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SooperKanoon Citation : sooperkanoon.com/691533

Court : Delhi

Decided On : Jul-23-1987

Reported in : AIR1988Delhi82; 1988(1)ARBLR255(Delhi); 33(1987)DLT298

Judge : D.P. Wadhwa, J.

Acts : [Patents Act, 1970](#) - Sections 25; Patent Rules, 1972 - Rule 35

Appeal No. : Civil Miscellaneous (Main) Appeal No. 42 of 1987 and Civil Miscellaneous Appeal No. 261 of 1987

Appellant : Scooters India Ltd.

Respondent : Java Hind Industries Ltd.

Advocate for Pet/Ap. : P. Bhushan,; N.K. Anand,; R.K. Chadha and;

Judgement :

D.P. Wadhwa, J.

(1) This is an appeal filed under Section 116 of The [Patents Act, 1970](#) (for short 'the Act') against the order dated 23rd September, 1986 of the Deputy Controller of Patents and Designs Bombay-respondent No. 2, whereby the apposition of the appellant to the grant of a patent to M/s Jaya Hind Industries Ltd., Bombay-respondent No. 1, was rejected. It appears that first respondent made an application No. 151977 on 23rd June, 1980 for a patent relating to an external

roster assembly for a magneto and filed the same in the patent office at Bombay. It is stated that the appellant, who has given its address of Lucknow, learnt about the acceptance of the patent application of the first respondent when it was published in the Patent Gazette dated 17th September, 1983. Appellant thereafter in pursuance of the provisions of Section 25 of the Act and Rules 35 of the Patents Rules, 1972, filed on or about 10th January, 1984 the notice of opposition to the said patent of the first respondent. After holding proceedings in accordance with the Act and the Rules the second respondent by order dated 23rd September, 1986 dismissed the opposition of the appellant. Thereafter, the present appeal came to be filed in this court under Section 116 of the Act. A notice was issued to the respondents to show cause as to why the appeal be not admitted. It may be noted that under Section 117 of the Act every appeal under the Act before a High Court shall be by petition and shall be in such form and shall contain such particulars as may be prescribed by rules made by the High Court under Section 158 of the Act. Like in many other enactments no rules have been framed by the High Court under the Act. However, present appeal has been filed in the form of a petition.

(2) First respondent took a preliminary objection that this court had no jurisdiction to entertain this petition. It is stated that office and the establishments of the first respondent are situated within the State of Maharashtra and the application for grant of patent was made in the Patents Office at Bombay and the impugned order is of the second respondent whose office is in Bombay. It is the case of the first respondent therefore, that the appeal should have been filed in the High Court at Bombay. In reply the appellant, however, stated that this court has jurisdiction to entertain the present petition and that Section 116 of the Act clearly conferred jurisdiction to any High Court to entertain an appeal against an order of the Controller of Patents accepting and rejecting a patents application. It was stated that the reason for this was that the Controller of Patents exercised jurisdiction over the entire country and any Deputy Controller of Patents in any regional office worked on his behalf and further that a patent granted by Controller of Patents through any of the Deputy Controllers was valid all over India and legal consequences ensued in the entire country. It was also stated that the High Courts had been given appellate authority over the judicial decisions of the Controller of

Patents and that is why the words used in the Section 116 of the Act were that the appeal shall lie to 'a High Court', which clearly meant any High Court in the country.

(3) I have heard arguments on the question of territorial jurisdiction of this court to entertain the present petition, advanced by Mr. Prashant Bhushan in support of the petition and Mr. N.K. Anand in opposition thereto.

(4) The Indian Patents and Designs Act, 1911 contained provisions both relating to Patents as well as to Designs. With the enactment of the [Patents Act, 1970](#), the provisions relating to Patents have now been deleted from the old Act and the old Act is now called the Designs Act, 1911.

(5) Section (2) I (b) of the Act defines 'Controller' to mean the Controller General of Patents, Designs and Trade Marks referred to in Section 73 of the Act. Under Section 2(l)(i) the 'High Court' means :-

(l) in relation to the Union Territory of Delhi and the Union Territory of Himachal Pradesh, the High Court of Delhi; (ii) in relation to the Union Territory of Manipur and the Union Territory of Tripura, the High Court of Assam; (iii) in relation to the Union territory of the Andaman and Nicobar Islands, the High Court at Calcutta; (iv) in relation to the Union Territory of the Laccadive, Minicoy and Amindivi Islands, the High Court of Kerala; (v) in relation to the Union Territory of Goa, Daman and Diu and the Union territory of Dadra and Nagar Haveli, the High Court at Bombay; (vi) in relation to the Union Territory of Pondicherry, the High Court at Madras; (vii) in relation to the Union territory of Chandigarh, the high Court of Punjab and Haryana; and (viii) in relation to any other State, the High Court for that State. Section 2(l)(r) defines 'Patent office' to mean the patent office referred to in Section 74 of the Act. Then, sub-section (2) of Section 2 is as under :- '(2) In this Act, unless the context otherwise requires, any reference :- (a) to the Controller shall be construed as including a reference to any officer discharging the functions of the Controller in pursuance of section 73; (b) to the patent office shall be construed as including a reference to any branch office of the patent office.'

Section 6 of the Act prescribes the categories of persons who can make an application for patents. Section 7 prescribes the form of the application for a patent and says that every application for a patent shall be for one invention only and shall be made in the prescribed form and filed in the patent office.

(6) Reference may now be made to Sections 73 and 74 of the Act and these may be reproduced as under :-

'73. Controller and other officers :-

(1) The Controller General of Patents, Designs and Trade Marks appointed under sub-section

(1) of section 4 of the Trade and Merchandise Marks Act, 1958, shall be the Controller of Patents for the purposes of this Act.

(2) For the purposes of this Act, the Central Government may appoint as many examiners and other officers and with such designations as it thinks fit.

(3) Subject to the provisions of this Act, the officers appointed under sub-section

(2) shall discharge under the superintendence and directions of the Controller such functions of the Controller under this Act as he may, from time to time by general or special order in writing, authorise them to discharge.

(4) Without prejudice to the generality of the provisions of sub-section

(3) of the Controller may, by order in writing and for reasons to be recorded therein withdraw any matter pending before an officer appointed under sub-section

(2) and deal with such matter himself either de novo or from the stage it was so withdrawn or transfer the same to another officers appointed under sub-section

(2) who may, subject to special directions in the order of transfer proceed with the matter either de novo or from the stage it was so transferred.

74. Patent office and its branches :-

(1) For the purposes of this Act, there shall be an office which shall be known as the patent office.

(2) The patent office provided by the Central Government under the Indian Patents and Designs Act, 1911 shall be the patent office under the Act,

(3) The head office of the patent office shall be at such place as the Central Government may specify, and for purpose of facilitating the registration of patents there may be established, as such other places as the Central Government may think, fit branch offices of the patent office. *

(4) There shall be a seal of the patent office.' Rule 4 of the Patents Rules, 1972 is also relevant and may be set out as under:-
Appropriate office-(1) The appropriate office of the Patent Office shall- (i) For all the proceedings under the Act, other than those under ss. 43, 44, 51, 52, 90, 65, 68, 125, 153, and 154, be the Head Office of the Patent Office or the branch office, as the case may be, within whose territorial limits- (a) the applicant for a patent resides or has his principal place of business or domicile; or (b) the application for a patent whose name is first mentioned resides or has his principal place of business or domicile if the application is made jointly in the names of two or more persons; or (e) the agent of the applicant for a patent or party to the proceeding, has his principal place of business, if the applicant or the said party has no place of business or domicile in India; and (ii) For proceedings under ss. 43, 44, 51, 52, 60, 65, 68, 125, 153 and 154; be the head office of the Patent Office.

(2) Notwithstanding contained in sub-rule (1), until branch offices are established in accordance with the provision of sub-section

(3) of S. 74 the appropriate office for all proceedings under the Act shall be the head office of the Patent Office at Calcutta.'

(7) It is stated that head office of the Patents Office is at Calcutta. Subsection (3) of Section 74 empowers the Central Government to establish branch offices to facilitate the registration of patents. Rule 4 quoted above defines the jurisdiction of the head office and the branch offices. It is not disputed that at present there are

three branch offices one each at Bombay, Delhi and Madras and further that in the present case the application for grant of patent by the first respondent was filed in the appropriate patent office at Bombay. Section 116 of the Act provides for appeals against various orders of the Controller, Sub-sections (2) and (3) of this section are relevant and may be re-produced as under :-

'(2)Save as otherwise expressly provided in sub-section (1), an appeal shall lie to a High Court from any decision, order or direction of the Controller under any of the following provisions, that is to say, section 15, section 16, section 17, section, 18 section 19, section 20, section 25, section 27, section 28, section 51, section 54, section 57, section 60, section 61, section 63, sub-section (3) of section 69, section 78, section 84, section 86, section 88(3), section 89, section 93, section 96 and section 97. (3) Every appeal under this section shall be in writing and shall be made within three months from the date of the decision, order or direction, as the case may be, of the Controller or within such further time as the High Court may in accordance with the rules made by it under section 158 allow.'

(8) Chapter xviii of the Act deals with suits concerning infringement of patents. Under section 104 of the Act falling under this chapter no suit for a declaration under Section 105 or for any other relief under Section 106 for infringement of a patent shall be instituted in any court inferior to a district court having jurisdiction to try the suit provided that where a counter-claim for revocation of the patent is made by the defendant, the suit, along with the counter-claim shall be transferred to the High Court for decision. Reference may now be made to Section 64 as well which deals with revocation of patents. Under this section a 'patent may be revoked by the High Court on the grounds mentioned in the section on a petition by any person interested or of the Central Government or on a counter-claim in a suit for infringement of the patent.

(9) In support of his arguments Mr. Bhushan referred to a Full Bench decision of this court in *Girdhari Lal Gupta v. M/s K. Gian Chand Jain & Co.* : AIR1978 Delhi146 . This decision was rendered on Section 51A of the Designs Act. Under sub-section (1) of this section any person interested may present a petition for the cancellation of the registration of a design to the High Court. Under sub-section (2)

of this section appeal lies from any order of the Controller to the High Court, and the Controller under subsection (3) of Section 2 of the Designs Act, 1911 means the Controller General of Patents Designs and Trade Marks appointed under subsection (1) of Section 4 of the Trade and Merchandise Marks Act, 1958. The definition of the High Court under the Designs Act, 1911 is the same as that in the Patent Act, 1970. The Full Bench while interpreting sub-section (1) of Section 51-A of the Designs Act, by a majority of two to one held that a petition for cancellation of the design under Section 51-A would lie to that High Court within the territory of which subject matter has the necessary nexus. It held that a petition may, therefore, be filed either in the High Court having jurisdiction over the place at which the design is registered or in the High Court having jurisdiction over the place at which the enjoyment of the copy-right by the registered proprietor causes injury to the commercial interests of the petitioner. On these reasonings it was submitted that the present appeal in this court against the impugned order was competent as the commercial interest of the appellant was affected in the territory of Delhi where the appellant was also having its offices. It may be noted that H.L. Anand, J. who has given dissenting judgment was of the opinion that such a petition under Section 51-A could lie in any of the High Courts as we find in Section 2(7) of the Designs Act. I do not think this Full Bench decision of this court is of any help to me in deciding the question now posed before me. This judgment dealt with the initial institution of the proceedings. It could have been of help if the court had decided as to which High Court appeal lay against the order of the Controller under sub-section (2) of Section 51-A. It was the argument of Mr. Bhushan that on the analogy of this judgment he could file a suit in Delhi for revocation of the patent granted to the first respondent under Section 64 of the act and impugned order of the second respondent would be the subject matter of the suit and if the court revokes the patent, that order would have to be set aside. I am afraid this is not the point I am called upon to decide in the present case. Then, Mr. Bhushan submitted that under sub-section (4) of Section 73 of the Act the Controller is empowered to withdraw any matter pending before an officer appointed under sub-section (2) of that section and deal with such matter either himself or transfer the same to any other officer appointed under sub-section (2). He said that in case the proceedings pending in the Patents Office at Bombay are

transferred to Delhi, then could it be said that the Bombay High Court still had the jurisdiction or it was the Delhi High Court which would have the jurisdiction. Again, I am not called upon to decide this point, though it was submitted by Mr. N.K. Anand that the proceedings as such are not transferred but any other officer would continue to hold proceedings at Bombay. Reliance was also placed by Mr. Bhushan on a Division Bench decision of the Gujarat High Court in Anup Engineering Ltd. v. The Controller of Patents New Delhi, (First Appeal No. 600 of 1980 and Special Civil Application No. 2767 of 1980) decided on 19th February, 1982. No doubt, the very point which is now being agitated before me was also raised in the Gujarat High Court. The Court, however, did not express any opinion but stated as under :-

'Without entering into controversy whether a first appeal or a special civil application is maintainable in this Court, this is a fit case even having regard to our powers under Article 226 of the Constitution, that the necessary relief must be given to the petitioner-Company whose only grievance is that the petitioner-company must be heard before the grant of any patent to respondent No. 3.'

It will thus be seen that this judgment is of no help to Mr. Bhushan.

(10) Mr. N.K. Anand, learned counsel for the first respondent submitted that the aforesaid Full Bench decision of this Court supported his submission that the appeal could be filed only in the Bombay High Court. He said that the theory of nexus between subject matter and jurisdiction, evolved in the Full Bench decision of this court, would itself show that the appeal is the nexus between the authority whose order is appealed against and the High Court within the territorial jurisdiction of which that authority has its place of sitting. Mr. Anand also submitted with reference to a Full Bench decision of Allahabad High Court in Shyam Sunder Lal v. Shagun Chand 1967 All 214 that the appeal is a part of the original proceedings.

(11) There is no dearth of the authority for the proposition that a decree passed in appeal is really a decree in the suit, for an appeal is only a continuation of the suit. The order of the authority appealed against gets merged in the order of the Appellate Court. The word 'appeal' is not defined even in the Code of Civil

Procedure and in ordinary parlance would mean 'call to higher tribunal for deliverance from decisions of the lower'. In *Chappan v. Moidin Kutti* 1899 22 Mad 68 the Madras High Court after referring to the meaning of word 'appeal' in various dictionaries observed that the appeal has been held to mean 'the removal of a cause from an inferior to a superior court for the purpose of testing the soundness of the decision of the inferior court.' The Supreme Court in *Garikapati Veeraya v. N. Subbiah Choudhry and other* : [1957]1SCR488 observed that the suit, appeal and second appeal were to be regarded as one legal proceeding. It laid down certain principles, all of which may not be quite relevant for the present case before me, but I am tempted to quote the same. These are :-(para 23).

'From the decisions cited above the following principles clearly emerge:- (i) That the legal pursuit of a remedy, suit, appeal and second appeal are really but steps in a series of proceedings all connected by an intrinsic unity and are to be regarded as one legal proceeding. (ii) The right of appeal is not a mere matter of procedure but is a substantive right. (iii) The institution of the suit carries with it the implication that all rights of appeal then in force are preserved to the parties thereto till the rest of the career of the suit. (iv) The right of appeal is a vested right and such a right to enter the superior Court accrues to the litigant and exists as on and from the date the lis commences and although it may be actually exercised when the adverse judgment is pronounced such right is to be governed by the law prevailing at the date of the institution of the suit or proceeding and not by the law that prevails at the date of its decision or at the date of the filing of the appeal. (v) This vested right of appeal can be taken away only by a subsequent enactment, if it so provides expressly or by necessary intendment and not otherwise.'

(12) Under the Act patent offices could be established at various places. An application for a patent is to be made in the form prescribed and filed in the appropriate patent office. It is not disputed that in the present case the application for the patent was filed in the patent office at Bombay, which was the appropriate office. This application for patent by the first respondent could not have been filed at any other place. It would follow therefore, that the appeal against the impugned order of the second respondent rejecting opposition of the appellant under Section 25 of the Act would have to be filed in the Bombay High Court. As

the word 'appeal' is to be construed in its natural and ordinary meaning, the appeal cannot be brought to this court. The argument that though Rule 4 of the Patents Rule, 1972 prescribes a particular patent office to which an application for patent could be filed, but that would not mean that appeal against the order could be filed only in a particular High Court where the patent office is situate, has to be rejected. If it were to be that appeal could be filed in any High Court, there was no point in defining the High Court under Section 2(l)(i) of the Act. Once the application is filed, as prescribed under Section 7, the jurisdiction of the High Court to which an appeal would lie is fixed. It would be that High Court of the State of Union Territory where the patent office, where the application is filed, is situate in terms of Section 2(l)(i) of the Act. Provisions of the Act referred to above clearly show that appeal cannot be filed against an order of the Controller passed under sub-section (2) of Section 116 of the Act to any High Court of the choice of the appellant.

(13) Reference was also made to the definition of the word 'High Court' in the Trade and Merchandise Marks Act, 1958. But I do not think that I have to refer to that definition to interpret the provisions of the Act.

(14) In view of my above discussion I will hold that this court has no jurisdiction to entertain the present appeal. It is, therefore, rejected. In the circumstances, however, there will be no order as to costs.