

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Extraordinary Jurisdiction)

DATED : 3rd June, 2025

SINGLE BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

WP(C) No.31 of 2024

Petitioner : Inbrew Beverages Pvt. Ltd.

versus

Respondent : Mount Distilleries Limited

Writ Petition under Article 227 of the Constitution of India

Appearance

Mr. Pramit Chhetri, Advocate for the Petitioner.

Mr. Sudesh Joshi, Advocate with Mr. Adarsh Gurung, Advocate for the Respondent.

JUDGMENT (ORAL)

Meenakshi Madan Rai, J.

1. The Petitioner herein, who was the Plaintiff before the Learned Commercial Court, East Sikkim, at Gangtok, filed a Suit for Infringement, Passing off of Trade Mark, Infringement of Copyright, Injunction and other consequential reliefs, under Sections 28(1) and 29 of the Trade Marks Act, 1999, against the Defendant/ Respondent. The Suit was valued at ₹ 1,00,00,000/- (Rupees one crore) only.

2. The original Plaintiff was the United Spirits Limited (USL). The business was later taken over by the present Petitioner who was thereby transposed as the Plaintiff. After closure of the evidence before the Commercial Court and when the matter was fixed for final arguments, the Petitioner filed a Petition under Order XI Rule 1(5), read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter, "CPC"), dated 28-09-2023, pertaining to

disclosure, discovery and inspection of documents in suits, vide which, the Petitioner sought to file the following documents;

- (i) Original certificate for use in legal proceedings for the trade mark registrations 296836 dated 12-06-1974; 544357 dated 15-12-1998; 949492 dated 05-01-2004 and 2000458 dated 27-11-2015;
- (ii) Certified copy of Design Registration No.216986 dated 03-07-2008;
- (iii) C.A. Certificate showing sales incurred by the Plaintiff in respect of brandy under the trade mark Honey Bee; and
- (iv) Usership Agreement, dated 01-01-2015, between USL and the Defendant.

3. Advancing the plea that the Petition be allowed, Learned Counsel for the Petitioner submitted that the Suit was filed in the year 2018. The entire evidence of the litigating parties was recorded and completed in June, 2022. The USL was taken over by Inbrew Beverages Pvt. Ltd., the present Petitioner Company on 30-09-2022, who stepped into the shoes of the original Plaintiff. The present Petitioner, while examining the documents handed over to it by the USL and relied on in the dispute, applied for the "certified to be true copies" of the documents from the Trade Mark Registry, located at New Delhi, which were accordingly made available. The Petitioner then sought to file the documents before the Commercial Court, but their Petition under Order XI Read with Rule 5(1) *supra* was rejected vide the impugned Order dated 24-11-2023, in I.P.R. Suit No.01 of 2018. That, disallowing the Petitioner to file these documents would be to their prejudice, as the original Plaintiff had failed to take necessary steps and the Petition ought to be allowed to rely on the documents to substantiate their case. Hence, the impugned Order be set aside and the instant Petition be allowed.

4. Learned Counsel for the Respondent, Defendant before the Commercial Court, in the first instance raised the question of maintainability of the Petition under Article 227 of the Constitution of India by relying on the decision of **Rajendra Diwan vs. Pradeep Kumar Ranibala and Another**¹ wherein the Supreme Court has *inter alia* held that, the powers under Article 227 of the Constitution is to be used sparingly and only when there is a perversity, arbitrariness or unreasonableness, in the order of the Courts below. That, the writ jurisdiction of the High Court cannot be converted into an alternative appellate forum in the absence of provision of appeal in the eyes of law. That, documents sought to be furnished now as “certified to be true copies”, were in fact submitted before the Commercial Court as photocopies along with the Plaint. That, during the entire course of trial the Petitioner failed to take steps to furnish certified copies. The evidence of both parties have since concluded and the matter fixed for final arguments. The Petitioner, who has stepped into the shoes of the original Plaintiff, cannot now claim ignorance of the non-filing of certified copies or put forth grounds of difficulties in obtaining the certified copies. That, the defence of the Defendant has been disclosed in its entirety during the trial and should these documents now be allowed, it would be prejudicial to the Defendant, as the Petitioner’s attempt is to fill the loopholes in their case. The Petition thereby deserves a dismissal.

5. Having heard the Learned Counsel for the parties *in extenso* and perused the documents, it is relevant to refer to the statutory provision in the Commercial Courts Act, 2015 (hereinafter, “the Act”), Section 8 of the Act provides as follows;

¹ (2019) 20 SCC 143

"8. Bar against revision application or petition against an interlocutory order.—Notwithstanding anything contained in any other law for the time being in force, no civil revision application or petition shall be entertained against any interlocutory order of a Commercial Court, including an order on the issue of jurisdiction, and any such challenge, subject to the provisions of section 13, shall be raised only in an appeal against the decree of the Commercial Court."

6. The scope and ambit of Section 8 of the Act is explicit and specifically bars revision, application or petition against an interlocutory order of a Commercial Court, including an order on the issue of jurisdiction. The Section elucidates that any such challenge, subject to the provisions of Section 13, shall be raised only in an Appeal against the decree of the Commercial Court, meaning thereby that any challenge to an interlocutory order must be raised through an Appeal, against the final decree of the Commercial Court.

7. However, it is clarified herein that, the bar engrafted in Section 8 of the Act will not apply to the supervisory jurisdiction under Article 227 of the Constitution of India. In this context, relevant reference is made to the observation of the Gujarat High Court in ***State of Gujarat vs. Union of India and Others***² wherein it was observed that the bar contained in Section 8 of the Act against entertaining of civil revision application or petition provided under any other law for the time being in force, shall not be applicable with respect to the petitions under Article 227 of the Constitution and it shall not affect the rights of the aggrieved party to invoke the jurisdiction of the High Court under Article 227 of the Constitution.

(i) The High Court of Madras in ***Ramanan Balagangatharan vs. Rise East Entertainment Private Limited, rep by its Authorized Signatory***

² 2018 SCC OnLine Guj 1515

Easwara Chandra Vidyasagar Pentala³ emphasised that the bar engrafted in Section 8 of the Act will not apply to the supervisory jurisdiction under Article 227 of the Constitution.

(ii) A Division Bench of this High Court in **Glenmark Pharmaceuticals Limited vs. Union of India and Others**⁴ observed as follows;

"10. It is relevant also to notice that the doctrine of judicial comity or amity, requires the Court not to pass an order which would be in conflict with another order passed by a competent court of law. In **India Household and Healthcare Ltd. vs. LG Household and Healthcare Ltd.**⁵ the Supreme Court observed that;

"19. A court while exercising its judicial function would ordinarily not pass an order which would make one of the parties to the lis violate a lawful order passed by another court."

The above judgment was taken note of and considered by one of us (Biswanath Somadder) in **Nirendra Kumar Saha & Ors. vs. Steel Authority of India Ltd. and Ors.**⁶.

(i) In **Yashita Sahu vs. State of Rajasthan and Others**⁷ the Supreme Court observed as follows;

"19. We are of the considered view that the doctrine of comity of courts is a very healthy doctrine. If courts in different jurisdictions do not respect the orders passed by each other it will lead to contradictory orders being passed in different jurisdictions. No hard-and-fast guidelines can be laid down in this regard and each case has to be decided on its own facts. We may, however, again reiterate that the welfare of the child will always remain the paramount consideration."

In light of the above circumstance, this Court is in agreement with the observation of the High Court of Gujarat and High Court of Madras on the issue of Section 8 of the Act and Article 227 of the Constitution as already elucidated above.

8. Under Article 227 of the Constitution, the High Court is to examine whether the concerned Court had jurisdiction to deal

³ 2022 SCC OnLine Mad 1300

⁴ 2025 SCC OnLine Sikk 48

⁵ (2007) 5 SCC 510

⁶ (2009) 2 CHN 306 = (2009) 2 Cal LT 367 = 2009 SCC OnLine Cal 619

⁷ (2020) 3 SCC 67

with the matter and if so, whether the impugned Order is vitiated by procedural irregularity. The power of revision under Article 227 would also be exercised albeit sparingly, to interfere in cases of grave dereliction of duty or flagrant violation of law, error of jurisdiction where grave injustice would occur, unless the High Court interferes.

9. The position of law having thus been settled, it appears that the standoff between the litigating parties was on account of the fact that the Plaintiff is the registered proprietor of the trade mark "Honey Bee", and manufacturing brandy under the said trade mark. The product was being sold in Sikkim for more than a decade, through the Defendant its erstwhile bottler, a Limited Company with its registered office in Sikkim who was aware of the Plaintiff's use of the trade mark "Honey Bee" since 1973. Sometime in June, 2018, it came to the knowledge of the Plaintiff that the Defendant had adopted the trade mark "Honey Gold", in respect of brandy which was packaged and sold in bottles identical to that of the Plaintiff. The products were openly sold in the markets of Sikkim. The Defendant was thereby infringing, passing off, falsifying, misusing, forging and/or counterfeiting the established trade mark "Honey Bee". Hence, the prayers in the Plaint *inter alia* for perpetual injunction restraining the Defendant from using the name "Honey Gold" to trade mark their product.

10. Having heard Learned Counsel for the parties and perused all documents including the averments and the impugned Order of the Commercial Court in IPR Suit No.01 of 2018, it is seen that the Commercial Court *inter alia* observed as follows;

"....."

The chronology of dates of proceedings would show that on the day (11.08.2020), when the case was posted for issues and documents, the plaintiff had filed copies of the documents relied by them. *Inter alia*, the documents mentioned in sl. no. i, ii and iv (of the application under consideration) had been filed. Due to the prevalent COVID-19 pandemic the plaintiff was given an opportunity to file the documents along with the evidence. However, the same was not complied. On 18.09.2021, the plaintiff closed their evidence. During the said period and also at the time of final arguments (*before another Commercial Court*), these documents were neither produced nor permission was sought to file.

It would be seen that the said documents are not new documents but those which have already been disclosed and relied by the plaintiff. **Hence, it cannot be taken as 'additional documents' within the meaning of Order XI Rule 1(5) of the CPC, 1908** which permits the plaintiff, upon establishing reasonable cause to rely on those documents which are not in their power, possession, control or custody and not disclosed along with the plaint.

The case of *Sudhir Kumar (supra)*, clearly forbids taking documents which the plaintiff intends to file at this stage as it does not come within the ambit of 'additional documents'.

I have also noticed that the plaintiff's witness namely Udayan Chatterjee was examined on 17.07.2021 and 24.07.2021 and during his cross-examination, he has mentioned about the data of sale of the plaintiff's product (Honey Bee) and whether any loss has been caused to the plaintiff. It appears that this point has also been argued by the parties during final arguments before another Commercial Court. Hence, permitting the plaintiff to file the CA certificate of volume of sale of the said product would clearly be to explain this short-comings in the plaintiff's case. The same is impermissible at this stage.

.....” [emphasis supplied]

11. On due consideration of the Order of the Commercial Court (*supra*), it is clear that despite adequate opportunity afforded to the Petitioner they failed to comply with the orders requiring them to produce documents.

12. Order XI Rule 1(5) of the CPC reads as follows;

“ORDER XI

DISCLOSURE, DISCOVERY AND INSPECTION OF DOCUMENTS IN SUITS BEFORE THE COMMERCIAL DIVISION OF A HIGH COURT OR A COMMERCIAL COURT

1. Disclosure and discovery of documents.—(1) Plaintiff shall file a list of all documents and photocopies of all documents, in its power, possession,

control or custody, pertaining to the suit, along with the plaint, including:—

.....
 (5) The plaintiff shall not be allowed to rely on documents, which were in the plaintiff's power, possession, control or custody and not disclosed along with plaint or within the extended period set out above, save and except by leave of Court and such leave shall be granted only upon the plaintiff establishing reasonable cause for non disclosure along with the plaint."

13. It is not the Petitioner's case that the documents which they seek to file, vide the Petition, were not in their power, possession, control or custody. Order XI Rule 1(4) of the CPC deals with the filing of "additional documents" in Court within thirty days of filing the Suit. This Section is being flagged for the reason that, the Commercial Court has observed that the documents sought to be filed, *"cannot be taken as additional documents within the meaning of Order XI Rule 1(5) of the CPC"*. In fact, Order XI Rule 1(5) of the CPC does not deal with additional documents and it is Order XI Rule 1(4) of the CPC which is concerned with additional documents. Hence, the Commercial Court was in error on this count. Order XI Rule 1(5) of the CPC is applicable in a commercial suit, only with respect to the documents which were in the Plaintiff's power, possession, control or custody and not disclosed along with the Plaint. The grounds for establishing the reasonable cause in non-disclosure along with the Plaint, may not arise in the case where "additional documents" are sought to be produced/relied upon which are discovered subsequent to the filing of the Plaint. In the instant matter, it is not the Petitioner's case that the documents were not in their possession or control and were subsequently discovered, as photocopies of the documents have admittedly been filed with the Plaint. This fact disentitles them from invoking the

provision of Order XI Rule 1(5) of the CPC. That apart, the evidence of both the parties have since been completed and the matter fixed for final arguments before the Court, which means that the entire defence of the Defendant has already been disclosed. The Petitioner cannot now seek to improve their case by filling in any loopholes that may have occurred on account of non-furnishing of the certified copies of the documents.

14. For the foregoing reasons, I am not inclined to allow the Petition which accordingly stands dismissed and disposed of.

15. It is clarified that, the foregoing discussions are not to be construed as findings or observations on the merits of the matter.

(Meenakshi Madan Rai)
Judge
03-06-2025

Approved for reporting : **Yes**

ds/sdl