

# Dispute Resolution Hotline

March 09, 2016

## COMMERCIAL DIVISION JURISDICTION CLARIFIED

- All 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
  - a) Shall be heard by the Commercial Division;
  - b) Shall be heard irrespective of its pecuniary value;
- Intellectual Property Right matters which are filed or pending on the original side of the High Court, shall be heard by the Commercial Division irrespective of the pecuniary value.

## INTRODUCTION

Most foreign investors have often been wary of India's lengthy and unending litigation. Given the current Government's mission to improve India's image as an investment destination, the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 ("**Act**") was recently enacted for expeditious and efficient resolution of commercial disputes. The new legislation is path breaking.

The Commercial Courts and Division provide for a two year timeline for adjudication of a Commercial Dispute. To have a better understanding of the newly formed Commercial Courts, Commercial Divisions and Commercial Appellate Divisions, please refer to our hotline elaborately discussing the same, [here](#).

Like any new enactment or legal regime, the Act also provides a fresh set of interpretational issues. Recently the Hon'ble High Court of Delhi ("**Court**") in *Guinness World Records v Sababbi Mangal*<sup>1</sup>, while interpreting the first proviso to Section 7 of the Act, has held that all commercial disputes which fulfill the following criteria shall be heard by the Commercial Division of the High Court, irrespective of such matters being above the specified value of Rs. 10,000,000/- (Rupees Ten Million Only) ("**Specified Value**") or not:

1. Is stipulated by an Act to be filed in a court not inferior to a District Court; and
2. are filed or pending on the original side of the High Court.

The Court did not go into the facts and has just dealt with the question of law being deliberated.

## ISSUE

Whether the expression "*filed or pending*" as appearing in the first proviso of Section 7 of the Act of 2015 would mean that the Court would have to entertain all pending matters even if it did not have the required pecuniary jurisdiction to entertain a suit.

## JUDGMENT

The Court observed that as per Section 7 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Ordinance, 2015 ("**Ordinance**")<sup>2</sup> where suits and applications relating to commercial disputes of a specified value were stipulated by a statute to be filed in a court not inferior to the District Court and had been filled with the High Court in pursuance of its original jurisdiction, the same would have to be heard and disposed by the Commercial Division. The Court stated that Section 7 of the Ordinance could have the following interpretations:

1. As long as a Suit had been originally filed in the High Court, the Commercial Division of the High Court would continue to hear and dispose of the suit, irrespective of whether the value of the suit was of the specified value as mentioned in the Ordinance, 2015.

OR

2. The Commercial Division of the High Court would be able to continue hearing a suit only if the value of the suit was above the specified value as mentioned in the Ordinance, 2015.

The Court then noted that the government issued a Press Note on December 16, 2015 by which it was stated that an amendment was required to the first proviso of Section 7 of the Ordinance, 2015 in order to remove any ambiguity and convey that the said proviso would be applicable to pending cases as well.

The Court further noted that as per the 78<sup>th</sup> Report submitted to the Rajya Sabha by the Department Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, pending cases should not have been transferred to Commercial Courts as that would overburden the newly formed courts and result in

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undesirable consequences.

Thereafter, the Court referred to Section 7 of the Act<sup>3</sup>, where the words “*or pending*” was indeed supplied by the Legislature after “*and filed*”. The Court observed that the Legislature had expanded the scope of the provisions such that cases filed and/or pending on the date of commencement of the Act would continue to be heard by the Commercial Division. The purpose of changing the wording of the first proviso to Section 7 would have been defeated, if pending matters were to be transferred depending on the value.

Thus the Court observed that the intention behind enacting Section 7 of the Ordinance and the Act was to ensure that where specific statutes mandated certain suits to be instituted either in District Courts or High Courts<sup>4</sup>, these matters were to be heard and disposed of by the Commercial Division of the High Court irrespective of whether the pecuniary value of the matter was above the specified value as mentioned in the Act of 2015.

The Court while interpreting Section 7 of the Act, interestingly notes that “*the golden rule is that there is no golden rule.*” The Court stated that while there are various doctrines of interpretation, the Court ultimately has to see the reasons and setting behind the use of words and give purpose to the bringing in of the necessary words and expressions in the statute.

The Court thereafter observed that matters filed under various statutes as given below governing different types of intellectual property rights (“**IPR**”) fulfill the twin conditions and that such IPR matters shall be heard by the Commercial Divisions:

1. Patents Act, 1970;
2. Trade Marks Act, 1999;
3. Designs Act, 2000;
4. Copyright Act, 1957; and
5. Geographical Indications of Goods (Registration and Protection) Act, 1999

## ANALYSIS

Commercial Divisions and Commercial Courts are normally to hear commercial disputes which are of the Specified Value or above. Currently such Specified Value is Rs. 10,000,000 (Rupees Ten Million Only). The aforesaid ruling indicates the expanded jurisdiction of Commercial Divisions. It clarifies that in context of certain types of matters (which shall include the matters arising of the enactments listed above) there would be no pecuniary threshold for the jurisdiction of the Commercial Divisions.

It may be noted that the first proviso to Section 7 of the Act which has been interpreted is only applicable in context of Commercial Division of High Courts and not to Commercial Courts. This is as Commercial Divisions are to be constituted in High Courts which otherwise have original jurisdiction and it is only in context of such High Courts that a situation would arise where a suit or application would be filed on the original side of a High Court under statutes which stipulate for matters to be filed in courts not inferior to District Courts.

— Arjun Gupta, Ashish Kabra & Vyapak Desai

You can direct your queries or comments to the authors

<sup>1</sup> CS (OS) No. 1180/2011

<sup>2</sup> Section 7 of Ordinance, 2015 - “*All suits and applications relating to commercial disputes of a Specified Value 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 on the original side of the High Court, shall be heard and disposed of by the Commercial Division of the High Court.*” (emphasis supplied by Court)

<sup>3</sup> Section 7 of Act of 2015 – “Jurisdiction of commercial divisions of High Court- *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 sub-section (4) of Section 22 of the Designs Act, 2000 or Section 104 of the Patents Act, 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.*” (emphasis supplied by Court)

<sup>4</sup> Generally referred to as IPR matters, such as trademark, copyright and patents cases.

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