IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL APPEAL (L) NO. 13430 OF 2025
IN
COMMERCIAL MISCELLANEOUS PETITION NO. 110 OF 2025

Vishal Prafulsingh Solanke and anr .. Appellants

Versus

Controller of Patent and Designs and ors .. Respondents

…

Mr. Pranshul Dube a/w Ms. Asma Nadaf, Ms. Maithri Porwal for the Appellants.
Mr. Ashish Mehta a/w Mr. Ashutosh Mishra for Respondent No.1
Mr. Venkatesh Dhond, Sr. Advocate- Amicus.

CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.
RESERVED ON : 13th FEBRUARY, 2026
PRONOUNCED ON: 9th MARCH, 2026

JUDGMENT (PER BHARATI DANGRE, J) :-

1. The Commercial Appeal filed by the Appellants raise a challenge to the impugned judgment/ order dated 27/03/2025 passed by the learned Single Judge, in Commercial Miscellaneous Petition (L) No. 25369 of 2023, being filed under Section 117A of the Patents Act, 1970, praying for quashing and setting aside of the order dated 14/06/2023, passed by the Assistant Controller of Patent and Designs refusing the Patent Application No. 879/MUM/2015. Since the impugned order dismissed the Petition, the present Appeal is filed under Section 13 of the Commercial Courts Act, 2015 (for short referred to as “Act of 2015 or CCA”).

2. As the Appeal came to be listed before the Division Bench headed by Hon'ble the Chief Justice on 18/08/2025, the Division Bench noted thus:-

"1. This appeal under Section 13 (1-A) of the Commercial Courts Act, 2015 (hereinafter referred to as "the Act of 2015") has been filed against an order dated 27th March, 2025 passed in Misc. Appeal under Section 117-A of the Patents Act, 1970 (hereinafter referred to as "the Act of 1970").

2. For the facility of reference Section 117-A of the Act of 1970 and Section 13 of the Act of 2015 are extracted below:-

*"**117A. Appeals to High Court.** — (1) Save as otherwise expressly provided in sub-section (2), no appeal shall lie from any decision, order or direction made or issued under this Act by the Central Government, or from any act or order of the Controller for the purpose of giving effect to any such decision, order or direction.*

(2) An appeal shall lie to the High Court from any decision, order or direction of the Controller of Central Government under section 15, section 16, section 17, section 18, section 19, section 20, sub-section (4) of section 25, section 28, section 51, section 54, section 57, section 60, section 61, section 63, section 66, sub-section (3) of section 69, section 78, sub-sections (1) to (5) of section 84, section 85, section 88, section 91, section 92 and section 94.

(3) Every appeal under this section shall be in the prescribed form and shall be verified in such manner as may be prescribed and shall be accompanied by a copy of the decision, order or direction appealed against and by such fees as may be prescribed.

(4) Every appeal shall be made within three months from the date of the decision, order or direction, as the case may be, of the Controller or the Central Government or within such further time as the High Court may, in accordance with the rules made by it, allow."

*"**13. 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.*

(1-A) 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."

3. Thus, it is evident that Section 117-A of the Act of 1970 provides for an appeal to the High Court. From close scrutiny of Section 13 of the Act of 2015, prima facie, it appears that the same does not provide for an appeal against an order passed under Section 117-A of the Act of 1970 before this Court in exercise of the appellate jurisdiction.

4. At this stage, learned counsel for the appellants prays for adjournment to enable him to examine the aforesaid aspect and to address the Court."

3. On 25/08/2025, taking a *prima facie* view, it was noted thus:-

"1. This Appeal under Section 13(1-A) of the Commercial Courts Act, 2015 has been filed against an order which is passed in an Appeal under Section 117-A of the Patents Act, 1970.

2. The Appeal is a creature of a statute and the statute under which the Appeal is filed needs to provide a right to prefer an Appeal. In the instant case, prima facie, Section 13 of the Commercial Courts Act, 2015 does not permit an Appeal against an order passed in an Appeal under Section 117-A of the Patents Act, 1970."

The Court also appointed Mr. Venkatesh Dhond, learned Senior Advocate as Amicus and sought his assistance.

4. In light of the aforesaid, we have heard learned counsel Mr. Pranshul Dube for the Appellants, Mr. Ashish Mehta for the Controller of Patent and Designs and we also received valuable assistance from learned Senior Counsel, Mr. Venkatesh Dhond, who has marked his appearance in the wake of the request of his assistance.

5. The Petitioners before the learned Single Judge, preferred a Patent Application No. 879/mum/2015 on 17/03/2015 for invention

titled “THREAD TYPE TAMPER EVIDENT SECURITY SEAL” which resulted in pre-grant opposition filed by the Respondent No.3, and after following the necessary procedure for grant of Patent, pursuant to the hearing being conducted, the Assistant Controller of Patent and Designs was of the view that if certain amendments were made in the Complete Specification as well as the claims, the patent could be granted.

The Appellants agent filed amendment specification, in line with the directions so issued. The parties were permitted to file their written submissions, however on 14/06/2023, the impugned order was passed by the Assistant Controller of Patent and Designs holding that the opposition succeeds under Section 25 (1) (b) and 25 (1) (e) of the Act, refused the Patent to the Appellants.

6. The order passed by the Controller of Patent and Designs was challenged by the Appellants by filing Commercial Miscellaneous Petition (L) No.25369 of 2023, praying for its quashment with various contentions being raised and at this stage, we refrain to examine the matter on merits, as we are restricting our ruling to the maintainability of the Appeal and therefore, it is suffice to note that the contest being raised by the counsel representing Respondent Nos. 1 and 2 and on consideration of the counter submissions, advanced qua the impugned order, the learned Single Judge finding merit in the submission advanced on behalf of the Respondents that it is only in the event of Section 25(1) (b) not being satisfied, the finding under Section 25 (1) (e) of the Act deserves consideration, and finding no merit in the submission advanced on behalf of the Appellants that there are differences and advantages between the subject Patent

Application and cited documents and having only referred to the cited documents under Section 14 and 15, decision of the Assistant Controller of Patents and Designs, on consideration of detail entire facts and material available on record, the impugned order was passed dealing with each and every aspect and it being substantiated with reasons, the Commercial Miscellaneous Petition was dismissed.

7. Being aggrieved by the impugned judgment, the present Commercial Appeal is filed, alleging that the impugned order is bad, void and suffers from apparent error and is not sustainable in the eyes of law and is therefore liable to be set aside.

Though the Appeal has raised various grounds on the merits, while raising a challenge to the impugned judgment, we need not refer to the same at this stage, as at present we are restricting ourself to the maintainability of the Appeal being filed as Commercial Appeal under Section 13 of the Commercial Courts Act, 2015.

8. In the backdrop of the order dated 18/08/2025, the learned counsel Mr. Dube, would submit that the Appellants filed a Patent Application, which was refused and according to him, that prior to 2021, a remedy of Appeal to the Appellate Board established under Section 83 of the Trade marks Act, 1999 and under Section 116 of the Patents Act, 1970, was available. However, since the said provision was omitted by the Tribunal's Reform Act, 2021 with effect from 4/04/2021, the Appeal now lie before the High Court, as Section 117-A is a provision of Appeal, from any decision, or order or direction of the Controller of the Central Government passed under various provisions stipulated therein, provided that the Appeal is made within three months from the date of decision, order or direction or within

such further time as the High Court may, in accordance with the Rules allow it to be made.

Mr. Dube, would submit that invoking the said provision, being aggrieved by the order passed by the Controller of Patent and Designs, Miscellaneous Petition is filed before the learned Single Judge, who rejected the same by the impugned judgment by exercising jurisdiction of a Commercial Division of High Court under subsection 1-A of Section 13 of the Commercial Act, 2015 and against the said decision an Appeal would lie to the Commercial Appellate Division of the High Court, within a period of sixty days from the date of passing of the judgment or order.

9. Inviting our attention to Section 13 (1-A) of the Commercial Courts Act, 2015, it is his contention that any person aggrieved by the judgment or order of a Commercial Division of High Court may appeal to the Commercial Appellate Division of that Court and on plain reading of the said provision, present appeal is maintainable under Section 13 (1-A) of the Act of 2015.

The difficulty posed, on account of the proviso appended to the said section, which provide that orders under Rule XLIII of the Code of Civil Procedure, 1908 (in short referred to as CPC or Code of 1908) are only appealable, he would submit that the proviso applies to ‘orders’, in a sense that ‘order’ is that which is not a ‘decree’, as decree imply conclusive determination of rights of the parties.

In support of this submission, he would place reliance upon the decision of the Bombay High Court in case of *Resilient Innovations Private Limited vs. PhonePe Private Limited,*[1] and reliance is also

1 2022 SCC Online Bom 521

placed upon the decision of Delhi High Court in case of *Promoshirt SM SA Vs. Armassuisse and anr.*[2]

Mr. Dube, would submit that the judgment passed by the learned Single Judge, is a 'Decree' as according to him Rule 835 read along with Rule 987-A of the Bombay High Court Original Side Rules, 1980**,** which make provision for 'Suits' under the Code of Civil Procedure, applicable to all petitions filed on the Original Side and hence the Miscellaneous Petition filed would take colour of a 'Suit' under CPC, and since the rights of the parties are 'conclusively determined', by the judgment passed by the learned Single Judge, it ought to be considered as 'original decree' appealable under Section 13 (1-A) of the Commercial Courts Act, 2015. He would further submit that since the Patents Act provide for first forum of appeal before the Single Judge to the High Court and do not provide for next forum of appeal, it do not debar the Appeal being filed as a Commercial Appeal, as it is filed in form of an original petition, in view of the Rules of the Bombay High Court on Original Side.

According to the learned counsel if it is considered as an original decree, it is appealable under Section 96 of CPC and since the dispute is a commercial dispute, the Appeal would lie under Section 13 of the Commercial Courts Act, 2015.

It is his specific contention that if a statute do not specifically provide for a second appeal, the same would not specifically be debarred.

2 2023 SCC Online Del 5531

10. Apprehending an objection being raised about the bar under Section 100A of the CPC, which prohibits filing of second appeal in certain cases, it is the submission of Mr. Dube, that in the current case as the Appeal is filed under Section 13(1-A) of the Commercial Courts Act, and the bar would apply not only against an appeal from an 'Order' or 'Decree', and as the Single Judge has not decided an appeal from an 'Order or Decree', the bar cannot be invoked. He would submit that 'Order' under the Code, is the one which is passed by the Civil Court and definitely not by any Authority which is not a Court. According to him, the bar of Section 100-A would apply where a Single Judge has decided an appeal from an 'Order or Decree' passed by a Civil Court and not an order of the Controller of Patents, which is not a Court and therefore, the Appeal is not a second appeal.

The reliance of the Respondents on Section 77 of Patents Act, 1970, where the Controller is given certain powers of a 'Court' and therefore he is deemed to be a 'Court', it is the submission of Mr. Dube that merely because the Controller of Patents is conferred with certain powers of Civil Court, in respect of the matters specified therein, it is not a 'Civil Court'. According to him, if the legislature intended to make the Controller of Patents a Civil Court, it would have specifically provided so and it would have also provided for a mechanism to enforce the orders passed by it, as if it was a decree made by a Court in a suit or by clearly indicating that all the proceedings before the Controller of Patents shall be considered as 'judicial proceedings' under the Code of Civil Procedure, 1908.

According to Mr. Dube, whenever the legislature intended that the Tribunal shall have powers of a Civil Court, it has so provided and he would invoke the example of Section 424 of the Companies Act, 2013, which recognizes that 'all orders' may be enforced as if it was a 'decree' made by a Court in a pending Suit as Section 424, specify that any order made by the Tribunal or the Appellate Tribunal may be enforced in the same manner, as if it was decree made by the court in a suit pending, and it shall be lawful for the Tribunal or the Appellate Tribunal to send the same for execution of its orders and subsection (4) of Section 424 also prescribe that all proceedings before the Tribunal or the Appellate Tribunal shall be deemed to be judicial proceedings.

In contrast, the only provision in the Patents Act, which is executable as a decree of civil court, is an order of cost as Section 77(2) reads thus:-

> *"(2) Any order for costs awarded by the Controller in exercise of the powers conferred upon him under sub-section (1) shall be executable as a decree of civil court."*

11. Mr. Dube would place heavy reliance upon the decision of the Delhi High Court in case of *Promoshirt SM SA* (supra) which had drawn a distinction by observing that respondents reliance on the judgment in *Kamal Kumar Dutta v. Ruby General Hospital Ltd.* [3] where the company law board was the first forum that decided the matter and since under Section 424 (3) 'any order' passed by the Tribunal will be deemed to be a decree, the company law board would be considered to be a 'Court' and therefore, the bar under

3 (2006) 7 SCC 613

Section 100 A of CPC was invoked. According to him, if the Registrar is provided with powers of Civil Court only for limited purpose, these powers cannot be extended in general and hence, the Registrar cannot be considered to be a Court in general.

In short the submission made by Mr. Dube is threefold;

(a) The order passed by the learned Single Judge is an order passed in exercise of the original jurisdiction conferred in him.

(b) The Appeal is maintainable under Section 13(1-A) of the Commercial Courts Act, 2015 as the judgment passed by the learned Single Judge is a 'Decree'.

(c) The bar under Section 100 A of CPC do not apply because the The Assistant Controller of Patents is not a Court.

12. Mr. Mehta, representing the Respondents, would raise a serious contest to the maintainability of the present appeal under Section 13, as it is his specific submission, that there is no provision for an intra-court appeal provided under the Patents Act, read along with the provisions of the Commercial Courts Act, 2015. He would submit that Section 117-A of the Patents Act does not provide for any further appeal, or any intra-court appeal, against a judgment rendered by the High Court while exercising appellate jurisdiction and according to him the right of appeal is a creature of statute and it cannot be inferred or implied in absence of an express provision.

Though, he do not dispute that the patent disputes would fall within the definition of 'commercial disputes' under Section 2(1)(c)(xvii) of the Commercial Courts Act, 2015, according to him, mere classification as a commercial dispute does not expand the appellate

structure provided under a special statute like the Patents Act.

13. Mr. Mehta has urged that Section 13 of the Commercial Courts Act exhaustively govern the appeals from Commercial Courts and Commercial Divisions, and under Section 13 (1-A) read with the proviso, appeals from the Commercial Division of the High Court shall lie only in respect of orders :

(a) Those enumerated under Order XLIII of the Code of Civil Procedure;

(b) Under Section 37 of the Arbitration and Conciliation Act, 1996.

According to him the appeals under Section 117A of the Patents Act do not fall in either of the category.

Further, relying upon sub-clause (2) of Section 13 of the Commercial Courts Act, it is his submission that no appeal shall lie under the Act otherwise than in accordance with the provisions of the Act and the said provision will prevail over the Letters Patent of the High Court.

14. Reliance is placed by Mr. Mehta, upon the decision of the Madras High Court in case of *ITALFARMACO SPA v. Deputy Controller of Patents & Designs*,[4] where it is expressed that permitting such an appeal would amount to an impermissible expansion of the appellate framework, contrary to the legislative intent.

Further reliance is also placed on another decision of Madras High Court in case of *Caleb Suresh Motupalli v. Controller of*

4 OSA (CAD) SR No. 72443 of 2025

Patents,[5] where the Madras High Court has held that appellate remedies under the Patents Act are exhaustive and strictly limited to Section 117A and where the statute consciously excludes a category of orders, no appeal can be entertained by implication.

Mr. Mehta has also invoked the ratio laid by the Apex Court in case of *Fuerst Day Lawson Ltd. v. Jindal Exports Ltd.*[6] holding that Letters Patent jurisdiction of a High Court can be excluded, where a special statute either expressly or by necessary implication bars further appeals. It is therefore his contention that in absence of an appellate provision in the statute it operates as a statutory bar by necessary implication, as the only appellate remedy under the Patents Act is under Section 117A.

15. In the wake of the rival contentions advanced before us, the learned Senior Counsel, Mr. Dhond, has advanced submissions on two points for consideration:

(a) Does an intra-court appeal lie from a decision of a Single Judge of the Court deciding an appeal under Section 117-A of the Patents Act, 1970.

(b) Whether Section 100-A of the Code which bar an appeal from the judgment and decree of the Single Judge, read with a non-obstante clause in sub-section (2) of Section 13 of the Commercial Courts Act, creating an embargo.

Taking us through the schemes of the Commercial Courts Act, 2015, a statute providing for constitution of Commercial Division and

5 C.M.A. (PT) No. 2 of 2024

6 AIR 2011 SC 2649

Commercial Appellate Division in the High Courts for adjudicating commercial disputes of specified value, in specific, Mr. Dhond has invited our attention to Section 13 (1-A) along with the proviso appended thereto as well as sub-section (2) thereof. He would also invite our attention to Section 16 (1), which amends certain provisions of the Code of Civil Procedure, 1908, in their application to any 'Suit' in respect of a commercial dispute of a Specified Value and according to him, by virtue of sub-section (2), the Commercial Division shall follow the provisions under the Code, as amended by the Act of 2015, in the trial of a Suit in respect of a commercial dispute.

According to Mr. Dhond, the provisions of Commercial Courts Act are indicative that the jurisdiction and powers of the 'Commercial Division in the High Court' is not confined to original suits or applications that are instituted in the Commercial Division as proceedings in first instance, but they also extend to appeals under special statutes and that is how the Single Judge of the High Court has exercised jurisdiction under Section 117-A of the Patents Act, 1970, in exercise of powers of a 'Commercial Division in a High Court'. According to him, a direct, appellate entry into the Commercial Division is not alien to the scheme of the Act of 2015, as there is no embargo in Section 7, for a Commercial Division in restricting the proceedings only to 'suits and applications' involving commercial disputes, as by relying upon the provision in form of Section 12, he would submit that the Act contemplates 'Appeals' as well.

16. Analyzing the scope of Section 13, it is the submission of the learned Amicus that Section 13 (1-A) read by itself permit appeals against ‘judgments’ or ‘orders’ of a Commercial Division. However, the proviso, restricts the applicability of ‘orders’ to those ‘specifically enumerated under order XLIII of the Code and Section 37 of Arbitration and Conciliation Act, 1996.

He would place reliance upon the latest decision of the Apex Court in case of *MITC Rolling Private Limited & Anr. v. Renuka Realtors & Ors.*[7] His contention is, read by itself, Section 13 (1-A) may not be an obstacle to the maintainability of the appeal, as the decision under challenge finally disposed of an appeal filed under Section 117-A of the Patents Act, and therefore, it is ‘judgment’ and not merely an ‘order’ and thus remain unaffected by anything in the proviso appended to the Section 13 (1-A).

However, according to the learned Amicus, the interpretation of sub-section (2) of Section 13 is crucial, as the Commercial Courts Act, according to him, as a general matter do not exclude the application of other laws to the proceedings involving commercial disputes as Section 16 of the Act, has only introduced amendments to the Code of Civil Procedure, 1908 in its application to ‘any suit in respect of commercial dispute’ and the amended code shall apply to the ‘trial of a suit’ but in no way it contemplate that the provisions of the Code shall not apply to proceedings other than ‘Suit’. He would also invoke Section 21 of the Act, which gives overriding effect to anything ‘inconsistent’, with it contained in any other law for the time being in force.

7 2025 SCC Online SC 2375

In the light of the aforesaid interpretation, according to Mr. Dhond, Section 100-A of the Code is the 'other law' and since the said provision imposes a bar on 'further' appeals from the judgment and decree of a Single Judge, this bar would not permit entertainment of the appeal under Section 13 of the Commercial Courts Act. Mr. Dhond, has placed reliance upon the decision of the Apex Court in case of *Mohd. Saud & Anr. v. Shaik Mahfooz & Ors.* [8] focusing upon the purpose of the provision in form of Section 100-A.

Dealing with the contention advanced on behalf of the Appellant, as regards its applicability, to the effect that it bars intra-court appeals only where the appeal decided by the Single Judge arises out of 'an original or appellate decree or order' passed by a civil court and the Controller of Patents is an authority, which is not a civil court and therefore the bar is inapplicable, is not a correct interpretation, as well as application of the provision, according to him.

He would place reliance upon two decisions of the Apex Court holding that Section 100-A act as a bar to an intra-court appeal against the decision of a Single Judge, even in case of a statutory appeal from quasi judicial body or authority and he invoked the principle of law laid down in:-

(i) *Municipal Corporation of Brihanmumbai & Anr v. State Bank of India,*[9] (ii) *Kamal Kumar Dutta & Anr v. Ruby General Hospital Ltd. & Anr. (Supra)*

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8 (2010) 13 SCC 517

9 (1999) 1 SCC 123

Apart from this, he would also place reliance upon the Full Bench decision of this Court in case of *Gangawani and Co., Nagpur v. Saraswati Banewar & Ors.;*[10] and *Mohd. Riyazur Rehman Siddhiqui v. Deputy Director of Health Services ;*[11] holding that Section 100-A bars an intra-court appeal from the decision of a Single Judge on a statutory appeal against the order of a body that is either not a Court, or which does have the 'trappings of a Civil Court'.

17. According to Mr. Dhond, in the wake of Chapter XLV of the Original Sides Rules, and in specific Rule 835, which make the Code of Civil Procedure, applicable to all proceedings under the Patents Act, Section 100-A also become applicable, creating a bar for filing of the appeal and according to him, if the Patents Act itself was to provide a second appeal, the embargo would not have come into force.

18. In the wake of the counter submissions advanced before us, where the facts involved have emerged before us with clarity, reveal that the appellant had filed an application for grant of Patent before the Assistant Controller of Patent and Designs, who by order dated 14/06/2023, refused grant of the Patent Application. This constrained the appellant to file Commercial Miscellaneous Petition before the learned Single Judge, by invoking section 117-A of the Patents Act, 1970, who dismissed the Petition, thereby upholding the order of the Assistant Controller of Patents.

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10 (2001) 3 Mh.L.J. 6

11 (2008) 6 Mh.L.J. 941

The Appellant, has therefore, filed the present Commercial Appeal under Section 13 of the Commercial Courts Act, where an objection is raised as regards its maintainability.

19. In light of the exhaustive order raising the objection following points deserve determination:-

(a) Whether the present Appeal filed under Section 13 (1-A) of the Commercial Courts Act, 2015, is maintainable or whether the proviso to the said section, restrict the appeal only to the orders enumerated under Order XLIII of the Code of 1908, and to the order under Section 37 of the Arbitration and Conciliation Act, as the decision under challenge is not an 'Order' but a 'Judgment /Decree'.

(b) When the Patent Act provides only for the first forum of appeal, but do not create further bar for entertaining a further appeal, whether the remedy of appeal under Section 13 of the Commercial Courts Act is available.

(c) Whether the bar under Section 100-A of the Code of Civil Procedure, would restrict the scope of the appeal under Section 13 of the Commercial Courts Act.

20. The Commercial Courts Act, 2015, providing for constitution of Commercial Courts, Commercial Appellate Courts, Commercial Division and Commercial Appellate Division is a special statute providing for a speedy disposal of high value commercial disputes through an independent mechanism being prescribed for its early resolution.

Commercial Appellate Courts are the courts designated under Section 3-A of the Act, whereas Section 4 provides for constitution of

Commercial Division of the High Court and Section 5 is a provision for Constitution of Commercial Appellate Division constituted for the same for the purpose of exercising jurisdictions and powers conferred on it by the Act.

The Commercial Court has jurisdiction to try all suits and applications relating to a commercial dispute of a 'Specified Value', arising out of the territory of the State and by virtue of Section 7, 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 Court.

A specific meaning is assigned to the term 'commercial disputes' which is the focal point of the Act, 2015 and there is no contest between the parties that Intellectual Property Rights relating to registered and unregistered Trade Marks, Copy Rights, Patent, etc., would fall within the ambit of 'commercial disputes'.

21. Chapter IV of the Commercial Courts Act, provide for appeals from decrees of Commercial Courts and Commercial Divisions and for our purpose what is of relevance is Section 13 (1-A) to be read with the proviso and sub-section (2) of Section 13, which reads thus:-

> *"**13 (1-A)** 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 to 1908) as amended by this Act and section 37 of the Arbitration and Conciliation Act, 1996 (26 of 1996).*

> *2 Nothwithstanding 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 a decree of a Commercial Division or Commercial Court otherwise than in accordance with the provisions of this Act."*

22. From plain reading of subsection (1-A), it is evident that a person aggrieved by the 'judgment or order' of a Commercial Court or the Commercial Division of a High Court may appeal to Commercial Appellate Division of that High Court. The above provision is appended with a proviso and the point for consideration is whether it restricts its scope to Orders under Rule XLIII of the Code and Section 37 of the Arbitration and Conciliation Act, 1996.

In *MITC Rolling Mills* (Supra), it is observed by the Apex Court that Section 13(1-A) is in two distinct parts; the main provision contemplating appeals against 'Judgments' and 'Orders' in the Commercial Appellate Division of the High Court and the proviso, operating as an exception, must be construed harmoniously with the main provision and not in derogation, and the same is interpreted in the following words:-

> *"17…..Where the language of the main provision is plain and unambiguous, the proviso cannot be invoked to curtail or whittle down the scope of the principal enactment, save and except where such exclusion is clearly and expressly contemplated. The proviso merely restricts appeals against interlocutory orders to those specifically enumerated under Order XLIII of CPC and Section 37 of the Arbitration and Conciliation Act, 1996. Consequently, only such interlocutory orders as are expressly specified therein would be amenable to an appeal under the proviso; orders not so enumerated would not fall within the restricted fold of the proviso'.*

In the facts of the case, which involved a challenge to an order rejecting application(s) under Order VII Rule 10 and Order VII Rule 11 (d) of CPC, which orders are not enumerated under Order XLIII of

CPC, it was held that such orders would not be amenable to the appeal under Section 13(1-A) of the Act of 2015, and rather are permitted to be challenged by filing revision or a petition/application under Article 227 of the Constitution of India.

23. In the case in hand, it is noted that the Appeal was filed by the Appellant by invoking Section 117-A of the Patents Act, the Appeal being preferred as a statutory appeal, but in the wake of a dispute being a commercial dispute, it was entertained as a Miscellaneous Petition by the High Court on its ordinary original jurisdiction by the Commercial Division i.e., by the Single Judge.

We do not agree with the submission of Mr. Dube that the High Court entertained the Appeal as a Court of first instance, as admittedly, the proceedings before the Commercial Division gained entry through Section 117-A, which permit Appeal to be filed from any decision, order or direction made or issued under the Patents Act 1970 by the Central Government or from any act or order of the Controller for the purpose of giving effect to such direction and in the wake of sub-section (2), appeal shall lie to the High Court against the decision, order, or direction of the Controller, under the sections which are specifically enumerated. Therefore, according to us, the decision rendered by the learned Single Judge as Commercial Division of the Court is not entertained as proceedings of original nature, but it was entertained as Appeal by the Commercial Division, the dispute being of commercial nature of a Specified Value.

It is not correct to restrict the scope of the jurisdiction of Commercial Divisions of High Court only to ‘Suits and Applications’, as we find that Section 7 is not restrictive in

entertaining proceedings other than ‘Suits and Applications’. Apart, Section 12, which has set out the determination of Specified Value of the subject matter of the commercial dispute also contain a reference to Suit, Appeal or Application as Section 12 is a provision as to how the Specified Value of the subject matter of a commercial dispute either in Suit, Appeal or Application shall be determined and what is relevant is reference to clause (b), (c) and (d), which refer to a relief sought in ‘Suit, Appeal or Application’ relating to movable property or immovable property or other intangible right, setting out the manner in which the subject value shall be determined.

Thus, the scheme of the special statute of 2015, permit exercise of jurisdiction by the Commercial Divisions of High Courts over Suits and Applications relating to commercial disputes of a ‘Specified Value’ and the determination of specified value in a Suit, Appeal or Application is allowed to be determined by applying the formula stated in Section 12, depending upon the nature of the proceedings.

It is clear from reading of Section 12, that when the Suit or Application is for recovery of money, the point of entry can be by way of proceedings of first instance, but in relation to the claim of movable property/ immovable property or to a right therein, the proceedings can be in form of a Suit or Appeal or Application and therefore, the submission of Mr. Dube that the Single Judge of the High Court had entertained the Miscellaneous Petition as a Court of first instance is not correct, as we have noticed that Section 117-A of the Patents Act, clearly provide for Appeals to the High Court against the decision of the Controller and when such dispute falls within the purview of ‘commercial dispute’ and is entertained by the

Commercial Division of the High Court, then its scope is not only restricted as proceedings of first instance, but it is accepted as in the form in which it comes i.e. in form of an Appeal under Section 117-A of the Act of 1970.

24. As the learned Single Judge entertained the appeal as a Commercial Division, and adjudicated the lis finally, and delivered the judgment upholding the order passed by the Assistant Controller of Patents and Designs, we have no difficulty in accepting the submission of Mr. Dube that the decision of the learned Single Judge does not amount to an 'Order' but it is a 'Judgment', as it would fall within the meaning of Section 2(9) of the CPC, which define 'Judgment' to mean "the statement given by the Judge on the grounds of a decree or order;".

A 'Decree' is defined by the Code, as the formal expression of an adjudication which conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and a decree may be preliminary or final.

We, therefore, hold that the decision of the learned Single Judge is the final determination between the parties, and as sub-section (1-A) of Section 13 provides for an appeal to the Commercial Appellate Division of the High Court from a 'Judgment' of the Commercial Division of the High Court, and as the proviso does not restrict the scope of the 'Judgment' under Section 13 (1A), we hold that an appeal would lie from the decision of the learned Single Judge to the Commercial Appellate Division, but within the bar projected under Section 100-A of CPC.

25. Now we proceed to consider whether the bar as prescribed under Section 100-A of the Code, restrict its scope and ambit.

The second limb of the point for consideration before us is about the applicability of the provisions in the Code of 1908, to the proceedings under the Commercial Courts Act, 2015, as Section 16 of the Act set out the amendments to the Code in its application to commercial disputes and those amendments are specified in the schedule.

Sub-section (2) of Section 16 clearly stipulates that the Commercial Division and Commercial Court shall follow the provisions of the Code of Civil Procedure, 1908, as amended by the Act, in the trial of a ‘Suit’ in respect of a commercial dispute of a Specified Value.

Perusal of the Schedule appended to the Act, would reflect the amendments to the Code of Civil Procedure, in relation to trial of a suits. A careful reading of the schedule would reveal that the amendments in the Code are made applicable to the suits being tried under the Act, 2015, cover its various stages and first schedule to the Act, specifically dealing with various stages of trial.

It is worth to note that the amended provisions of the Code of Civil Procedure, are only applicable to the trial of a ‘suit’ of a commercial dispute of Specified Value but in no sense it convey that the provisions of the Code are inapplicable in regards to appeals/ execution or as regards the supplementary proceedings which are specifically provided for in the Code of Civil Procedure.

Since, there is no express exclusion of other provisions of the Code, except the one which are suggested in Section 16 of the Commercial Courts Act, and this provision when read with Section 21 of the Act, which give it effect, notwithstanding anything inconsistent therewith contained in any other law for time being in force or in any instrument having effect by virtue of any lawful time being in force other than the said Act, it can be well inferred that the provisions of the Code of Civil Procedure do apply.

26. We must also refer to another relevant provision under the Act in form of Sub-section (2) of Section 13 which read thus:-

> *"(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."*

From the above, it is evidently clear that an appeal from any order or decree of a Commercial Division or Commercial Court shall lie only in accordance with the provisions of the Act, notwithstanding anything contained in any other law for the time being in force or Letters Patent of a High Court.

Since, the Commercial Courts Act do not exclude the application of other laws including the Code of Civil Procedure, for proceedings involving 'commercial disputes', other than in the trial of a commercial suit, Section 100-A, do not stand excluded in its application to the Appeal under Section 13(1-A).

The said provision creates an embargo from entertaining an appeal from the judgment and decree of a Single Judge, who has decided the Appeal arising from an Original or Appellate Decree or

an Order.

Section 100-A overrides anything contained in Letters Patent for any High Court or in any instrument having the force of law or in 'any other law for the time being in force' and it bars 'further' appeals from the judgment and decree of a Single Judge, who has pronounced upon an appeal from an original or appellate decree or order.

27. The purpose behind introducing Section 100-A is highlighted by the Hon'ble Apex Court in *Mohd. Saud* (supra) by adopting a purposive interpretation and the opinion expressed is worded thus:-

> *"15. To resolve this conflict we have to adopt a purposive interpretation. The whole purpose of introducing Section 100-A was to reduce the number of appeals as the public in India was being harassed by the numerous appeals provided in the statute. If we look at the matter from that angle it will immediately become apparent that the LPA in question was not maintainable because if it is held to be maintainable then the result will be that against an interlocutory order of the District Judge there may be two appeals, first to the learned Single Judge and then to the Division Bench of the High Court, but against a final judgment of the District Judge there can be only one appeal. This in our opinion would be strange, and against the very purpose of the object of Section 100-A, that is, to curtail the number of appeals."*

28. Mr. Dube, has attempted to canvass before us that Section 100-A is inapplicable in the present case, as the section bars an intra-court appeal, when the appeal is decided by a Single Judge and it arises out of an original or appellate 'Decree or Order' passed by a Civil Court and the Controller of Patents is not a 'Civil Court' and therefore the bar imposed for entertaining second appeal cannot be invoked.

In this regard, our attention is invited to the decision of the Apex Court in *Municipal Corporation of Brihanmumbai and Anr v*

State Bank of India (Supra) which involved the Bombay Municipal Corporation Act, 1888 which is a complete code and Section 217 (1) in the Act existed in form of a provision, where appeal against any rateable value or tax fixed or charged under the Act was directed to be heard and determined by the Chief Judge of the Small Cause Court. Noting that the jurisdiction to be exercised by the Chief Judge of the Small Cause Court is a appellate jurisdiction and when Section 218-D provided an appeal to the High Court, sub-section (2) thereof providing that the Code of Civil Procedure, with respect to appeals from original decrees shall, so far as they can be made applicable apply to the appeals, the question arose whether Section 100-A of the Code of Civil Procedure hit the entertainment of the appeal. In this background, the Apex Court observed thus:-

> *"10. This section has been introduced to minimise the delay in the finality of a decision. Prior to the enactment of the above provision, under the letters patent, an appeal against the decision of a Single Judge in a second appeal was, in certain cases, held competent, though under Section 100 of the Code of Civil Procedure, there was some inhibition against interference with the findings of fact. The right of taking recourse to such an appeal has now been taken away by Section 100-A of the Code of Civil Procedure (supra). Since, an appeal under Section 217(1) of the Act is a first appeal in a second forum/court and an appeal under Section 218-D of the Act is the second appeal in the third forum/court, no further appeal would be competent before the fourth forum/court in view of Section 100-A of the Code of Civil Procedure (supra).*
>
> *11. In the instant case, since an appeal from the appellate order was heard and decided by a learned Single Judge of the High Court, no further appeal was maintainable from the judgment and order of the learned Single Judge passed in that appeal. The view taken by the Division Bench of the High Court under the circumstances suffers from no error. This appeal has no merits and it is dismissed as such. No costs."*

29. *In Kamal Kumar Dutta and anr v. Ruby General Hospital (Supra),* a decision again involving the amendment introduced in the Code of Civil Procedure in form of Section 100-A, in the background

facts where the appeals were preferred against the order passed by the Single Judge of the High Court in the matter under Sections 397 and Section 398 of the Companies Act, 1956, and the preliminary objection was raised to the maintainability of the appeals on the ground that the appellant had an alternative remedy of approaching the Division Bench of the High Court under the Letters Patent of the High Court, the Apex Court held that prior to the amendment of 1956 Act with effect from 31/05/1991, the power under Sections 397 and 398 was exercised by the Company Judge of the High Court and an appeal against the order was provided under Section 483 before the Division Bench of the High Court. However, after the amendment the power under Section 397 and 398 is being exercised by the Company Law Board under Section 10-E of the Act and the appeal against it lie to the High Court under Section 10-F.

Holding that the scheme contemplated as above was a complete code and when the order passed by the board is appealable under Section 10-F of the Act before the High Court with no further provision of Appeal against the order of the Single Judge, it is held as below:-

> *"23. Therefore, where appeal has been decided from an original order by a Single Judge, no further appeal has been provided and that power which used to be there under the Letters Patent of the High Court has been subsequently withdrawn. The present order which has been passed by the CLB and against that an appeal has been provided before the High Court under Section 10-F of the Act, that is, an appeal from the original order. Then in that case no further letters patent appeal shall lie to the Division Bench of the same High Court…*
>
> *…. The power of the High Court in exercising the letters patent in a matter where a Single Judge hears an appeal from the original order, has been taken away and it cannot be invoked in the present context. There are no two opinions in the matter that when CLB exercises its power under Section 397 and 398 of the Act, it exercised its quasi- judicial*

power as original authority. It may not be a court but it has all the trapping of a Court. Therefore, CLB while exercising its original jurisdiction under Sections 397 and 398 of the Act passed the order and against that order appeal lies to the learned Single Judge of the High Court and therefore no further appeal could be filed."

30. The Apex Court also referred to the observation of the Constitution Bench decision in case of *P.S. Sathappan v. Andhra Bank Ltd*[12]. and it reproduced the relevant observation as below:-

" From Section 100-A CPC, as inserted in 1976, it can be seen that when the legislature wanted to exclude a letters patent appeal it specifically did so. Again from Section 100-A, as amended in 2002, it can be seen that the legislature has provided for a specific exclusion. It must be stated that now by virtue of Section 100-A no letters patent appeal would be maintainable in the facts of the present case. However, it is an admitted position that the law which would prevail would be the law at the relevant time. At the relevant time neither Section 100-A nor Section 104(2) barred a letters patent appeal. The words used in Section 100-A are not by way of abundant caution. By the Amendment Acts of 1976 and 2002 a specific exclusion is provided as the legislature knew that in the absence of such words a letters patent appeal would not be barred. The legislature was aware that it had incorporated the saving clause in Section 104(1) and incorporated Section 4 CPC. Thus now a specific exclusion was provided."

31. In paragraph 27 of the law report of *Kamal Kumar Dutta* (Supra) the Court has recorded thus:-

"27. Similarly, in Subal Paul v. Malina Paul their Lordships observed as follows:

Whenever the statute provides such a bar, it is so expressly stated, as would appear from Section 100-A of the Code of Civil Procedure."

32. The submission is advanced by Mr. Dube that the Commercial Courts Act has made the Code of Civil Procedure applicable in its modified form in the wake of Section 16 read with the schedule, but in our considered opinion, the amendment to the Code of Civil

12 (2004) 11 SCC 672

Procedure, 1908 is qua the provisions as regards conduct of a trial of a commercial suit but for all other purposes, which include the provision for appeal, the Code of Civil Procedure operate with full force.

33. Another submission of Mr. Dube, that the bar under Section 100-A operates only when the decision of the Single Judge of the High Court is on an appeal, which arises out of an 'original or appellate decree or order' and for attracting the said clause, the 'decree' necessarily has to be adjudicated by the 'court' determining the rights of the parties and even an 'order' which is a formal expression of decision of a Civil Court, but which is not a decree necessarily imply that the decision must be of a Court and just because the Controller is clothed with certain powers of Civil Court for certain purposes necessarily is not a Court, also fail to appeal us.

34. A Full Bench of the Bombay High Court in *Mohd. Riyazur Rehman Siddhiqui* (supra) held that in absence of any specific provision creating a right in a party to file an appeal, such right can neither be assumed nor inferred in favour of the party. In connection with Section 173 of the Motors Vehicle Act, which provided an appeal against the award of the Claims Tribunal, it is held that when the statute do not contemplate any further appeal, on coming into force of Section 100-A of the Code of Civil Procedure, the letters patent appeal or an appeal against the judgment of the Single Judge passed in exercise of appellate jurisdiction is held to be not appealable.

Dealing with the contention advanced that the Tribunal is not a 'Court' and therefore the embargo under Section 100-A is not

attracted, the following observation of the full bench deserve reproduction:-

> *"24. Further in the case of Associated Cement Companies Ltd. vs. P. N. Sharma and anr., reported in AIR 1965 SC 1595, it was stated by the Supreme Court that the presence of some of the trappings may assist the determination of the question as to whether the power exercised by the authority which possesses the said trapping, is the judicial power of the State or not, and the main and the basic test, however, is whether the adjudicating power which is the particular authority is empowered to exercise, has been conferred on it by a statute and can be described as a part of the State's inherent power exercised in discharging its judicial functions. Applying this principle, it was held by the Supreme Court that the Tribunal constituted under the Punjab Welfare Officers Recruitment and Conditions of Service Rules, 1952 was a Tribunal having the trappings of a Court.*
>
> *25. More so, in the case of State of Haryana vs. Smt. Darshana Devi and ors., reported in (1979) 2 SCC 236, the Supreme Court, while dealing with a case under the provisions of Motor Vehicles Act, 1939, stated that as under:-*
>
> *The reasoning of the High Court in holding that Order XXXIII will apply to the Tribunals which have the trappings of the Civil Court finds our approval. We affirm the decision.*
>
> *26. It is said that all Tribunals are not Courts, though all the Courts are Tribunals. The word "Courts" is used to designate those Tribunals which are set up in an organized State for the Administration of Justice. The Administration of Justice is meant to be the exercise of judicial power of the State to maintain and uphold rights and to punish "wrongs". Whenever there is an infringement of a right or an injury, the Courts are there to restore the vinculum juris, which is disturbed."*

35. Reproducing the observation in *Shah Babulal Khimji vs. Jayaben D. Kania and anr*[13] , where the Apex Court while explaining the ingredients of a judgment, had held that Section 104 read with Order XLIII of Rule 1 of the Code of Civil Procedure is neither inconsistent, nor override, nor control clause 15 of the Letters Patent and the judgment was in relation to the orders passed by the learned Single Judge of the Court in exercise of its original jurisdiction.

13 (1981) 4 SCC 8

As regards the applicability of Section 100-A, when the appeal has been preferred against the judgment of the Single Judge passed in exercise of appellate jurisdiction under Section 173 of the Motors Vehicle Act, it is held thus:-

> *"60. The factual matrix of the case has already been stated by us above. Suffice it to note that the present appeals have been filed after coming into force a provision of section 100-A of the Code of Civil Procedure (i.e. 1st July 2002). All these appeals have been preferred against the judgment of the learned Single Judge passed in exercise of its appellate jurisdiction. The appeals before the learned Single Judge were preferred in terms of section 173 of the Motor Vehicles Act and were accordingly decided by the learned Single Judge vide judgments dated 12th February, 2004 and 25th January, 2005. There is undoubtedly no provision contained in the M.V. Act which gives right to appeal to any dissatisfied litigant to prefer an appeal against the appellate judgment of the learned Single Judge. In other words, special statute does not provide any right of second appeal against the judgment of the appellate Court. The Tribunal certainly has trappings of a Civil Court, may be, it is not a Civil Court in stricto sensu. Once the special law and even the M.V. Act which is treated to be a self-contained Code, and which do not provide for a grant of specific right of second appeal, the same cannot be made available by a recourse to any general provision. It is an unquestionable proposition of law that right of appeal is a statutory right and not a general, natural, or a fundamental right. In the absence of any provision granting such statutory right to prefer second appeal, the litigant cannot be permitted to rely upon the general provisions, if at all there is any, to prefer a second appeal. The award made by the Motor Accident Claims Tribunal under section 168 of the Act even if it is treated as a decree and so is the judgment of the learned Single Judge passed in appeal, still the Court would not be able to take recourse to general provision of the Code and for that matter, it will hardly be of any consequence as to whether the proceedings before the Tribunal are at parity with the Civil Court or actual proceedings are before the Civil Court. Non availability of right of appeal under the statute would be a complete answer to non-maintainability of such an appeal.*
>
> *61. Section 173 of the Motor Vehicles Act provides only for a restricted right of appeal and the same cannot be stretched by interpretative process to hold that even a second appeal or an appeal against the appellate jurisdiction of the Single Judge would be maintainable. This would obviously be an interpretation which would neither further the cause of the Legislation nor it will be true on the plain reading of the section."*

36. Recording that the Tribunal has the trapping of a Civil Court and various procedural and effective provisions of the Code of Civil Court have been made applicable substantially to the proceedings before the Tribunal and when an award is passed by the Tribunal, an appeal under Section 173 is maintainable before the High Court and which exercises the appellate jurisdiction.

Highlighting the object underlining Section 100-A being to curtail the right of second appeal and to attach finality to the judgment of the first Appellate Court, the intention of the legislature was discerned and it is held that Section 100-A must be given its effective and natural meaning. In conclusion, the Full Bench held thus:-

"The cumulative reading and analysis of various provisions in consonance with the Rules of interpretation stated above, would lead to a simple and one conclusion that the Letters Patent Appeal or an appeal against the judgment of the learned Single Judge passed in exercise of its appellate jurisdiction against the appellate judgment passed by the Court subordinate to the High Court, would not be appealable. Where Section 100-A constitutes a complete bar against right to prefer an appeal against an appellate decision, there appeal cannot be preferred with the aid of Clause 15 of the Letters Patent against such judgment. Thus, either way, the obvious conclusion would be that no intra-court appeal is maintainable in the High Court against the judgment passed by the learned Single Judge in exercise of its appellate powers in terms of Section 173 of the Motor Vehicles Act"

37. The full bench of the Bombay High Court had placed heavy reliance upon the decision of the Apex Court in case of *Kamal Kumar Dutta* (Supra) dealing with the provision of Section 397 and 398 of the Companies Act as well as the decision in case of *P. S. Sathapan* (supra) and also considered the decision of the Apex Court in case of *Municipal Corporation of Brihanmumbai and ors v. State Bank of India* (supra).

The reference on the issue was answered by the Full Bench as below:-

> "*86. Thus, we proceed to record and answer propositions of law formulated by us in paragraph 5 of the judgment as follows:*
>
> *(a) Upon amendment of section 100-A of the Code of Civil Procedure by Amending Act of 2002 with effect from 1st July, 2002, no Letters Patent Appeal would be maintainable against the judgment rendered by the learned Single Judge of the High Court under the provision of section 173 of the Motor Vehicle Act, 1988.*
>
> *(b) Appeal against the judgment of the learned Single Judge in exercise of its appellate jurisdiction under section 173 of the Motor Vehicles Act, 1988 even with the aid of Clause 15 of the Letters Patent is not maintainable, and in fact, in both these situations, the Appellate Court would have no jurisdiction to entertain and decided such an appeal."*

38. The thrust of the appellant's submission is that though Section 77 of the Patents Act, has conferred certain powers of the Civil Court on the Controller, which include the specific power set out in sub-section (1), that itself does not make it a 'Civil Court'.

We may agree with the said submission, but we are also conscious of the fact that in the modern era, even the quasi judicial authorities, like the Tribunals, Regulatory bodies as well as Commissions, who are not a part of a formal judiciary but are called upon to discharge functions similar to that of a Court and such bodies

are designed to alleviate the burden on the traditional court system by providing specialized, faster and cost effective Justice. In order to enable them to function with authority, they are conferred with the powers of Civil Court while trying a suit under the Code of Civil Procedure, 1908 and this include various powers like;

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavit;

(d) issuing commissions for the examination of witnesses or documents;

(e) awarding cost etc.,

39. With the recognition of quasi-judicial authorities as competent in adjudicating upon the rights of the parties, and with a mandate to them to adhere to the principles of natural justice, such authorities are competent to interpret the law and make decisions in specific matters, their decisions being based on existing laws. Such quasi-judicial authority is thus vested with the attributes or trappings of judicial functions, though not in totality, and it is under an obligation to act judicially.

An administrative body is entitled to be characterized as quasi-judicial, when it possess legal authority, the authority being vested with the powers determining the question affecting the rights of the subjects, and it is under a duty to act judicially.

The dividing line between the administrative power and a quasi-judicial power is quite thin and is gradually obliterated, as in the recent years, the concept of the quasi-judicial power has undergone a radical change and in identifying whether a function

discharged is quasi-judicial, or it is administrative, the true indicators may be the nature of power conferred; the person on whom the power is conferred, the framework of the law conferring such power; the consequences ensuing from exercise of such power, and the manner in which the power is expected to be exercised.

The real test what distinguishes a quasi-judicial act from an administrative act, is the duty to act judicially and this duty may arise widely in different circumstances and is incapable of being defined exhaustively, where a statute itself prescribes the manner in which the administrative authority shall act judicially. There is no doubt that if given power, a quasi-judicial authority can determine the questions affecting the rights of the parties before it.

40. *In Indian Network for People living with HIV/AIDS vs. Union of India*[14] , the Madras High Court has answered the question as to whether or not the proceedings before the Controller are quasi-judicial.

Holding that Controller of Patents is vested with powers of Civil Court in matters of summoning the attendance of witnesses, discovery and production of any documents, receiving evidence of affidavits etc., it is held that the said provision will apply to 'any proceedings' before the Controller and is not restricted to the pre-grant opposition proceedings. Since the Controller before whom the proceeding takes place is endowed with some of the powers of the Civil Court and whose orders or costs are executable as a decree of Civil Court, it is held that it has trappings of a 'Civil Court' and proceedings before such an authority are obviously quasi-judicial

14 2009 (1) CTC 32

proceedings and in a pre-grant stage, the Controller is deciding a controversy, which is raised by the objector opposing the grant of patent and the applicant for its grant. It therefore, held by the Madras High Court that the Assistant Controller of Patents and Designs, functions as a quasi-judicial Tribunal and has to decide the lis namely, the right of the objector raised on a wider perspective as against the claim of patent, by the private respondent.

41. The Calcutta High Court in *Glorious Investment Limited v. Dunlop International Limited and anr,*[15] being confronted with the order passed by the Deputy Registrar of Trademarks in application for registration of a trade mark, dealt with an argument opposing the appeal directed against an order passed by the Single Judge sitting in Intellectual Property Rights Division of the High Court to set aside the order passed by the Deputy Registrar of Trademarks, the same being objected that it is a second appeal, which is prohibited by Section 100-A of the Civil Procedure Code, 1908. The opposition raised was specific, that where an appeal from an original or appellate decree or order had been heard and decided by a Single Judge of a High Court no further appeal could lay from the judgment and decree of a Single Judge. Reliance was placed upon the decision in case of *Kamal Kumar Dutta* (supra) and also on the decision in case of *P.S. Sathappan* (supra).

On behalf of the appellant a similar objection is raised, almost on same lines, which is advanced before us, namely that the definition of Decree and Order in Section 2 (2) of the Code, viewed in the backdrop of the bar in Section100-A of the Code, would only

15 (2025) SCC Online Cal 8647

be confined to a Second Appeal preferred against a 'Judgment' and 'Decree' passed by the Single Judge while exercising appellate power in respect of a 'decree or order' passed by a Civil Court under the provisions of the Code. An identical contention was advanced that the Registrar who had passed the impugned order which was taken in appeal before the Single Judge, is not even akin to a 'Civil Court' and therefore, the bar under Section 100-A is not attracted.

42. The Calcutta High Court invoked the principle laid down in the case of *National Sewing Thread Co. Ltd. V. James Chadwick & Bros. Ltd*,[16] dealing with the Trademark Act, 1940 and with reference to Section 76 (1) therein, which prescribed that an appeal shall lie, from any decision of the Registrar under the Act or the Rules to the High Court having jurisdiction.

In this background, it was held that the Trademarks Act does not provide or lay down any procedure for future conduct or career of that appeal in the High Court, though Section 77 of the Act provides that the High Court can if it likes, make Rules in that matter and after the appeal reach the High Court, it has to be determined according to the rules of practice and procedure of that Court and in accordance with the provisions of the Charter under which the Court is constituted. Noting that the well settled Rule is, that when a statute directs that an appeal shall lie to a Court already established, the appeal must be regulated by the practice and procedure of that Court.

With reference to Section 91 of the Act of 1999 which provided appeal to the High Court, being aggrieved by the decision of the Registrar under the Act, or the rules made thereunder, it was

16 (1953) 1 SCC 794

noted that at the relevant time when the National Sewing Thread Co. Ltd. (Supra) was decided, Section 100-A was not there in the Code and therefore, the Division Bench of the Calcutta High Court deemed it appropriate to determine whether insertion of the said provision would affect the exercise of the appellate jurisdiction by the High Court.

43. The Division Bench placed reliance in case of *Kamal Kumar Dutta* (supra), which did not make reference to the earlier decision and the National Sewing Thread Co. Ltd. (supra), but since the decision was delivered, when Section 100-A of the Code was not in place, the Division Bench of Calcutta High Court record that the precedential flavour of *Kamal Kumar Dutta* (supra) remains intact.

With extensive reliance being placed upon the decision in *Kamal Kumar Dutta* (supra), holding that the Company Law Board was constituted for shouldering the same judicial business that the Single Bench of the High Court did prior to the amendment to the Companies Act, 1956 and on the strength of provisions of Section 634A of the 1956 Act, any order made by the CLB could be enforced by it in the same manner as it was a Decree made by a Civil Court, in a suit it was held that the Company Law Board had all the trappings of a Court.

What would amount to trappings of the Court was also highlighted by placing reliance upon the decision of the Apex Court in case of *Associated Cement Companies Ltd. v. P.N. Sharma,*[17] the main and the basic test however, is as to whether the adjudicating power which a particular authority is empowered to exercise, has

17 AIR 1965 SC 1595

been conferred on it by a statute and can be described as a part of State's inherent power exercising its judicial functions. By placing reliance upon the precedents in this regard, the Division Bench of the Calcutta High Court proceeded to decide whether the Registrar under Section 127 of 1999 Act has the trappings of the Civil Court and with reference to Section 127 concluded thus:-

> *"28. Thus the Registrar has all powers including power to review its decision and to impose costs that a Civil Court has for the purposes mentioned in Section 127 of the 1999 Act. The order as to costs passed by the Registrar has been made executable as a decree of Civil Court.*
> *30 A holistic reading of the various provisions of the 1999 Act and the Rules framed thereunder hardly leave any room for doubt that the Registrar has almost all the trappings of a Court. We are conscious that there is no provision in the 1999 Act whereby the proceedings before the Registrar has been held to be judicial proceedings within the meaning of the Code of Criminal Procedure or Indian Penal Code as was there in respect of the erstwhile Intellectual Property Law Appellate Board under the pre- amendment 1999 Act or the CLB under the 1956 Act but then that by itself would not detract us from the conclusion that the Registrar has all the trappings of a Civil Court for the purpose of deciding as to whether a mark should be registered in favour of a person or not. A decision to register makes the person concerned the exclusive owner of the registered trademark in terms of Section 28 of the 1999 Act. Such decision is taken on the basis of the evidence adduced by the person concerned and upon considering the opposition to the application along with the evidence in support of the opposition. The Registrar thus has a duty to act judicially and fairly. Even if an opposition is not filed, the Registrar has a duty to objectively scrutinise the application, examine the facts in the light of the evidence adduced in order to determine if the trademark meets the requirements for registration under the 1999 Act and then take a decision. The same would have been a case for a Civil Court as well where the defendant had not filed its written statement and the case was proceeding ex-parte. The Court would also in such a case be required to pass a judgment in favour of the plaintiff only upon the plaintiff proving his case. The decision taken by the Registrar to either accept the request for registration or to reject the same directly impacts and determines the applicant's legal rights and liabilities and in a case of an opposition the rights and liabilities of both the parties. This is an essential characteristic of a judicial function."*

44. The Calcutta High Court, with the above observation, concluded that the 'Registrar' has the trappings of a Court and the

ratio of *Kamal Kumar Dutta* (supra) can be effectively applied to the facts of the case, thereby ousting any avenue for a Letters Patent Appeal against an order passed under Section 91 of the 1999 Act.

45. Yet another reason to be found in the decision of the Calcutta High Court is the stark difference in the provisions of the Trade and Merchandise Marks Act, 1958 and the Trademarks Act, 1999.

In 1958 Act, Section 109 provided for 'Appeals', and sub-section (5) clearly contemplated that where appeal is heard by a Single Judge, a further appeal shall lie to a Bench of the High Court, thus, specifically providing a forum for second appeal. However, upon the repeal of the 1958 Act, a similar provision was consciously avoided by the legislature while creating an Appellate Board for hearing Appeals under the 1999 Act. Focusing upon the intention of the legislature in deleting such a provision, the Calcutta High Court arrived at a conclusion that the appeal is not maintainable, as a conclusion drawn is, that there is no reason not to extend the prohibition contained in Section 100-A of the Code to appeals filed under Section 91 of the 1991 Act.

46. Mr. Dube has placed heavy reliance upon the decision of Delhi High Court in case of *Promoshirt SM SA* (supra) and another decision of the Bombay High Court in case of *Resilient Innovations Pvt Ltd* (supra) and we find that Calcutta High Court distinguishing the said judgments by recording that the case arose out of Section 57 of the 1999 Act, which contemplated application for rectification filed before the Registrar or High Court, which was in original proceeding and not in appellate proceeding and the same would be outside the purview of provisions of Section 100-A of the Code and Letters

Patent appeals thereagainst would be maintainable before the Division Bench.

47. We have minutely perused the decision of the Division Bench of the of Delhi High Court in *Promoshirt*, which invoke the provisions of Trademarks Act, 1999, as the Letters Patent Appeals were preferred before the Division Bench assailing the judgment of the learned Single Judge rendered on appeals preferred against the order of the Deputy Registrar of the Trade Marks, when the notice of opposition was rejected and the applications for registration of Trademark as made by *Promoshirt SM SA* (supra) were directed to be accepted and process for registration. The jurisdiction of the learned Single Judge was invoked in terms of Section 91 of the 1999 TM Act, which provided a forum of the appeal to the High Court against the decision of the Registrar.

In the Letters Patent Appeal, the Respondent raised a preliminary objection about its maintainability in light of Section 100-A of the Code of Civil Procedure, 1908, and the precise objection raised was that the Single Judge was exercising appellate jurisdiction and therefore no further appeal would lie in the wake of the unambiguous language of Section 100-A and particularly, in the wake of its overriding effect, which was intended to bar further intra-court appeals arising from orders/judgments rendered by a Single Judge while exercising appellate jurisdiction.

Reliance was placed by the counsel for the Respondent on the decision of the Supreme Court in case of *Kamal Kumar Dutta* (supra) which was cited as a binding authority for the proposition that Section 100-A of the Code takes away the right of any further appeal,

even though the same may have earlier existed in terms of a Letters Patent of a High Court.

Reliance was also placed upon the Full Bench decision of the Andra Pradesh High Court in *Gandla Pannaia Bhulaxmi vs. Managing Director, APSRTC,*[18] which had considered the very same issue; whether the right of appeal as available under the Letters Patent Act would be taken away by virtue of Section 100-A of the Code in respect of the matters arising out of special enactments.

It was urged that the view in *Gandla Pannaia* (supra) was reiterated by Larger Bench of five Judges in *United India Insurance Co. Ltd., vs. Palmaner Branch, Tirupati v. S. Surya Prakash Reddy & Ors*[19] , where it is categorically held that language of Section 100-A does not suggests that the exclusion of the right of the appeal available under the Letters Patent is confined only to the matters arising under the Code and not other enactments.

48. The counsel for the Respondent also relied upon the authoritative pronouncements of law in *Mohd. Saud* (supra) which reiterated the decision in *Kamal Kumar Dutta* (supra), where the purpose of introducing Section 100-A was set out, being to reduce the number of appeals as the public in India was being harassed by the numerous appeals provided in statute and looked at from this angle it was apparent that the LPA in question was not maintainable because, if it is held to be maintainable, then the result will be that against an interlocutory order of the District Judge there may be two appeals, first to the Single Judge and then to the Division Bench of

18 (2003) SCC Online AP 525

19 (2006) SCC Online AP 434

the High Court, but against a final judgment, there will be only one appeal.

49. The Division Bench of Delhi High Court, proceeded, in the wake of the counter submissions to determine the issue, as to whether the bar created by Section 100-A would stand raised only where the Single Judge had exercised appellate jurisdiction in respect of a decree or order and what is the conspectus of two terms ‘decree’ and ‘order’ whether it would take its colour from the definition under the Code as Section 2(14) of the Code has defined the word ‘Order’ to mean the formal expression of a decision of a Civil Court.

50. The attention of the Bench was drawn to the decision in re *National Carbon Co. Inc,*[20] where the Court held, that Controller of Patents is not technically a Court or tribunal exercising judicial functions and the bench referred to various decisions pronouncing upon ‘Whether Tribunal is a Civil Court’ and with reference to the said decisions, the argument advanced on behalf of the appellant, that the Registrar while acting and discharging functions under the 1999 Trade Marks Act cannot be possibly held to be a ‘Court’ came to be appreciated with reference to the definition of ‘Decree’ and ‘Order’ as defined in Sections 2(2), and 2(14) of the Code.

51. On an exhaustive reference to the precedents, the position emerging was summarized thus:-

> *“68. The position may be summarized thus. From the various judgments which have been cited for our consideration and have been noticed hereinabove, those which had recognized Section 100-A of the Code as baring the avenue of an appeal which may otherwise be available in terms of the letters patent provisions, either originated fro orders or judgments passed by the civil court or where it was the civil court which formed the*

20 A.I.R. 1934 Cal. 725

principal tier of adjudication although it may have been exercising jurisdiction otherwise conferred by a special enactment."

52. The Division Bench further expressed that the decision cited before it did not take note of the definition of the words 'Decree' or 'Order' as appearing in the code as 'decree' was defined to mean a formal expression of an adjudication by a 'Court' which conclusively determined the right of the parties, whereas the word 'order' was defined to mean a formal expression of any decision of a Civil Court which is not a decree and in this regard, the Court observed thus:-

"70…..Although, the phrase, "civil court" is not specifically defined, one can safely discern the meaning liable to be ascribed to it from Section 2 (4) of the Code which while defining the word "district" refers to the local limits of the jurisdiction of a principle civil court of original jurisdiction".

"71. Undoubtedly, therefore, the word 'order' wherever occurring in the Code would have to be understood bearing in mind Section 2(14) of the Code. Section 100-A of the Code prescribes the filing of a further appeal from a decision rendered by a Single Judge of a High Court where such a Single Judge was hearing an appeal form an original or appellate decree or order. It would thus appear to mean that where a Single Judge of a High Court has considered an appeal arising from an original or appellate decree or order, no further appeal would lie. The restraint on a further appeal being available to be preferred is to operate notwithstanding anything contained in the Letters Patent of a High Court or any other law for the time being in force.

53. The Division Bench in *Promoshirt SM SA* (supra), therefore concluded that Registrar of Trade Marks is not a Civil Court, although, some powers are available to it, the same would not make it a Civil Court and even it would not qualify the test of 'trappings of a court' in light of a decision in *Anglo-French Drug. Co. and Khoday Distilleris*. The conclusion drawn is recorded in the following words:-

"74 ...Section 91 of 1999 TM Act does not prescribe the appellate remedy to be governed by the provision of the Code. This as we have found above is a departure from Section 76 of the 1940 TM Act and Section 109 of the 1958 TM Act as well as Section 299 of the Indian Succession Act, 1925 on

the basis of which the full bench came to rule and decide Avtar Narain Behal. All the above would tend to indicate that LPA against an order passed by the Single Judge while exercising the Section 91 power would not be barred."

77. *We would think that the intent of Section 100A would be confined to a second appeal when preferred against a judgment of a Single Judge exercising appellate powers provided it pertained to a decree or order as defined by the Code. The bar would thus only operate where the decree or order against which the appeal was preferred before the Single Judge was of a civil court. We further note that Section 2(14) uses the expression "civil court" and not "court". It would thus be doubtful whether the "trappings of a court" test as generally formulated would have any application. However, even if we were to proceed on the basis that such a test could be justifiably invoked for the purposes of Section 100A, the Registrar of Trademarks would not qualify the standards as enunciated.*

78. *In addition to the above, the LPA remedy would also not be available where the special statute subjects the appeal remedy to follow the rules applicable to appeals and embodied in the Code. Once the appeal is made subject to the rules incorporated in the Code, all restrictions to an appeal including Section 100A would get attracted and attached. This since the appeal provision in such a case would be deemed to have consciously adopted all restrictions as put in place under the Code and would override the letters patent provision. This would be in line with the ratio decidendi of Avtar Narain Behal."*

54. The reliance upon the judgment in *Promoshirt SM SA* (supra) in our considered opinion is of no assistance in the facts before us, as we have noted that the decision was delivered in a Letters Patent Appeal, where the Respondents have taken a preliminary objection about its maintainability in the wake of Section 100-A of the Civil Procedure Code, 1908. The objection raised, specifically being that Section 100-A of the Code, in terms of its express language is ordained to override anything to the contrary contained in any Letters Patent appeal in the High Court and it would bar all further intra-court appeals arising from orders or judgments rendered by a Single Judge while exercising appellate jurisdiction. Reliance is placed upon the decision in case of *Kamal Kumar Dutta* (supra) rendered in the

context of appellate proceedings emanating from an order of erstwhile Company Law Board and it was cited as a binding authority for the proposition that Section 100-A of the Code take away right of any further appeal even though the same existed earlier in terms of Letters Patent of a High Court.

Per contra, it was urged on behalf of the appellants that right of appeal is a substantive right and the same accrues to a party on the date of starting of a lis and this right cannot be taken away.

The learned Single Judge referred to the authoritative pronouncement cited and considered the contention advanced that the expression 'Decree' and 'Order' have been defined in the Code and it definitely connote formal expression of a decision of a Civil Court. In the wake of the 1999 Trademarks Act, with regard to the power of the Registrar, the learned Judge relied to the decision in case of *Nahar Industrial Enterprises Ltd. v. Hong kong and Shanghai Banking Corporation Ltd*[21] and concluded that merely because a Tribunal has all the trappings of a Court it would not be a Court.

55. We are unable to express our concurrence with the above aforesaid view, in light of the reasons recorded by us in the aforesaid paragraph as the line between the judicial and quasi judicial authorities conferred with the powers of the Court is thin and slowly diminishing and since we find that the Assistant Controller under Section 77 of the Patents Act is clothed with the powers of Civil Court while trying a Suit under the Code of Civil Procedure, in the wake of the proceedings before him and by exercise of this power, the Controller is empowered to hear any parties to the proceedings or

21 (2009) 8 SCC 646

to give any such party an opportunity to be heard in regards to the application, which is filed for grant of patent or for amendment of a specification before exercising the discretion adverse to the applicant.

Looking at the scheme of Chapter XV, including Section 77 read along with Section 79 and 80, the evidence before the Controller is permitted to be given on affidavit, in absence of his directions to the contrary but where the controller thinks it right so to do, he may take oral evidence in lieu of, or in addition to, evidence by affidavit, or may allow any party to be cross-examined from the contents of the affidavit.

It is in light of the specific powers conferred on the Controller General of Patents, Designs and Trademarks, appointed under Section 3 of the Trade Marks Act, 1999, we are of the expressed view that the decision given by him amounts to an ‘order’ from which an Appeal lie to the High Court. Under the Patents Act, the Controller is the key person, as whenever an application for patent is preferred and a request for examination is made, it shall be referred at the earliest by the Controller to an Examiner for making a report and the Controller, under Section 14, on receipt of the said report, before proceeding to dispose of the application is entitled to follow the procedure prescribed, i.e., affording an opportunity to the applicant to be heard if the report of examiner is adverse to the applicant or requires an amendment.

Under Section 15 of the Patents Act, 1970, the Controller has the Power to refuse the application or he may require the application, specification or other documents, as the case may be to be amended to his satisfaction.

Ashish

With the nature of extensive powers vested on the Controller, which includes the specific power in cases of anticipation as contemplated in Section 18 as well as the power conferred on him in case of potential infringement as well as the power to make orders regarding substitution of the applicants, in our view the Controller of Patents play a significant role and therefore, in the whole process of grant or refusal of patent and he is conferred with the powers of the Civil Court, as regards the application for grant of patent, he is authority to take a decision, which is appealable before the High Court. We therefore do not agree with the view expressed by the Delhi High Court that qua the powers of a Registrar under the Trademarks Act, as it is held that Registrar of Trademarks is not a Civil Court as we find that the powers conferred on the Registrar under the Trademarks Act are not parallel to one exercised by the Controller of Patents under the Patents Act, 1970, as we find that the role of the Controller is of much more significance in the scheme of the statute and distinct than the one discharged by Registrar of Trade Marks, who has the trappings of a Court.

56. In light of the aforesaid discussion, and on threadbare analysis of the provisions of the Patents Act, 1970 and the Commercial Courts Act, 2015, though we find substance in the contention of Mr. Dube as regards the first point that the Single Judge of the High Court in entertaining the appeal under Section 117-A of the Patents Act has decided the proceedings on the commercial division but we record that the proceedings are entertained by way of an appeal. It is in this background, the bar under Section 100-A of the Civil Procedure Code debars the second appeal as the said provision prohibits an appeal

from the Judgment and Decree of a Single Judge, the intention underlying the said provision being not to encourage filing of second appeal when the first appeal is decided by the High Court and in no unequivocal terms, this principle has been reiterated in various authoritative pronouncements, to which we have made reference.

It is on this count, in the wake of the bar of Section 100-A, according to us, the present appeal filed under Section 13 of the Commercial Courts Act, 2015, is not maintainable and the same is dismissed.

Easy on costs.

(MANJUSHA DESHPANDE, J.) **(BHARATI DANGRE, J.)**

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