

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7TH DAY OF JUNE, 2024

BEFORE

THE HON'BLE MR JUSTICE ANANT RAMANATH HEGDE

CIVIL REVISION PETITION NO.426 OF 2023 (IPR)

BETWEEN:

M/S BTV KANNADA PRIVATE LIMITED
DULY REPRESENTED BY ITS DIRECTORS,
2(A) SEEMANAZ,
2(B) KRISHNAPPA BABU,
NO.38, MAHAGANAPATHI NAGAR,
WEST OF CHORD ROAD,
BENGALURU-560010,
PRESENT OFFICE AT NO.32/1-2,
CRESCENT TOWER, CRESCENT ROAD,
HIGH GROUNDS, BENGALURU-560001

...PETITIONER

(BY SRI ASHOK HARANAHALLI, SR. COUNSEL A/W
SRI SUNIL RAO, ADVOCATE)

AND:

1. M/S EAGLESIGHT MEDIA PRIVATE LIMITED (ESMPL)
CHAIRMAN AND DIRECTOR,
MR. ASHWIN MAHENDRA,
DULY REP. BY HIS AUTHORIZED PERSON,
MR. MAHENDRA B (FATHER OF ASHWIN MAHENDRA)
VIDE LETTER OF AUTHORISATION DATED 24-01-2022
AGED ABOUT 62 YEARS,
R/AT NO.301/10, 36TH CROSS, 7TH C MAIN ROAD,
JAYANAGARA, 4TH BLOCK, BENGALURU-560011.
2. M/S EAGLE SIGHT TELE MEDIA PRIVATE LIMITED
DULY REP. BY ITS DIRECTORS,
1(A) KRISHNAPPA BABU,
1(B) NARAYAN RAVI KUMAR,
NO.68, IST STAGE, 5TH PHASE,
MAHAGANAPATHINAGAR, 4TH MAIN ROAD,
WEST OF CHORD ROAD, SHIVANAGAR,

BENGALURU-560079.

3. MR. GANGADHARAPPA MUNINDRA KUMAR
@ KUMAR G.M.
S/O GANGADARAPPA MUNINDRA,
AGED ABOUT 47 YEARS,
EX.DIRECTOR OF M/S EAGLE SIGHT TELEMEDIA
PRIVATE LIMITED,
(DEFENDANT NO.1 COMPANY)
NO.68, IST STAGE, 5TH PHASE,
MAHAGANAPATHINAGAR, 4TH MAIN ROAD,
WEST OF CHORD ROAD, SHIVANAGAR,
BENGALURU-560079.
4. MRS. MALLEGOWDANAHALLI KRISHNA MANJULA @
MANJULA K, W/O MR. KUMAR G.M.
AGED MAJOR,
EX.DIRECTOR OF M/S EAGLE SIGHT TELEMEDIA
PRIVATE LIMITED, (DEFENDANT NO.1 COMPANY)
NO.68, IST STAGE, 5TH PHASE,
MAHAGANAPATHINAGAR, 4TH MAIN ROAD,
WEST OF CHORD ROAD, SHIVANAGAR,
BENGALURU-560079.

...RESPONDENTS

(BY SRI K N PHANINDRA, SR. COUNSEL A/W
SRI DEEPAK B R, ADVOCATE FOR R1,
SRI D.R.RAVISHANKAR, SR. COUNSEL A/W
SRI CHANDRASHEKAR L, ADVOCATE FOR R2,
SRI/SMT BHANU H M, ADVOCATE FOR R3,
SMT SUHANA S, ADVOCATE FOR R4)

THIS CIVIL REVISION PETITION IS FILED UNDER SECTION 115 OF CPC 1908 READ WITH ARTICLE 215 OF CONSTITUTION OF INDIA AGAINST THE ORDER DATED 27.02.2023 PASSED ON IA NO.13 IN OS NO.584/2022 ON THE FILE OF THE XVIII ADDITIONAL CITY CIVIL JUDGE, BANGALORE ALLOWING IA NO.13 FILED UNDER SECTION 151 OF CPC R/W SECTION 2(i) AND SECTION 12(1)(d) OF THE COMMERCIAL COURTS ACT 2015 R/W SECTION 26(c) OF THE KARNATAKA COURT FEE AND SUIT VALUATION ACT.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 3rd JUNE, 2024 AND COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

ORDER

In a suit for injunction, alleging passing off under the Trade Marks Act, 1999, can the "specified value" of the subject matter of the suit, be determined applying Section 50 of the Karnataka Court Fees and Suit Valuation Act, 1958 is the question that needs to be answered in this petition.

2. Respondent in this appeal filed the suit for an injunction in respect of movable, immovable as well as intangible properties. In the said suit filed before the City Civil Court at Bengaluru, defendant No.3 filed a memo to reject the plaint on the premise that the value of the properties exceeds Rs. 3 lakhs, as such, only the designated Commercial Court can try the suit and the suit is not maintainable before the City Civil Court.

3. The Court dismissed the memo vide order dated 03.09.2022. CRP No.545/2022 was filed challenging the said order, this Court vide order dated 13.12.2022 directed the plaintiff to estimate the "specified value" as per Section 12 of the Commercial Courts Act, 2015 (for short 'Act of 2015').

4. After the disposal of CRP No.545/2022, the plaintiff filed I.A.No.13 valuing *only* the relief sought over the intangible property at Rs.2,50,000/-without valuing movable and

immovable properties. Defendants No.2 to 4 opposed the application and insisted on valuing the movable and immovable properties. The Trial Court accepted the plaintiff's valuation. Aggrieved by the aforementioned order dated 27.02.2023, defendant No.2 is before this Court.

5. Learned Senior counsel Sri. Ashok Harnahalli and Sri D.R. Ravishankar appearing for the petitioner would contend that the suit is filed for an injunction in respect of the movable, immovable as well as intangible properties. Under Section 12 of the Act of 2015, the plaintiff must provide the market value of all the properties described in the plaint; in CRP No.545/2022, this Court has directed the plaintiff to provide the "specified value" of the properties as per Section 12(1)(b), (c) and (d) of the Act of 2015. Since the valuation of movable and immovable properties which exceed Rs. 3 lakhs is not provided, as ordered, the plaint is to be rejected.

6. Learned Senior counsel Sri. K.N. Phanindra appearing for the 1st respondent would contend that the plaintiff is the *dominus litus* and the plaintiff is entitled to '*value the relief*' and need not value the property as the relief claimed is *injunction simpliciter*. Elaborating on the point, it is urged that Section 50 r/w Section 26(c) of the Act of the Karnataka Court Fees and

Suits Valuation Act 1958 ('Act of 1958' for short) would apply, as such the valuation for jurisdiction and the Court fee would be the same and there cannot be two different valuations.

7. Learned Senior counsel for respondent No.1 further submits that the subjects mentioned in Entry No.11A in List-III of VII Schedule of the Constitution of India confers the power on the Parliament as well as the State Legislature to pass laws relating to the jurisdiction of the Court. In terms of the Act of 1958, the State Legislature has passed the laws relating to the jurisdiction of the Court. If there is inconsistency in the methodology adopted to determine the jurisdiction of the Court under the Act of 2015 and Act of 1958, as the Act of 1958 has received the President's assent under Article 254(2) of the Constitution of India, the same will prevail over the Act of 2015 to the extent of repugnancy. Thus, the suit valuation has to be under the provisions of the Act of 1958. The plaintiff need not provide a valuation of the property under Section 12(1)(b) and (c) of the Act of 2015 as those provisions are repugnant to the provisions of the Act of 1958 governing the valuation for jurisdictional purpose. Thus, the plaintiff is required to furnish the valuation of the relief as provided under Section 12 (d) of the Act of 2015.

8. Learned Senior counsel in support of his submission, has relied on the following judgments:

- (i) Mrs. Soni Dave v. M/s Trans Asian Industries Expositions Pvt Ltd. 2016 SCC Online Del 4282
- (ii) Fine Footwear Private Limited v. Skechers U.S.A Inc. and Another 2019 SCC Online Kar 1024
- (iii) Condor Healthcare Pvt. Ltd. and another v. M/s Corem Pharma Pvt. Ltd. 2018 SCC online Hyd.348
- (iv) Bharat Bhushan Gupta v. Pratap Narain Verma & Another (2022) 8 SCC 333
- (v) Thaikkudam Bridge v. Hombale Films. & others
FAO No. 147/2022

9. Sri Sunil Rao, the learned counsel appearing for the petitioner submits that Entry No.11A in List No.III does not deal with the jurisdiction of the Court. The power to make law relating to the jurisdiction of the Courts dealing with intellectual property rights is placed only in Entry No.49 of List No-I. Hence, it is urged that the State has no legislative competence to frame law relating to the intellectual property matter.

10. It is also his submission that assuming that the State is competent to enact a law relating to the jurisdictional aspect

in respect of intellectual property matters, in view of Section 50 of the Act of 1958, r/w Section 134 of the Trade Marks Act 1999, ('Act of 1999' for short) and Section 12 of Act of 2015, the suit falling under the Act of 1999 is to be valued under Section 12 of the Act of 2015.

11. In the light of the contentions raised, following points arise for consideration.

(a) In a suit falling under the Trade Marks Act, 1999, whether the provisions of the Karnataka Court-Fees And Suits Valuation Act, 1958 or Section 12 of the Commercial Courts Act 2015 is to be applied to determine the "specified value of the subject matter" which has a bearing on the jurisdiction of the Court?

(b) Whether Section 12 of the Commercial Courts Act, 2015 is repugnant to the provisions of the Karnataka Court-Fees And Suits Valuation Act, 1958?

12. The Act of 1999 was enacted consolidating the law relating to Trade Marks. As per Section 134 of the said Act, only the District Court will have the jurisdiction to try the suits falling under the said Act. To put it differently, the jurisdiction of the Court to entertain the suit falling under the Act of 1999, is governed by Section 134 of the Act of 1999.

13. The Act of 2015 came into force in 2016. As per Section 2(1)(c)(xvii) of the Act of 2015, the suits under the Act of 1999 are "Commercial Disputes". The Act of 2015 confers the jurisdiction on Commercial Courts to try "Commercial disputes" only if the specified value" of the subject matter exceeds Rs. 3 lakhs. If the "specified value" of the subject matter is less than Rs. 3 lakhs, even the "Commercial dispute" has to be tried by the regular court dealing with civil suits, subject to any other law governing the jurisdiction of such suits.

14. In a suit falling under the Act of 1999, though the jurisdiction to try the suit is with the District Court, in view of Section 3 of the Act of 2015, it is imperative that the "specified value of the subject matter" has to be provided to determine whether designated "Commercial Court" under the Act of 2015, or a regular District Court has to try the "Commercial dispute".

15. The plaintiff has valued the suit taking shelter under Sections 26 (c) and 50 of the Act of 1958 and Section 12 of the Act of 2015. The plaintiff contends that the aforementioned provisions are to be read harmoniously.

16. The question is, should the provisions of the Act of 1958 and Section 12 of the Act of 2015, are to be harmoniously read to determine the "specified value" in a "commercial suit" in a passing off action.

17. To answer the question, the Court has to consider the interplay of Section 50 of the Act of 1958, Section 12 of the Act of 2015, and also Section 134 of the Act of 1999 as the suit is filed claiming rights and protection under the Act of 1999.

18. Section 50 of the Act of 1958 reads as under.

***"50. Suits not otherwise provided for.-(1)
In a suit as to whose value for the purpose
of determining the jurisdiction of courts,
specific provision is not otherwise made in
this Act or in any other law, value for that
purpose and value for the purpose of
computing the fee payable under this Act
shall be the same:***

*provided that notwithstanding anything
contained in sub-section (2) of section 7, the
value of land specified in clauses (a), (b), or (c)
of the said sub-section shall, for purposes of
determining the jurisdiction of courts, be the
market value of such land.*

(2) In a suit where the fee is payable under this Act at a fixed rate, the value for the purpose of determining the jurisdiction of courts shall be the market value, or where it is not possible to estimate it at a money value such amount as the plaintiff shall state in the plaint.”

(emphasis supplied)

19. Section 50(1) of the Act of 1958, dealing with the valuation for the purpose of the jurisdiction, covers three situations namely;

- a) Where a specific provision is made **in the Act of 1958** relating to valuation for the purpose of jurisdiction,
- b) Where a provision is made in **any other law** for the purpose of jurisdiction,
- c) Where **no specific provision is made in the Act of 1958** for the jurisdictional purpose.

Thus, to determine the valuation for the purpose of the jurisdiction of the Court, the following exercise needs to be carried out:

- (a) The first step is to find out whether any of the specific provisions of the Act of 1958 provides for the valuation for the purpose of the jurisdiction of the Court.

- (b) If a specific provision is found in the Act of 1958 to determine the valuation for the purpose of jurisdiction, then the procedure contemplated under the said provision has to be followed.
- (c) If no provision is found in the Act of 1958, to determine the valuation for the purpose of jurisdiction, as a second step, one has to find whether **any other law** deals with the valuation for the purpose of jurisdiction or confers the jurisdiction on the Court. If **any other law** provides for the valuation of the suit for the purpose of jurisdiction, then the procedure contemplated under such law is to be followed to determine the valuation which will have a bearing on the jurisdiction.
- (d) If any other law confers the exclusive jurisdiction on a particular court, then irrespective of valuation, said court will have the jurisdiction to try the suit
- (e) If the Act of 1958 or provisions of any other law do not govern the valuation for the purpose of jurisdiction of the Court, or do not confer the jurisdiction on a particular court, then by *default*, the valuation for the purpose of

the Court Fee under the Act of 1958 will be the valuation for the jurisdiction.

20. Now the Court has to apply the aforementioned tests to the case on hand. The suit under consideration is one for injunction falling under the Act of 1999. In the Act of 1958, there is *no specific provision* providing for the valuation of suits falling under Section 134 of the Act of 1999. Thus, the next step is to find out whether any other law provides for valuation or confers the jurisdiction to try a suit falling under the provisions of the Act of 1999. Under Section 134 of the Act of 1999 only the District Court can try the suit. Thus, the suit has to be filed before the jurisdictional District Court by applying Section 50 of the Act of 1958 and Section 134 of the Act of 1999. However, the dispute on hand is a Commercial Dispute within the definition of "Commercial Disputes" under Section 2(1)(c)(xvii) of the Act of 2015. The Act of 2015 provides for the jurisdiction of the designated commercial court to deal with "commercial disputes" only if the specified value of the "commercial suit" exceeds Rs. 3 lakhs on the date of the suit. Section 12 of the Act of 2015 provides as to how the "specified value" of the commercial suit is to be valued. Thus, Section 12

of the Act of 2015, has to be applied to determine the “specified value”.

21. For the reasons recorded above, there is no scope to value the suit under the provisions of the Act of 1958 as Section 12 of the Act of 2015 provides the method to determine the “specified value” which has the bearing on jurisdiction of the Court, and Section 50 of the Act of 1958 recognises such provision ‘*in any other law*’ dealing with the jurisdiction of the Court, in situations already discussed supra.

22. The contention that Section 12 of the Act of 2015 has to be considered harmoniously with the provisions of the Act of 1958 to determine the specified value of the subject matter cannot be accepted as there is no ambiguity or conflict in the provisions. All provisions referred to above co-exist and do not overlap each other, given the fact that Section 50 of the Act of 1958 recognises and respects “any other law” on the valuation of the suit for the purpose of jurisdiction.

23. It is also relevant to refer to Section 21 of the Act of 2015 which reads as under.

21. Act to have overriding effect.—Save as otherwise provided, **the provisions of this Act shall have effect, notwithstanding anything**

inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law for the time being in force other than this Act.

(Emphasis supplied)

24. As can be readily noticed, Section 21 supra, has an overriding effect over anything inconsistent with the provisions of the Act of 2015, except as otherwise provided. Hence, it cannot be said that the provisions of the Act of 1958 prevail over Section 12 of the Act of 2015 when it comes to the valuation of the subject matter for the purpose of the jurisdiction of the Court, in a commercial dispute, in a situation where *any other law* provides for the valuation of the suit for the purpose of jurisdiction or jurisdiction irrespective of valuation. Thus, "specified value of the subject matter" in a suit falling under the Act of 1999 will have to be under Section 12 of the Act of 2015. The said value in a suit for recovery of money will be the value of the money sought to be recovered and valuation has to be provided under Section 12(1)(a) of the Act of 2015. Under Section 12(1)(b) and (c) of the Act of 2015, the "specified value of the subject matter" is the actual market value of the subject matter i.e., the movable or immovable property as the case may be as on the date of the suit.

Whereas, in Section 12(1) (d) of the Act of 2015, the specified value is the value of the relief estimated by the plaintiff and there is no need to value the property.

25. **Point No.2.** Whether Section 12 of the Act of 2015 is repugnant to the provisions of the Act of 1958.

26. Though the learned senior counsel appearing for the respondent would urge that Section 12 of the Act of 2015 is repugnant to the provisions of the Act of 1958, as already held, Section 50 of the Act of 1958 yields to *any other law* providing for the jurisdiction of the Court in situations already discussed supra. This being the position, the repugnancy if any, in the provisions of the Act of 1958 and Section 12 of the Act of 2015 is taken care of under Section 50 of the Act of 1958 itself as the said provision paves the way for Section 12 of the Act of 2015 to operate. Hence, there is no need to dwell on the contention based on Article 254(2) of the Constitution of India.

27. For the reasons assigned supra, the Act of 1958 has no application to determine the valuation for the purpose of the jurisdiction of the Court, in a suit falling under the Act of 1999, and the procedure provided under Section 12 of the Act of 2015 has to be followed to determine the specified value.

28. Learned Senior counsel has relied on the judgment of the Delhi High Court in ***Mrs. Soni Dave*** (Supra). In the said judgment, the Delhi High Court has taken the view that Section 12 of the Act of 2015, has to be read harmoniously with the provisions of the Court Fees Act, 1870 and the Suits Valuation Act, 1887. It is relevant to note that in the said proceeding, the Delhi High Court was not considering the interplay between the provisions of the Act of 1999, the Act of 2015, and the Act of 1958. The scope of Section 50 of the Act of 1958 or any other analogous provisions under the Act of 1887 and the Act of 1870 were not considered in the said judgment. The dispute involved in the said case was not governed under Section 134 of the Act of 1999. Hence the said judgment cannot have a persuasive value in the present case.

29. The co-ordinate bench of this Court in ***Fine Footwear Private Limited (Supra)*** has also taken a view that in a suit for injunction simpliciter the plaintiff is not required to value the property and is only required to value the relief. In the said case, Section 134 of the Act of 1999, Section 21 of the Act of 2015, and Section 50 of the Act of 1958 which will have a bearing on the valuation and jurisdiction are not brought to the notice of the co-ordinate bench. Hence with due

respect, this Court is of the view that the judgment in ***Fine Footwear*** supra, cannot be cited as a binding precedent in a case falling under Section 134 of the Act of 1999.

30. Respondents also placed reliance on the judgment of the Delhi High Court in ***Vishal Pipes Limited vs. Bhavya Pipe Industry*** (2022) SCC Online Del 1730. It is to be noticed that the Division Bench of the Delhi High Court in ***Pankaj Ravjibhai Patel Trading as Rakesh Pharmaceuticals vs. SSS Pharmachem Pvt. Ltd.*** (FAO(COMM) 98/23) has held that the judgment in *Vishal Pipes supra* is not a correct law. The judgment in ***Condor Healthcare Pvt. Ltd. supra*** rendered by the High Court of Hyderabad also does not assist the respondents as the said judgment does not deal with Section 50 of the Act of 1958. Though Section 50 of the Act of 1958 and Section 50 of the Andhra Pradesh Court-Fees and Suits Valuation Act, 1956 are by and large analogous to each other, it is noticed that the implication of Section 134 of the Act of 1999 and Section 12 of the Act of 2015, on the expression, "any other law" found in Section 50 of the Act of 1958 is not considered.

31. The judgment in ***Bharat Bhushan Gupta supra***, is again of no avail to the respondents as the aforementioned

judgment does not deal with Section 12 of the Act of 2015, Section 50 of the Act of 1958, and Section 134 of the Act of 1999.

32. The judgment of the Kerala High Court in the case of ***Thaikkudam Bridge supra*** has no application to the case on hand as the relief claimed in the said suit was in respect of intangible property where the valuation is made under Section 12(d) of Act of 2015. Whereas, in the instant case, the relief is claimed in respect of movable, immovable as well as tangible properties.

33. Learned Senior counsel has also referred to the judgment of the Apex Court in ***Tek Singh vs. Shashi Verma and another (2019) 16 SCC 678*** to contend that the Civil Revision Petition is not maintainable against an interlocutory order. In the said case, the Civil Revision Petition was filed challenging the order granting an injunction. However, in the present case, the issue relating to the valuation of the property for the purpose of the jurisdiction of the Court will go to the root of the matter. Hence, the ratio laid down in the said case cannot be applicable.

34. Learned senior counsel for the respondent has placed reliance on the judgment of the co-ordinate bench of this Court in ***Manicklal Verma and Another vs. Smt. Jamunadevi and Others, ILR 2002 Kar.2347.*** It is urged that the finding on the pecuniary jurisdiction of the Court arrived on an application cannot be questioned in a revision and the defendants can question the said order after the disposal of the suit on merits by way of an appeal.

35. This Court has considered the aforementioned judgment. In the said case, the Court has held that the issue relating to the valuation is a mixed question of law and fact. In the said case, the dispute was on the question of undervaluation and the defendant's objection was to the court fee and not on jurisdiction. In such circumstances, this Court held that once the question relating to valuation is adjudicated, there cannot be a revision petition challenging the said order. However, in the present case, the issue is different. The question raised is a jurisdictional issue that results in the termination of the proceeding if answered in favour of the petitioner.

36. It is also urged by the learned Senior counsel for the respondent that the remedy under Section 115 of the Code

of Civil Procedure ('Code' for short) is not available as even if the petition is allowed, the matter has to be remitted to the trial Court for providing the 'specified value of the subject matter' as contemplated under Section 12 of the Act of 2015. As a result, the proceeding before the trial Court will not be terminated and the Civil Revision Petition under Section 115 of the Code is not maintainable.

37. It is to be noticed that in MFA No.7382/2022, this Court in an earlier round of litigation has directed the plaintiff to provide the specified value within 15 days from the date of the order dated 02.01.2023. The order also refers to the earlier order in CRP No.545/2022 where there was a direction to value the suit under Section 12 of Act of 2015. Order VII Rule 11(b) of the Code which provides for the rejection of the plaint if the valuation is not provided within the specified date. Since the valuation is not provided as required, the plaint has to be rejected which results in termination of the proceeding before the Trial Court. Hence the Civil Revision petition is maintainable. However as the learned senior counsel on a specific query by the Court submits that the specified value of the movable and immovable properties exceeds Rs. 3 lakhs. Hence instead of rejecting the plaint, this Court directs the

return of the plaint to enable the plaintiff to present the suit before the jurisdictional "Commercial Court" by complying the other formalities of the plaint mandated under the Act of 2015.

38. Hence the following:

ORDER

- (i) The Civil Revision Petition is ***allowed in part.***
- (ii) The order dated 27.02.2023 passed in O.S.No.584/2022 on I.A.No.13 on the file of XVIII Additional City Civil Judge, Bengaluru is set-aside.
- (iii) The plaint is returned to the plaintiff with a liberty to present the same before the jurisdictional Commercial Court by making necessary modifications as per the requirement of the Commercial Courts Act, 2015.
- (iv) Registry to return the Trial Court Records forthwith.
- (v) No order as to cost.

**Sd/-
JUDGE**