

HIGH COURT OF MADHYA PRADESH BENCH AT INDORE

Case Number	Civil Suit No.1/2021
Parties Name	M/s.Mold Tek Packing Pvt. Ltd Vs. S.D.Containers
Date of Judgment	27.02.2021
Bench	<u>Division Bench:</u> Justice Sujoy Paul Justice Shailendra Shukla
Judgment delivered by	Justice Sujoy Paul
Whether approved for reporting	YES
Name of counsel for parties	Shri. V.K. Asudani, learned counsel for petitioner. Shri Neeraj Grover with Shri Prakhar Karpe, learned counsel for respondent.
Law laid down	<u>Section 22 (4) of the Designs Act, 2000</u> – Civil Suit – Civil Suit is directed to be decided by Indore Bench of High Court by judgment of Supreme Court dated December 01, 2020. The parties have taken diametrically opposite view as to which bench can try the said civil suit. The plaintiff urged that civil suit needs to be decided by a commercial appellate division constituted u/S.5 of the Commercial Courts Act, 2015 whereas other side urged that it should be decided by a commercial division of High Court constituted u/S.4 of the said Act. In alternatively, civil suit can be decided by single bench as per Rule 1(8) of High Court of M.P. Rules, 2008. <u>Section 4 of Commercial Courts Act, 2015</u> – Commercial Division can be constituted in those High Courts having “ordinary original civil jurisdiction” and by a specific order passed by Hon’ble Chief Justice of the High Court. The High Court of M.P. does not exercise ordinary original civil jurisdiction nor Hon’ble Chief Justice has passed any order

	<p>constituting commercial division in High Court of M.P. Thus, Civil suit cannot be tried by commercial division despite second proviso to Sec.7 of Act of 2015.</p> <p><u>Section 5 and 13 of Commercial Courts Act, 2015</u> – The Commercial Appellate Division is constituted in the High Court of M.P. However, as per Act of 2015, the commercial appellate division is an appellate forum and is not a Court of first instance to try a suit.</p> <p><u>Clause 9 of Letter Patent</u> - This provision gives “extra ordinary” civil jurisdiction to High Court of M.P. In the opinion of division bench, the present suit can be tried only in exercise of this extra ordinary power by a single bench of High Court (Indore Bench).</p> <p style="text-align: center;">Order passed accordingly.</p>
Significant paragraph numbers	14,16,19,20,21

ORDER(Passed on 27th February, 2021)**Per: Sujoy Paul, J. :**

The Apex Court by its judgment dated December 1, 2020 passed in Civil Appeal No.3695/2020 (SD Containers, Indore vs. M/s. Mold Tek Packaging Ltd.) directed transfer of instant suit to Indore Bench of Madhya Pradesh High Court and in turn directed the High Court, Indore Bench to decide the suit in accordance with law.

2) The interesting quagmire in this case is whether the suit is to be tried and decided by Single Bench/Commercial Division of High Court or by a Division Bench/Commercial Appellate Division of the High Court.

3) Interestingly, both the parties on this aspect have taken

diametrically opposite stand. Shri VK Assudani, learned counsel for the plaintiff urged that suit needs to be tried and decided by Commercial Appellate Division whereas Shri Neeraj Grover assisted by Shri Prakhar Karpe urged that the jurisdiction is vested with Commercial Division of the High Court.

4) The stand of Shri Assudani is that as per the scheme of the Commercial Courts Act, 2015 (Act of 2015), the hierarchy of Courts is as follows:-

- (i) Commercial Court at the level of District Court.
- (ii) Commercial Division and
- (iii) Commercial Appellate Division at the level of High Court.

5) Section 3 of the Act of 2015 was relied upon to submit that by way of Notification, Commercial Courts at district level are required to be constituted. Section 3A of said Act provides the method to designate Commercial Appellate Courts. As per the scheme of Act of 2015 and an amendment which is incorporated in the said Act, there exists no commercial division in the High Court which can exercise original jurisdiction. Admittedly, the High Court of Madhya Pradesh does not exercise any original civil jurisdiction. Thus, civil suit must be decided by the Division Bench/Commercial Appellate Division.

6) Sounding a *contra* note, Shri Grover, learned counsel for the other side placed reliance on Section 22(4) of the Designs Act, 2000 to submit that suit needs to be tried by the High Court. By placing reliance on Chapter-IV Rule 1 (8) of High Court of Madhya Pradesh Rules 2008 (High Court Rules), it is submitted that the Civil Suit must be tried by a Single

Bench/Commercial Division. Since Section 21 of the Act of 2015 has an overriding effect on any other enactment, Shri Grover contended that Civil Suit needs to be decided by Commercial Division of the High Court. This will also facilitate the parties to prefer an appeal before Commercial Appellate Division of the High Court and right of appeal will not be frustrated.

7) Both the parties placed reliance on certain paragraphs of aforesaid judgment of Supreme Court dated 01/12/2020. The matter was heard only on the question as to which Bench of High Court is having jurisdiction to try the present suit.

8) Before dealing with rival contentions, it is apposite to reproduce relevant statutory provisions on which reliance was placed by the learned counsel for the parties.

Section 3 of Commercial Courts Act, 2015

3. Constitution of Commercial Courts. - (1) The State Government, may after consultation with the concerned High Court, by notification, constitute such number of Commercial Courts at District level, as it may deem necessary for the purpose of exercising the jurisdiction and powers conferred on those Courts under this Act:

[Provided that with respect to the High Courts having ordinary civil jurisdiction, the State Government may, after consultation with the concerned High Court, by notification, constitute Commercial Courts at the District Judge level:

Section 3A of Commercial Courts Act, 2015

3A. Designation of Commercial Appellate Courts. - Except the territories over which the High Courts have ordinary original civil jurisdiction, the State Government may, after consultation with the concerned High Court, by notification, designate such number of Commercial Appellate Courts at District Judge level, as it may deem necessary, for the purposes of exercising the jurisdiction and powers conferred on those Courts under this Act.

4. Constitution of Commercial Division of High Court.—(1) In all High Courts, having [ordinary original civil jurisdiction], the Chief Justice of the High Court may, by order, constitute Commercial Division having one or more Benches consisting of a single Judge for the purpose of exercising the jurisdiction and powers conferred on it under this Act.

(2) The Chief Justice of the High Court shall nominate such Judges of the High Court who have experience in dealing with commercial disputes to be Judges of the Commercial Division.

5. Constitution of Commercial Appellate Division.—(1) After issuing notification under subsection (1) of section 3 or order under subsection (1) of section 4, the Chief Justice of the concerned High Court shall, by order, constitute Commercial Appellate Division having one or more Division Benches for the purpose of exercising the jurisdiction and powers conferred on it by the Act.

(2) The Chief Justice of the High Court shall nominate such Judges of the High Court who have experience in dealing with commercial disputes to be Judges of the Commercial Appellate Division.

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 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 subsection (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.

Section 22(4) of the Designs Act, 2000

Notwithstanding anything contained in the second proviso to sub-section (2), where any ground on which the registration of a design may be cancelled under section 19 has been availed of as a ground of defence and sub-section (3) in any suit or other proceeding for relief under sub-section (2), the suit or such other proceeding shall be transferred by the Court, in which the suit or such other proceeding is pending, to the High Court for decision.

Chapter-IV Rule 1 (8) of High Court of Madhya Pradesh Rules 2008

Suits- A suit invoking extraordinary original civil jurisdiction of the High Court.

Chapter-IV Rule 22 of High Court of Madhya Pradesh Rules 2008

Notwithstanding anything hereinbefore contained in these Rules, the Chief Justice may, by a special or general order, direct a particular case (s) or a particular class(es) of cases to be listed before a particular bench.

(emphasis supplied)

9) Pertinently, both the parties placed reliance on following paras of the aforesaid judgment of the Supreme Court.

“8. We have heard learned counsel for the parties. The 2015 Act deals with two situations i.e. the High Courts which have ordinary original civil jurisdiction and the High Courts which do not have such jurisdiction. The High Court of Madhya Pradesh does not have the ordinary original civil jurisdiction. In areas where the High Courts do not have ordinary original civil jurisdiction, the Commercial Courts at the District Level are to be constituted under Section 3 of the 2015 Act. The State Government is also empowered to fix the pecuniary limit of the Commercial Courts at the

District Level in consultation with the concerned High Court. In terms of Section 3(2) of the 2015 Act, the Court of District Judge at Indore is notified to be a Commercial Court. "Commercial Dispute" within the meaning of Section 2(c)(xvii) of the Act, 2015 includes the dispute pertaining to "intellectual property rights relating to registered and unregistered trademarks, copyright, patent, design, domain names, geographical indications and semiconductor integrated circuits." Therefore, disputes related to design are required to be instituted before a Commercial Court constituted under Section 3 of the said Act.

9. On the other hand, Section 4 of the 2015 Act provides that where the High Courts have ordinary original civil jurisdiction, a Commercial Division is required to be constituted. Further, in terms of Section 5 of the Act, a Commercial Appellate Division is required to be constituted. Section 7 of the Act deals with the suits and applications relating to the commercial disputes of a specified value filed in the High Court having ordinary original jurisdiction, whereas, the second proviso contemplates that all suits and the applications transferred to the High Court by virtue of sub-section (4) of Section 22 of 2000 Act 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.

10. It is thus contended that in the High Courts having ordinary original civil jurisdiction, the suits which have been transferred to the High Court by virtue of sub-section (4) of Section 22 of the Act are required to be dealt with by the Commercial Division of the High Court instead of a Bench of the High Court, in terms of the Rules applicable to each High Court. Thus, the suit pertaining to design under the 2000 Act would be transferred to the Commercial Division from the ordinary original civil jurisdiction, i.e., from one Bench to the other exclusive Court dealing with Commercial Disputes.

11. It is pertinent to mention that Section 7 of the 2015 Act only deals with the situation where the

High Courts have ordinary original civil jurisdiction. There is no provision in the 2015 Act either prohibiting or permitting the transfer of the proceedings under the 2000 Act to the High Courts which do not have ordinary original civil jurisdiction. Further, Section 21 of the 2015 Act gives an overriding effect, only if the provisions of the Act have anything inconsistent with any other law for the time being in force or any instrument having effect by virtue of law other than this Act. Since the 2015 Act has no provision either prohibiting or permitting the transfer of proceedings under the 2000 Act, Section 21 of the 2015 Act cannot be said to be inconsistent with the provisions of the 2000 Act. It is only the inconsistent provisions of any other law which will give way to the provisions of the 2015 Act. In terms of Section 22(4) of the 2000 Act, the defendant has a right to seek cancellation of the design which necessarily mandates the Courts to transfer the suit. The transfer of suit is a ministerial act if there is a prayer for cancellation of the registration. In fact, transfer of proceedings from one Bench to the Commercial Division supports the argument raised by learned counsel for the Appellant that if a suit is to be transferred to Commercial Division of the High Court having ordinary original civil jurisdiction, then the Civil Suit in which there is plea to revoke the registered design has to be transferred to the High Court where there is no ordinary original civil jurisdiction.

14. Furthermore, in the 2000 Act, there are two options available to seek revocation of registration. One of them is before the Controller, appeal against which would lie before the High Court. Second, in a suit for infringement in a proceeding before the civil court on the basis of registration certificate, the defendant has been given the right to seek revocation of registration. In that eventuality, the suit is to be transferred to the High Court in terms of sub-section (4) of Section 22 of the 2000 Act. Both are independent provisions giving rise to different and distinct causes of action.”

(emphasis supplied)

10) During the course of hearing Shri Asudani, learned counsel for plaintiff produced the order/notification dated 2/4/2019 whereby Commercial Courts have been constituted in various districts of Madhya Pradesh.

11) Commercial Division of High Court can be constituted only in consonance with Sec.4 of the Act of 2015. A bare perusal of Sec.4 makes it clear that in High Courts having *ordinary original civil jurisdiction*, the Hon'ble Chief Justice may by order constitute one or more benches of commercial division. Thus, commercial division at the High Court level is to be constituted in those High Courts who are having ordinary original jurisdiction. Constitution of bench shall be by order of Hon'ble Chief Justice. In the instant case, indisputedly, the High Court of Madhya Pradesh does not have ordinary original civil jurisdiction. No order of Hon'ble Chief Justice was also brought to our notice whereby any commercial division is directed to be constituted in High Court of Madhya Pradesh. Apart from this, second proviso to section 7 mandates that on fulfilling certain conditions, the suit and applications be transferred to the High Court by virtue of sub-section 4 of section 22 of the Designs Act, 2000 or section 104 of the Patents Act, 1970. Such transferred civil suit shall be heard and disposed off "*by commercial division of High Court*" in all areas over which the High Court exercise ordinary original civil jurisdiction.

12) Since commercial division was not constituted in High Court of Madhya Pradesh, this second proviso of section 7 cannot be translated into reality. Thus, we find force in the argument of Shri Asudani, learned counsel that no commercial division was established in Madhya Pradesh High Court as per Act of 2015. Hence, we are unable to persuade ourselves with

the argument of Shri N.Grover that commercial division of High Court must try the instant civil suit.

13) The ancillary question is whether commercial appellate division can try the suit.

14) A careful reading of Sec.5 of Act of 2015 leaves no room for any doubt that power u/S.5 for constituting commercial appellate division can be exercised only after issuing notification under sub-section 1 of Section 3 or order under sub-section 1 of Section 4. A Notification dated 2/4/2019 mentioned above has already been issued by State government in exercise of power vested in it under sub-section 3(1) of the Act of 2015 and, therefore, there was no impediment in constituting a bench of commercial appellate division in High Court of M.P. The Hon'ble Chief Justice by an order constituted a commercial appellate division. Thus, commercial appellate division exists very much in High Court of M.P. The next question is whether commercial appellate division can try the present civil suit.

15) The jurisdiction of commercial appellate division can be traced from Section 13 of Act of 2015 which reads as under:-

“Appeals from decrees of Commercial Courts and Commercial Divisions.—(1) Any person aggrieved by the judgment or order of a Commercial Court below the level of a District Judge may appeal to the Commercial Appellate Court within a period of sixty days from the date of judgment or order.

(1A) Any person aggrieved by the judgment or order of a Commercial Court at the level of District Judge exercising original civil jurisdiction or, as the case may be, Commercial Division of a High Court may appeal to the Commercial Appellate Division of that High Court within a period of sixty days from the date of the judgment or order:

Provided that an appeal shall lie from such orders passed by a Commercial Division or a Commercial Court that are specifically enumerated under Order

XLIII of the Code of Civil Procedure, 1908 (5 of 1908) as amended by this Act and section 37 of the Arbitration and Conciliation Act, 1996 (26 of 1996).]

(2) Notwithstanding anything contained in any other law for the time being in force or Letters Patent of a High Court, no appeal shall lie from any order or decree of a Commercial Division or Commercial Court otherwise than in accordance with the provisions of this Act.”

(emphasis supplied)

16) This provision clearly shows that commercial appellate division is required to act as appellate court and does not have any original civil jurisdiction to try a suit. The judgment or order of commercial Court at the level of District Judge exercising original civil jurisdiction or commercial division of the High Court can be called in question in appeal before commercial appellate division. We are thus unable to persuade ourselves with the argument of Shri Asudani that commercial appellate division must try the present suit.

17) A peculiar situation has arisen in the present matter in view of provisions of Act of 2015 which can be summarised as under:-

(i) No commercial division is constituted in High Court of Madhya Pradesh;

(ii) Commercial appellate division being an appellate forum cannot try the present suit;

18) The quagmire springs out of this situation is; which Court then can decide the present suit ?

19) At the cost of repetition, it is clear that the High Court of Madhya Pradesh does not exercise ordinary original civil jurisdiction. However, clause 9 of Letters Patent provides that High Court can exercise extra ordinary original civil jurisdiction. Clause 9 read as under:-

“9. Extraordinary original civil jurisdiction- An We do further ordain that the High Court of Judicature at nagpur shall have power to remove and to try and determine, as a Court of extraordinary original jurisdiction any suit being or falling within the jurisdiction of any Court subject to its superintendence when the said High Court may think proper to do so, either on the agreement of the parties to that effect, or for purpose of justice, the reasons for so doing being recorded on the proceedings of the said High Court.”

(emphasis supplied)

20) The Division of this Court in **1988 MPLJ 435, Union Carbide Corporation Vs. Union of India and others**

considered clause 9 of Letters Patent and held as under :-

“This Court is not a Court of original civil jurisdiction, but under clause 9, of the Letters Patent, this Court has extraordinary original civil jurisdiction to try any suit, when this Court thinks proper to do so for the purpose of justice.”

(emphasis supplied)

21) In our considered opinion, for purpose of justice this civil suit can be tried only by invoking clause 9 of Letters Patent read with rule 1(8) of Chapter IV of High Court Rules, 2008. Hence, the Registry is directed to list the matter before appropriate Single Bench of this Court.

(SUJOY PAUL)
JUDGE

(SHAIENDRA SHUKLA)
JUDGE