecuniary jurisdiction and specified value of District Courts in Delhi is at par.

7. The learned Ms. Sukumar, has with her characteristic erudition addressed the following submissions for our consideration. It was firstly urged by the learned amicus that regard must be had to the concept of "specified value" as introduced by the CCA and which by definition is concerned with the *"subject matter"* of the suit as opposed to the Court Fees Act which bids one to bear in mind the amount at which the *"relief"* sought is valued in the plaint or memorandum of appeal.

8. Ms. Sukumar submitted that undoubtedly for the purposes of applicability of the CCA, a suit must necessarily qualify both the *"commercial dispute"* and *"specified value"* tests as prescribed by that statute. The learned amicus pointed out that an IPR dispute would undoubtedly fall within Section 2(1)(c)(xvii) of the CCA and thus qualify as a commercial dispute as defined thereunder. Ms. Sukumar

then invited our attention to Section 12(1)(d) of the CCA and which while prescribing the manner in which specified value is to be determined for suits pertaining to intangible rights, and which would indubitably include IPR, ties "specified value" to the market value of the intangible right as estimated by the plaintiff. It was the submission of Ms. Sukumar that it is only when the aforenoted twin conditions are met that an IPR suit would be liable to be placed and tried by a commercial court.

9. According to Ms. Sukumar, while the aspect of commercial dispute and specified value is relevant for the purposes of considering whether a suit is liable to be tried in accordance with the CCA, the subject matter of valuation of a suit is also governed and regulated by the provisions of the Court Fees Act as well as the **Suits Valuation Act, 1977**[4] both of which connect the valuation of a suit to the value ascribed to the reliefs as may be sought. It was in the aforesaid backdrop that Ms. Sukumar submitted that the "subject matter" of a suit is a facet separate and distinct from valuation of suits based on the relief claimed. According to the learned amicus, while the former has a direct bearing on whether the suit proceedings would be governed by the provisions of the CCA, the latter is concerned with the question of court fee as payable in terms of the Court Fees Act.

10. Ms. Sukumar then submitted that even if an IPR suit were valued at below Rs. 3 lakhs, it could be tried by a District Judge even though it may not be a designated commercial court. It was her

[4] Suits Valuation Act

submission that no legal provision mandates that all IPR suits must necessarily be tried in accordance with the CCA or only by courts created in terms thereof. According to the learned amicus, there is, in any case, no inherent or apparent incongruity in such suits either being instituted or being tried as non-commercial actions.

11. Ms. Sukumar also alluded to a contingency where the valuation of a suit based on the relief claimed for the purposes of payment of court fee may be less than Rs. 3 lakhs although the specified value might be more than the above. It was her submission that merely because an IPR suit is valued at below Rs. 3 lakhs based on the relief claimed therein, there would be no legal justification to mandate either the plaint being amended or additional court fee being demanded. According to Ms. Sukumar, such a direction cannot, in any case, be prescribed as an inviolate rule divorced from the court coming to the conclusion that the valuation has been suppressed for mala fide reasons and which in any case would be a question liable to be considered in the facts of each individual case.

12. Ms. Sukumar also commended for our consideration the judgment rendered by the High Court of Karnataka in **Kirloskar Aaf Limited v. American Air Filters Company Inc. & Anr**[5] where the following observations came to be made: -

> "**8.** The twin requirements of this Act are that a dispute has to be a commercial dispute, and secondly, it must be of certain pecuniary limit, namely Rs.3,00,000/- or above. The term commercial dispute has been defined in Section 2(c) of the Act. Section 2(1)(c) (xvii) clearly deals with the intellectual property rights

[5] [RFA No.1 of 2015, 25th September, 2018]

relating to registered, and unregistered trademarks. Undoubtedly, the present case deals with a trademark the usage of trademark by the appellant, which according to the respondent plaintiff is illegal usage. Thus, the subject matter of the dispute does relate to intellectual property rights. Hence, the dispute is a commercial dispute as defined by Section 2(1)(c)(xvi) of the Act.

9. The Karnataka Court Fees and Suits Valuation Act deals with the calculation of Court Fees. Section 26 of the said Act clearly states that in a suit for injunction, whether the subject-matter of the suit has a market value, or not, the fee shall be computed on the amount at which the relief sought is valued in the plaint, or on rupees one thousand whichever is higher. Therefore, a distinction has to be made between the value of the subject-matter, and the calculation of Court fees. According to Section 26(c), the Court fee shall be based on the relief sought, and the value of the relief mentioned in the plaint. Admittedly, in the present case, in the plaint, the relief sought was valued as Rs.3,000/. But nonetheless, the value of the subject matter, that is the infringement of the trademark, has not been stated. But considering the fact that the dispute relates to the infringement of trademark that too by a company, the value of the subject matter can safely be taken to be more than Rs.3,00,000/-. (emphasis supplied)

...

Therefore, the Registry is directed to list this appeal before the Commercial Appellate Division of this Court."

13. Ms. Sukumar while referring to the decision in *Vishal Pipes* submitted that the directions as framed would tend to not only disrupt the distribution of matters between commercial and non-commercial courts, they also appear to cast an onerous and additional obligation on commercial courts to examine the valuation of all suits relating to IPR. It was her submission that the directions as framed in *Vishal*

Pipes may therefore merit being modified to be read as all IPR suits which are valued at below Rs. 3 lakhs alone being scrutinized by the concerned court so as to verify the valuation as declared and to allay all doubts with respect to undervaluation. This exercise, according to learned counsel, could be undertaken by any court before which the suit is laid, irrespective of whether it be a commercial or a non-commercial court.

14. The learned amicus further suggested that apart from the above, plaintiffs in IPR suits which are instituted as non-commercial actions should additionally be called upon to certify that they have not taken an inconsistent stand with respect to valuation in any previous litigation that may have been instituted. Ms. Sukumar submitted that the aforesaid declaration would not only cast a responsibility upon plaintiffs but additionally place a positive obligation upon them to truthfully disclose the value of the subject matter of the suit and consequentially deter forum shopping.

15. Appearing for the appellant, learned counsel at the outset submitted that the District Judge has committed a manifest illegality and caused grave prejudice to the plaintiff by vacating the injunction which operated on the suit solely on the basis of the doubts which were harboured with respect to the certification submitted by the C.A. According to learned counsel, that could not have possibly constituted a valid or justifiable ground for vacation of the injunction.

16. Proceeding further to deal with the issue of declaration of specified value, it was submitted that the suit had been valued at Rs.

10 lakhs based on the reliefs which were claimed therein. According to learned counsel, bearing in mind the well settled principle of dominus litis, it was clearly open to the plaintiff to ascribe a particular valuation based on the reliefs that were claimed. Learned counsel also drew our attention to the judgment rendered by the Full Bench of this Court in **Sheila Devi and Ors. Vs. Kishan Lal Kalra and Ors.**[6] where the Court had held that a plaintiff has the requisite discretion to place a value on the reliefs as claimed by him in accordance with the provisions of Section 7 of the Court Fees Act. Learned counsel drew our attention to the following passages from the decision in *Sheila Devi*:

> "Section 7 of the Court-fees Act provides for the computation of the amount of court-fee payable under the Act in the suits mentioned in the various paragraphs of the Section. As pointed out by M/s V. V. Chitaley and S. Appurao in Note 1 in their Commentary on Section 7 of the Court-fees Act, an analysis of the said paragraphs shows that the section adopts three modes of valuation of a suit, viz. (1) by valuing the subject matter according to its market value (vide paragraph (iii), (v) (d) and (e), etc.); (2) by giving to the subject matter an artificial value based on specified rules of calculation (vide paragraph (v) (a), (b) and (c); and (3) by requiring the plaintiff himself to value the relief he seeks (vide paragraph (iv). We are concerned here with the last mode. Paragraph (iv) contains clauses (a) to (f) each of which deals with a particular kind of suit. But, the court-fee payable under all the clauses is to, be computed according to one general rule which is given at the end of the paragraph. It requires the plaintiff in any of the suits mentioned in the various clauses to state the amount at which "he values the relief sought", and the amount of court-fee payable to be computed according to the said amount at which "the relief sought

[6] 1974 SCC OnLine Del 136

is valued" in the plaint. In other words, it requires the plaintiff himself to value the relief he seeks.

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We have thus only Section 7(iv) of the Cour-fees Act on a consideration of the scope and effect of which the question under consideration has to be answered. A plain reading of paragraph (iv) of Section 7 shows that it requires the plaintiff in any of the suits mentioned in the various clauses thereof to state the amount at which "he values the relief sought", and the amount of court-fee payable to be computed according to the said amount at which "the relief sought is valued" in the plaint. It is implicit in it, and it is also not disputed, that the paragraph requires the plaintiff himself to value the relief he seeks. The only question for consideration is whether the plaintiff has the right to place any valuation that he likes. The paragraph does not by itself impose any restriction or condition as regards the valuation by the plaintiff. When the statutory provision itself has not imposed any such restriction or condition, it would not be proper, in our opinion, for a Court to introduce such a restriction or condition into the section. The plain language of the provision gives an unrestricted choice to the plaintiff to value the relief. It would not, Therefore, be proper for a Court to say that the relief was undervalued and to correct the said valuation invoking the general power mentioned in Order VII Rule 11(b) or the inherent power saved by Section 151 of the Code of Civil Procedure. The provision in paragraph (iv) of Section 7 of the Court-fees Act which gives a free hand to the plaintiff to place any valuation that he likes and does not place/any restriction or condition has, in our opinion, so far as the suits mentioned in that paragraph are concerned, the effect of taking away the general power of the Court under Order VII Rule 11(b) of the Code of Civil Procedure and the inherent power to correct an undervaluation. The general power and the inherent power stand modified by the special statutory provision in Section 7(iv) of the Court-fees Act. In other words, in, our opinion, paragraph (iv) of Section 7 of the Court-fees Act gives a right to the plaintiff to place any valuation that he likes on the relief he seeks, and the Court has no

power to interfere with the plaintiff's valuation. This view is quite in conformity with the nature of the suits mentioned in clauses (a) to (f) of paragraph (iv) of Section 7. All the said suits are such that it is not possible for the plaintiff to specify the precise value of the relief he seeks in each of the said suits. A perusal of the various clauses (a) to (f) shows the same. That was why the legislature obviously thought it fit to leave to the plaintiff to place any valuation the likes on the relief he seeks in such suits. It was sought to be argued that the aforesaid view would permit the plaintiff to place any arbitrary or fanciful value on the relief he seeks. When the nature of the suit is such that no precise value can be placed on the relief sought, arid for that reason there cannot be any definite standard by which it can be said that the relief has been under-valued or not, the question of the valuation being arbitrary or fanciful does not arise. To say in such a, case that the valuation placed by the plaintiff is arbitrary or fanciful and seek to interfere with the same would amount to a re-writing of the statutory provision in paragraph (iv) of Section 7 of the Court-fees Act which a Court cannot do. So far as suits for mesne profits and suits for accounts are concerned, Section 11 of the Court-fees Act provides that if the profits or the amount decreed are or is in excess of the profits claimed or the amount at which the plaintiff values the relief sought, the decree shall not be executed until the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits or the amount so decreed shall have been paid to the proper officer. In that way, so, far as the said suits are concerned, the legislature has taken care to safeguard the revenue and to see that the plaintiff does no get away with a decree for an amount in his favor without paying adequate court-fee therefore. No question, of a decree for an amount being passed arises in the other suits mentioned in clauses (a) to (e) of paragraph (iv) of Section 7 of the Court-fees Act. Thus, the view taken by us above seems to be the proper one to be taken on a plain interpretation of the relevant provisions (Sections 7(iv) and 11) in the Court-fees Act.

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As pointed out in paragraph 15 of the judgment in the case of S. Rm. Ar. S. Sp. Sathappa Chettiar (supra), (1) the effect of the provision in Section 8 of the Suits Valuation Act is "to make the value for the purpose of jurisdiction dependent upon the value as determinable for computation of court-fees", and "the computation of court- fees in suits falling under Section 7(iv) of the Court-fees Act depends upon the valuation that the plaintiff makes in respect of his claim". Also, "once the plaintiff exercises his option and values his claim for the purpose of court-fees, that determines the value for jurisdiction" and "not vice versa". In other words, the value for the purpose of court-fee under Section 7(iv) of the Court-fees Act should be fixed first, and then by virtue of Section 8 of the Suits Valuation Act the same value would be the value for the purpose of jurisdiction. However, if there are rules made by any High Court under Section 9 of the Suits Valuation Act and the same are applicable, the valuation for the purpose of court-fees under Section 7(iv) of the Court-fees Act will have to be made according to such rules. So far as the rules made, by the Punjab High Court are concerned, it has to be noted that Rules 3 and 4 set out above contemplate separate valuation for the purpose of court-fees and for the purpose of jurisdiction. So, if the said rules are applicable, the valuation for purpose of court-fees would be separate from the valuation for the purpose of jurisdiction as provided in the said rules. It has also to be noted that under Rule 4, in the case of suits to which it applies the value for the purpose of court-fee is to be as determined by the Court-fees Act. That means that as regards suits falling under Section 7(iv) of the Court-fees Act, the value for the purposes of court-fee would be the value as fixed by the plaintiff. The value for the purpose of jurisdiction would be the value fixed by the plaintiff in the plaint "subject to determination by the Court at any stage of the trial". In other words, if Rule 4 applies, the value for the purpose of court-fee would be the value as fixed by the plaintiff in the plaint and the same cannot be interfered with by the Court, while the Value for the purpose of jurisdiction would normally by the value fixed by the plaintiff in the plaint subject, however, to determination by the Court at any stage of the trial. This is the position that emerges on the view

taken by us as regards the scope and effect of paragraph (iv) of Section 7 of the Court-fees Act, reading the said paragraph along with Sections 8 and 9 and the Rules framed under Section 9 of the Suits Valuation Act in case they are applicable.

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For the foregoing reasons, our answer to the first question that has been referred is in the negative, i.e. that Paragraph (iv) of Section 7 of the Court-fees Act gives a right to the plaintiff in any of the suits mentioned in the clauses of that paragraph to place any valuation that he likes on the relief he seeks, subject, however, to any rules made under Section 9 of the Suits Valuation Act, and the Court has no power to interfere with the plaintiff's valuation."

17. In addition to the judgment rendered by the Full Bench of this Court, learned counsel also placed reliance upon the judgment delivered by the Supreme Court in **Tara Devi Vs. Sri Thakur Radha Krishna Maharaj, through Sebaits Chandeshwar Prasad and Meshwar Prasad and Anr.**[7] and where too the Supreme Court had reiterated the position of the plaintiff being entitled to estimate the reliefs sought in the suit and the same being liable to be ordinarily accepted both for the purposes of court fees as well as jurisdiction.

18. Insofar as the provisions of the CCA are concerned, learned counsel sought to draw sustenance from the judgment rendered by a learned Single Judge of this Court in **Soni Dave Vs. Trans Asian Industries Expositions Pvt. Ltd.**[8] where while considering the interplay between Section 12 of the CCA and the provisions contained in the Court Fees and Suits Valuation Acts, the following pertinent

[7] (1987) 4 SCC 69
[8] 2016 SCC OnLine Del 4282

observations came to be made:

> **"25.** The Commercial Courts Act has not been enacted to interfere with the Courts Fees Act or the Suits Valuation Act. It is a settled principle of law that the provisions such as Section 21 supra have to be read and interpreted by finding out the extent to which the legislature intended to give it a overriding effect and the context in which such a provision is made and on a consideration of purpose and policy underlying the enactment. It is also relevant to consider whether the conflicting enactment can be described as a special one and in which case the special one may prevail over the more general one, notwithstanding that the general one is later in time.
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> **27.** In my view Section 12 of the Commercial Courts Act providing for determination of specified value as defined in Section 2(i) thereof is not intended to provide for a new mode of determining the valuation of the suit for the purpose of jurisdiction and court fees. It would be incongruous to hold that while for the purpose of payment of court fees the deemed fiction provided in the Court Fees Act for determining the value of the property is to apply but not for determining the specified value under the Commercial Courts Act.
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> **28.** In my opinion Section 12 of the Commercial Courts Act has to be read harmoniously with the Court Fees Act and the Suits Valuation Act and reading so, the specified value of a suit where the relief sought relates to immovable property or to a right thereunder has to be according to the market value of the immovable property only in such suits where the suit as per the Court Fees Act and / or the Suits Valuation Act has to be valued on the market value of the property and not where as per the Court Fees Act and the Suits Valuation Act the valuation of a suit even if for the relief of recovery of immovable property or a right therein is required to be anything other than market value as is the case in a suit by a landlord for recovery of possession of immovable property from a tenant."

19. Learned counsel submitted that the view as expressed in *Soni Dave* has been followed by different High Courts of the country as would be evident from the following decisions rendered by the Karnataka and Kerala High Courts:-

i) **Fine Footwear Pvt. Ltd. Represented by its Director v. Skechers USA Inc. and Anr.**[9]

ii) **C.K. Surendran Vs. Kunhimoosa**[10]

iii) **Bangalore Blues Entertainment India Private Limited Vs. One Ikigaii Edutech Private Limited and Ors.**[11]

20. Learned counsel submitted that the Court in *Vishal Pipes* clearly erred in attempting to distinguish the principles propounded in *Soni Dave* merely on the ground that the same emanated from a suit relating to immovable property. According to learned counsel, *Soni Dave* had in unequivocal terms held that section 12 of the CCA cannot possibly be construed as constructing a new or novel method for valuation of suits or for that matter mandating a departure from the provisions contained in the Court Fees and Suits Valuation Acts.

21. It was also the submission of learned counsel that the principles laid down in *Vishal Pipes* also fail to bear in consideration situations where quia timet actions may be instituted and thus actions being commenced at a time when a defendant is yet to commence use of the complained mark or suits which may be legitimately instituted based on an apprehension of infringement and passing-off. It was submitted

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[9] 2019 SCC OnLine Kar 1024

[10] 2021 SCC OnLine Ker 9808

[11] Miscellaneous First Appeal No. 6392 of 2022 (CPC). Decided on: 02.01.2023

that the directions as formulated in *Vishal Pipes* would be rendered wholly unworkable in such situations. This, according to learned counsel, would additionally merit *Vishal Pipes* being reviewed.

22. It was further contended that *Vishal Pipes* clearly fails to bear in mind the distinction which must be recognized to exist between the concepts of specified value and valuation of a suit for the purposes of court fee. According to learned counsel, the concept of specified value becomes relevant only for the purposes of determining whether a particular suit is liable to be placed before a commercial court. Learned counsel also laid stress on Section 12(1)(d) itself enabling the plaintiff to declare the market value of an intangible right based on its own estimation. It was thus contended that the court in *Vishal Pipes* has clearly failed to bear the aforesaid aspects in consideration and has erroneously proceeded on the premise that all IPR suits which may be valued at below Rs. 3 lakhs have been so filed only for the purposes of escaping from the rigors of the CCA.

23. Having considered the aforenoted submissions, we at the outset find merit in the submissions addressed by Ms. Sukumar and learned counsel for the appellant when they contended that *Vishal Pipes* appears to have confused the aspects of specified value and valuation based on the reliefs claimed. The CCA would inarguably be attracted to any action which relates to a commercial dispute falling within the ambit of section 2(1)(c) and where the specified value of the subject matter goes beyond the minimum Rs. 3 lakhs pecuniary limit as notified. Undisputedly if the declared specified value be Rs. 3 lakhs

or above and the suit relate to a commercial dispute, it would necessarily have to be placed before the notified commercial court.

24. However, in our considered opinion, it would be wholly incorrect to proceed on the premise that the dispute forming the subject matter of IPR suits would necessarily and invariably be liable to be valued at Rs. 3 lakhs or above. While we do not intend to convey a position of a deliberate undervaluation being accorded a judicial imprimatur, we are of the firm opinion that it would be wholly incorrect for courts to proceed on the presumption that an IPR suit when valued at below Rs. 3 lakhs is necessarily based on ulterior motives or a mala fide intent to avoid application of the CCA. We note that the issue of whether a particular suit has been deliberately undervalued is one which can always be examined and scrutinized by a competent court. Ultimately the issue of a deliberate suppression of valuation would have to be considered and answered based on the facts obtaining in an individual case. All that we deem apposite to note and observe in this respect is that *Vishal Pipes* clearly appears to have been incorrectly decided when it formulated a direction mandating that normally in all IPR cases, the valuation ought to be Rs. 3 lakhs and above.

25. We also find merit in the submission of Ms. Sukumar who alluded to the disruptive outcome of the directions contained in Para 66 (iv) and (v) of *Vishal Pipes*. As would be evident from a reading of the various provisions of the CCA, a suit is liable to be placed before the notified commercial court only if it relates to a commercial

dispute and crosses the threshold of Rs. 3 lakhs as the specified value when determined in accordance with Section 12. Undisputedly, unless the twin factors of "commercial dispute" and "specified value" are met, a matter cannot be placed before or be taken cognizance of by a commercial court. It is in the aforesaid backdrop that we find ourselves unable to appreciate or sustain the directions contained in sub-paragraphs (iv) and (v) of Para 66 of *Vishal Pipes*.

26. Undisputedly, the direct fallout of Para 66 (iv) is that even where suits are found to have been correctly valued at below Rs. 3 lakhs and are thus liable to be tried as non-commercial suits, they are liable to be listed before the District Judge (Commercial) and be tried in accordance with the law as ordinarily applicable. If the suit is ultimately found to have been correctly valued at below Rs. 3 lakhs, the District Judge (Commercial) would clearly stand denuded of jurisdiction to try the same. It would, therefore, be wholly inappropriate for us by way of a judicial fiat to direct such non-commercial suits to be tried by District Judges (Commercial) notwithstanding those suits not meeting the threshold criteria constructed in terms of the CCA.

27. We also find ourselves unable to approve the direction for transfer of all pending IPR suits presently laid before District Judges (Non-Commercial) to be placed before the commercial courts in Delhi. The said direction clearly flies in the face of the primordial conditions statutorily created by the CCA. In our considered view, unless the twin conditions of commercial dispute and specified value

are satisfied, a suit cannot be tried by a commercial court. The directions formulated in *Vishal Pipes* and embodied in Para 66 (iv) and (v) thus clearly distort the distribution of matters between commercial and non-commercial courts as statutorily ordained. In fact, if those directions were to be affirmed, they would operate so as to create and confer jurisdiction on commercial courts contrary to the qualifying criterion as laid in place by the CCA.

28. On due consideration of the questions which stand raised, we find that *Vishal Pipes* clearly appears to have firstly proceeded on a general presumption of IPR suits being liable to be valued at Rs. 3 lakhs and above. It then presupposes that every instance of an IPR suit below Rs. 3 lakhs must be understood as being actuated by a mala fide intent to overreach the provisions of the CCA and the plaintiff indulging in forum shopping. We are of the view that not only is such a premise wholly conjectural, it amounts to painting all actions, legitimate or otherwise, with a common brush. We thus find ourselves unable to either countenance or approve the presumptions which constitute the foundation for the directions which ultimately came to be formulated in para 66 of *Vishal Pipes*. While it would still be open for a court to consider and examine whether a particular suit has been deliberately undervalued, the valuation as ascribed by a plaintiff cannot be doubted merely on the basis of a surmise.

29. Insofar as para 66 (ii) and (iii) are concerned we find merit in the submission of Ms. Sukumar that all IPR suits in which a valuation has been pegged at below Rs. 3 lakhs may be duly examined by the

court before which those matters are presently laid. We find no justification for the withdrawal of those matters from the competent courts and their placement before a commercial court for the purposes of ascertaining the correctness of the valuation as declared. That exercise can very well be undertaken by the competent court itself. If the competent court, in the facts of a particular case, ultimately comes to conclude that the valuation of an IPR suit has been deliberately suppressed, it could always frame appropriate directions for the plaint being amended and additional court fee being demanded. However, those directions would be warranted only when the concerned court comes to a definitive conclusion in the facts of a particular case that the declared valuation is patently incorrect or is actuated by ulterior motives.

30. We further note that Section 12 and which sets out the basis for determination of specified value is essentially placed in the statute in order to subserve the provisions of the CCA and which are intended to require suits and applications relating to commercial disputes of a specified value being placed either before the notified commercial court or the Commercial Division of a High Court. However, Section 12 cannot possibly be construed as seeking to override the principles enshrined in the Court Fees and Suits Valuation Acts. This is evident when one bears in mind the intent of Section 12 and which clearly appears to be restricted to the determination of the value of the subject matter of the commercial dispute alone. Sections 2(1)(c) and 12 essentially constitute the two gateways which when crossed would

lead to a particular matter being placed before a commercial court. That is the only purpose which those two provisions serve. They, however, clearly do not appear to be imbued with any legislative intent to override the provisions of the Court Fees and Suits Valuation enactments and which entitles a plaintiff to ascribe a value to the reliefs as claimed in the suit. The provisions contained in the Court Fees and Suits Valuation statutes are principally concerned with the imposition of court fee and other related matters. Insofar as the subject of court fee is concerned, it would be the amount as claimed by the plaintiff bearing in mind the nature of reliefs which are sought which would be determinative. We thus find ourselves unable to discern or read any provision of the CCA which may be said to mandate a contrary view being taken or the provisions of the Court Fee and Suits Valuation statutes being ignored.

31. We also cannot ignore the contingency alluded to by Ms. Sukumar and who had urged us to consider a situation where even though the subject matter of the commercial dispute be more than Rs. 3 lakhs, the amount as claimed in terms of the reliefs as framed may be less than the aforenoted threshold limit. If the directions as framed in *Vishal Pipes* were to be accepted, the plaintiff in such a situation would be compelled to pay court fee on the basis of specified value as opposed to the amount claimed in terms of the reliefs as sought. It was in order to avoid the said conflict that *Soni Dave* correctly harmonized the provisions contained in the CCA and the Court Fees and Suits Valuation Acts. *Soni Dave* also rightly negated the

argument based on Section 21 of the CCA. As we read the provisions of the said enactment, we come to the firm conclusion that the CCA did not intend to either override the provisions of the Court Fees and Suits Valuation Acts nor was it intended to regulate the subject of court fees.

32. Our inability to subscribe or accede to the directions framed in *Vishal Pipes* is further fortified when those directives are tested in the backdrop of a quia timet action. It would clearly be impossible to accord an imprimatur to those directions in situations where loss cannot be quantified or where the infringement is apprehended. Learned counsel for the appellant thus clearly appears to be correct when he contended that the directions framed by the Court in *Vishal Pipes* would be rendered unworkable in such contingencies.

33. We thus come to conclude that while it would be open for the competent court to examine the declared specified value and the value ascribed to the reliefs claimed in an IPR suit if it be pegged at below Rs. 3 lakhs, the issue of undervaluation would have to be evaluated based on the facts of each case. The aforesaid exercise can be legally undertaken by the competent court itself and such matters need not be transferred to commercial courts for the aforesaid purpose.

34. The Court further finds merit in the suggestion mooted by Ms. Sukumar of an additional declaration being made by plaintiffs in IPR suits where valuation is placed at below Rs. 3 lakhs. We thus direct that in all such cases, the plaintiff would have to declare that it has not taken an inconsistent position with respect to specified value in any

other litigation pending or instituted in the past.

35. Reverting to the facts of the present case, we find that the District Judge had clearly erred in vacating the ex parte injunction consequent to a purported failure on the part of the appellant to dutifully place all particulars relating to specified value. Those were defects which were curable. In any case, such a mistake or failure in compliance did not justify the vacation of the injunction which had been granted. The impugned order to the aforesaid extent is clearly liable to be set aside. We however leave it open to the appellant to place on the record of the proceedings pending before the District Judge such additional material as may be chosen and desired insofar as specified value is concerned. The issue of court fee and valuation would however have to be considered in light of the observations rendered hereinabove.

36. We consequently allow this appeal and set aside the impugned order dated 21 February 2023. The matter shall stand remanded to the concerned District Judge for deciding the pending issues afresh in accordance with the principles enunciated hereinabove. The ex parte injunction which stood revived in terms of our order dated 25 April 2023 passed on the instant appeal shall continue to hold the field. We however accord liberty to the defendant/respondent to apply for vacation of the ex parte injunction if so chosen and advised. Any such application, if so moved, may be decided in accordance with law.

37. We, for reasons aforenoted, find ourselves unable to affirm or approve the directions contained in Para 66 (iv) and (v) of *Vishal*

Pipes. They shall consequently stand overruled. Any matters which in the interregnum may have been transferred to designated commercial courts for compliance with the directions issued in *Vishal Pipes* shall revert to the competent courts for being tried in accordance with the observations made hereinabove.

38. To avoid inconvenience to parties, we request the concerned District Judges to display a list of all such matters indicating the courts to which they would revert and the dates on which they would be called before the appropriate courts. A list of all such matters carrying details as indicated above, may also be uploaded on the web portals of the concerned District Courts. The courts upon receipt of such matters shall proceed further and in accordance with the directions framed hereinabove.

39. We request the Registrar General of this Court to bring the present judgment to the notice of all the Principal District Judges for necessary compliance.

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YASHWANT VARMA, J.

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DHARMESH SHARMA, J.

NOVEMBER 02, 2023 /kk