

(2006) 04 GUJ CK 0047
In the Gujarat High Court

Case No : Civil Application for Direction No. 138 of 2006 in Appeal from Order No. 142 of 1998

Cadila Healthcare Limited

APPELLANT

Vs

Lupin Laboratories Ltd. and Another

RESPONDENT

Date of Decision : 26-04-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 43 Rule 1
Constitution of India, 1950 — Article 233, 234, 235, 236, 237
Trade Marks Act, 1999 — Section 134

Citation : (2006) 3 GLR 2168 : (2006) 33 PTC 68

Hon'ble Judges : K.M. Mehta, J

Bench : Single Bench

Advocate : Singhi and CO for Petitioners, for the Appellant; YJ Trivedi Advocate for Respondent No. 1 and JB Pardiwala, for the Respondent

Final Decision : Dismissed

Judgement

K.M. Mehta, J.—Rule. Mr.Y.J.Trivedi, learned advocate waives service of rule on behalf of respondent No. 1 and Mr.J.B.Pardiwala, learned advocate waives service of rule on behalf of respondent No. 2.

2. Cadila Healthcare Limited, applicant-original plaintiff has filed this application with a prayer that this Court may direct the Principal District Judge at Ahmedabad (Rural) to transfer the Civil Suit No. 4 of 1997 to the appropriate District Court. The said application was filed on 12.1.2006.

3. The facts giving rise to this application are as under:-

1. Cadila Healthcare Limited original plaintiff had filed Civil Suit No. 4/97 against M/s.Lupin Limited original defendant under the provisions of Trade Marks Act with a prayer that the Court may be pleased to pass an order of ad-interim injunction against the defendant restraining it to sale, manufacture and market the products under the trade mark CZ-3 and/or CZ and/or any other trademark

which is deceptively similar or imitation of the plaintiff's trademark CX-5 and/or CX-4 and/or CX-3, either through it's employees or agents or stockists or distributors or dealers and retailers throughout the Union of India or any part thereof. The said suit was filed on 4.9.1997.

2. It appears that originally suit was filed for passing off action but subsequently it was also amended and action for infringement of trade mark was included. The Court has issued notice and ultimately defendants appeared and filed their reply. Thereafter the learned 5th Extra Assistant Judge, Ahmedabad (Rural) by his judgment and order dated 20.1.1998 pleased to dismiss the ad-interim injunction application of the plaintiff.

3. Being aggrieved and dissatisfied with the said judgment and order of the learned Judge, the appellant-original plaintiff has filed this appeal from order under Order 43 Rule 1 of CPC before this Court. The said appeal from order was filed somewhere in February 1998.

4. On 30.4.1998 this Court has issued notice and thereafter this Court passed the order on 7.3.2005 directing the trial court to expedite the hearing of the suit in question and to dispose it of within a period of six months from the date of receipt of writ of this order. Office is directed to send writ of this order forthwith. The matter to be listed on board in the first week of October 2005.

5. Thereafter as the matter could not be disposed of the plaintiff has filed a Civil Application No. 11922 of 2005 before this Court for extension of time and this Court (Coram: K.R.Vyas, J. (as he was then) by his order dated 6.12.2005 directed the trial court to dispose of the suit in three months' time instead of nine months as prayed for by the applicant. The suit was not disposed of but the same was transferred to Fast Track Court for early disposal.

6. In view of this further development, the present application has been filed by the applicant somewhere in January 2006 in which it has been stated that the aforesaid Civil Suit No. 4 of 1997 was filed by the applicant before the learned District Judge, Ahmedabad (Rural), however, the same has been transferred to the Fast Track Court on or around 15.2.2005 and the same is pending for hearing.

7. Now the applicant has stated that, as per Section 134 of the Trade Marks Act, 1999, a suit for the infringement of a registered trade mark and/or passing off action shall be instituted only in a Court, which is not inferior to a District Court having jurisdiction to try the suit. Therefore, only a District Court has jurisdiction to entertain a suit for infringement and passing off action and Fast Track Court has no jurisdiction to hear and try the suit for infringement of trade mark and passing off action.

8. Relying upon Section 134 of the Act it was submitted that any judgment or order which may be passed by the Fast Track Court, may be, ultimately, of no consequences as the said Court may be said to have no jurisdiction to entertain the subject suit. In view of the same, the Civil Suit No. 4 of 1997 is once again

required to be transferred to the District Court, Ahmedabad (Rural) at Ahmedabad and disposed off by the District Court, as the said Court only has jurisdiction to entertain such suit. In the said application this Court passed the order on 17.1.2006 and further orders from time to time.

4. In view of the important question of law arises regarding adjudication and administration of District Court, the Registrar (General), High Court of Gujarat was also joined as party respondent by the order of this Court dated 17.1.2006.

5. I have heard Mr.Bijal Chhatrapati, learned advocate for the plaintiff, Mr.Y.J.Trivedi, learned advocate for the respondent-original defendant and Mr.Jamshed B.Pardiwala, learned advocate on behalf of Registrar, High Court of Gujarat.

6. As this matter raises an important question regarding jurisdiction of District Court vis-a-vis Fast Track Court along with the provisions of Trade Marks Act, this Court heard Mr.J.B.Pardiwala, learned advocate, who has appeared on behalf of Registrar General, High Court of Gujarat, who has very ably assisted this Court in resolving this complicated question of law in this behalf.

6.1 The learned advocate has also invited my attention to the provisions of Constitution of India, particularly, Article 233 which provides for Appointment of District Judges which reads as under:

Art. 233 Appointment of District Judges:

1. Appointment of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State.

2. A person not already in the service of the Union or of the State shall only be eligible to be appointed a district judge if he has been for not less than seven years an advocate or a pleader and is recommended by the High Court for appointment.

6.1A Article 234 provides recruitment of persons other than district judges to the judicial service. Article 235 provides control over subordinate courts and Article 236 provides interpretation.

In this Chapter -

(a) the expression Sdistrict judge includes judge of a city civil court, additional judge, joint district judge, assistant district judge, chief judge of a small cause court, chief presidency magistrate, additional chief magistrate, sessions judge, additional sessions judge and assistant sessions judge;

(b) the expression Sjudicial service means a service consisting exclusively of persons intended to fill the post of district judge and other civil judicial posts inferior to the post of district judge.

6.2 The learned Counsel has, thereafter, invited my attention to the provisions of

Fast Track Courts, notification issued by the State of Gujarat dated 22.10.2001 which reads as under:

No. GK/44/2001 Bharat/102001/2117 (F.T.)/D:- WHEREAS the Central Government has sponsored the Scheme for creation of Fast Track Courts for eliminating or substantially bringing down pendency of cases in the District Courts and Subordinate Courts in the State; AND WHEREAS, the scheme is to be implemented effectively; NOW, THEREFORE, in exercise of the powers conferred by the proviso to Article 309 read with Articles 233, 234 and 235 of the Constitution of India and notwithstanding anything contained in the Gujarat Judicial Service Recruitment Rules, 1961, and the Rules for recruitment of Class III and Class IV services in Subordinate Courts, the Governor of Gujarat, in consultation with the High Court of Gujarat and the Gujarat Public Service Commission, hereby makes the following Rules for regulating the appointments on ad-hoc and purely urgent temporary basis for implementation of the said Scheme. Section 5(i) provides the appointments on ad hoc basis for the posts of District and Sessions Judges as the Presiding Officer of the Fast Track Courts shall be made by the Governor on recommendation of the High Court either by promotion or transfer or by recruitment from amongst, -

(a) Retired District and Sessions or retired Assistant Judges/retired City Civil and Sessions Judges or

(b) Judicial Officers eligible to be appointed as Assistant Judges, or

(c) Advocates eligible to be appointed as District and Sessions Judges,

ii. District and Sessions Judges or City Civil and Sessions Judges or Assistant Judges, who retired on attaining the age of superannuation or who took voluntary retirement in normal course but have not attained the age of 63 years at the time of appointment shall be eligible to be considered for such ad hoc appointment subject to fitness and suitability; Provided that the Officers who sought voluntary retirement or have resigned after initiation of Departmental Inquiry and Judicial Officers who were or are not permitted to continue beyond 58 years upto 60 years after screening shall not be eligible to be considered for such ad hoc appointment.

iii. The selection of such candidates for ad hoc appointment shall be made by the Committee on the basis of the laid down procedure and criteria.

6.3 The learned advocate has also invited my attention to the provisions of the Gujarat Civil Courts Act, 2005. The Subjects and reasons is as follows:

The Bombay Civil Courts Act, 1869 as applicable to the State of Gujarat was adopted by the State of Gujarat on its formation on 1.5.1960. With a view to carrying out the intention of the Government to have its own law for the State of Gujarat, it is considered necessary to enact the law relating to the Civil Courts in the State by repealing the said Bombay Act.

It is considered necessary to repeal the said Bombay Act also in view of the recommendations made by the First National Judicial Pay Commission popularly known as the Shetty Commission to have uniform nomenclature of designations of judicial officers throughout the country. For this purpose, the Commission has also supplied the draft of Civil Court Bill. Therefore, it is considered necessary to enact the law replacing the Bombay Civil Courts Act, 1869.

6.4 Section 2(b) provides civil court. Section 2(d) provides district. Section 3 provides classes of civil courts. Section 4 provides establishment of courts of District Judges. Section 12 provides jurisdiction of a court of District Judge. Section 13 provides jurisdiction of a court of Senior Civil Judge. Section 14 provides jurisdiction of a court of Civil Judge and Section 15 provides appeals.

6.5 The learned Counsel has relied upon Section 2(4) of the CPC which defines Sdistrict which reads as under. Sdistrict means the local limits of the jurisdiction of a principal Civil Court of original jurisdiction (hereinafter called a SDistrict Court), and includes the local limits of the ordinary original civil jurisdiction of a High Court.

6.5A Thereafter he has relied upon Section 134 of the Trade Marks Act which reads as under: SSuit for infringement, etc., to be instituted before District Court

1. No suit -

(a) for the infringement of a registered trade mark; or

(b) relating to any right in a registered trade mark; or

c.) for passing off arising out of the use by the defendant of any trade mark which is identical with or deceptively similar to the plaintiffs trade mark, whether registered or unregistered, shall be instituted in any court inferior to a District Court having jurisdiction to try the suit.

2. For the purpose of Clauses (a) and (b) of Sub-section (1), a "District Court having jurisdiction" shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 or any other law for the time being in force, include a District Court within the local limits of whose jurisdiction, at the time of the institution of the suit or other proceeding, the person instituting the suit or proceeding, or, where there are more than one such persons any of them, actually and voluntarily resides or carries on business or personally works for gain.

6.5B The learned advocate has also relied upon the judgment of Allahabad High Court in the case of A.K.Enterprises, Agra v. Sterling Machine Tools, Agra and Anr. reported in 2000(3) ALR 226 particularly paragraphs 5, 9, 10 and 16.

7. Mr.Chhatrapati, learned advocate who appears on behalf of the original plaintiff has submitted that when the Trade Marks Act provides that the suit to be tried by District Court then the suit has to be tried by District Judge or Additional District Judge, but it cannot be entertained by Fast Track Court Judge, and if that is so, then adjudication of Fast Track Court Judge is without jurisdiction because

the legislature has used the word only SDistrict Court in this behalf. He has further submitted that the suit regarding infringement of trade mark under provisions of Trade Marks Act are important and therefore the legislature has conferred the jurisdiction only on the District Court. According to the learned Counsel the Fast Track Court cannot be equated with the District Court and therefore the Fast Track Court has no power to entertain or to adjudicate the suit in this behalf.

8. Mr.Y.J.Trivedi, learned advocate appears for the original defendant - respondent No. 1 has supported to Mr.J.B.Pardiwala and contended that even Fast Track Court has a competence and jurisdiction to try and dispose of the suit relating to infringement as well as passing off action.

9. Conclusion & Findings:

1. For arriving at the findings, this Court has first consider what is the position of District Courts and Subordinate Judiciary under the Constitution of India. I have already referred Articles 233, 234 of the Constitution of India, Notification issued for appointment of Fast Track Courts and also the provisions of the Gujarat Civil Courts Act, all these provisions this Court will have to consider together in this behalf.

2. Subordinate Judiciary and Appointment of District Judges:

9.2A The Constitution makes a few provisions in Articles 233 to 237 to regulate the organisation of these courts and to ensure independence of the subordinate judges. Under Article 233(1), appointment, posting and promotion of district judges in a State are made by the Governor in consultation with the High Court. Under Article 233(2), a person not already in the 'service of the State' is eligible to be appointed as a district judge only if (i) he has been for not less than seven years an advocate or a pleader, and (ii) is recommended by the High Court for such appointment. From the tenor of Article 233, it appears that there are two sources of recruitment of district judges, viz: (i) service of the Union or the State; (ii) members of the Bar. The judges from the first source are appointed in consultation with the High Court, and those from the second source are appointed on the recommendation of the High Court. No one can be appointed from the Bar until and unless his name is recommended by the High Court. These are the constitutional provisions for appointment of District Judges.

3. Now let this Court consider the provisions of the Fast Track Courts scheme. For that purpose I refer to the judgment of Hon''ble Supreme Court in the case of Brij Mohan Lal Vs. Union of India (UOI) and Others, : (2002) 5 SCC 1 where the Hon''ble Apex Court has considered the scheme of Fast Track Courts vis-a-vis appointment of District Judges and also given certain directions with a view to see that Fast Track Courts function properly. For this purpose I did not refer to all these guidelines, but it is sufficient to state that in initial time the Hon''ble Supreme Court considered the scheme of Fast Track Courts and appointment of District Judges.

4. The Hon''ble Supreme Court has considered the fact that the Fast Track Courts were to be given on ad-hoc basis in the sense that they would not be on permanent basis. It was also stated that ad-hoc promotion of judicial officers was also contemplated. It was also pointed that the consequential vacancies shall be filled up immediately by organizing a special recruitment drive and steps should be taken in advance to initiate process for selection to fill up these vacancies much before the judicial officers are promoted to the Fast Track Courts, so that vacancies may not be generated at the lower levels of the subordinate judiciary and in para 10 the Hon''ble Supreme Court has given certain directions and some of the directions shows that the appointment is also with the consultation of the High Court, and one of the guidelines was that there may be committee of at least three Judges of the High Court constituted by the Hon''ble Chief Justice in this behalf. Even one Administrative Judge shall also be nominated in each High Court to monitor the disposal of cases by Fast Track Courts and to resolve the difficulties and shortcomings, if any, with the administrative support and co-operation of the concerned State Government. Thus, the appointment and posting and overall control envisage by the Constitution remains with the High Court which is also in connection with the District Court. The only difference is that the District Courts and District Judges are permanent whereas Fast Track Courts and Fast Track Courts Judges are ad-hoc and temporary.

5. For that I crave leaves to refer to and rely upon the further judgment of the Hon''ble Apex Court in the case of Brij Mohan Lal v. Union of India and Ors. reported in (2004) 11 SCC 344 and also another judgment of Hon''ble Supreme Court in the case of All India Judges Association and Ors. v. Union of India and Ors. reported in (2004) 12 SCC 444 where the Hon''ble Apex Court has given further directions in this behalf. All these judgments is throwing considerable light in this behalf and if one reads those judgments, the scheme of Fast Track Courts and the District Judges are almost same. While considering this contention I have taken into consideration the constitutional provisions as well as the aforesaid judgments of the Hon''ble Apex Court in this behalf.

10. I have considered the provisions of Section 134 of the Trade Marks Act which provides suit for infringement of trade mark, etc., to be instituted before District Court. The said provisions provides that no suit for the infringement of a registered trade mark or relating to any right in a registered trade mark shall be instituted in any court inferior to District Court having jurisdiction to try the suit. The said section will have to be read in position of Constitutional provisions particularly Article 233 of the Constitution of India provides for Appointment of District Judges. Article 234 provides recruitment of persons other than district judges to the judicial service.

11. In light of this, if one go through the notification issued by the State Government in connection with the appointment of Fast Track Court Judges, it provides that in exercise of the powers conferred by the proviso to Article 309 read with Articles 233, 234 and 235 of the Constitution of India and

notwithstanding anything contained in the Gujarat Judicial Service Recruitment Rules, 1961, and the Rules for recruitment of Class III and Class IV services in Subordinate Courts, the Governor of Gujarat, in consultation with the High Court of Gujarat and the Gujarat Public Service Commission, hereby makes the following Rules for regulating the appointments on ad-hoc and purely urgent temporary basis for implementation of the said Scheme. The said notification also provides Section 5(i) which provides for the appointments on ad hoc basis for the posts of District and Sessions Judges as the Presiding Officer of the Fast Track Courts shall be made by the Governor on recommendation of the High Court either by promotion or by transfer the person envisaged under said section.

12. On conjoint reading of the provisions of the Constitution, provision of the notification of the Fast Track Courts as well as provisions of Civil Court, it appears that the appointment of Fast Track Courts are appointed in the cadre of District Judge and all the procedures which was envisaged under Article 233 which provides appointment of district judges, the said procedure has been provided for appointment of Fast Track Court Judges and the only difference that appointment of District Judges are permanent whereas appointment of Fast Track Court Judges are temporary or ad-hoc otherwise regarding procedure and nature of appointments all are similar with the District Judges.

13. Now coming to the definition of District Court, we have to consider the definition of District given in sub-Section (4) of Section 2, according to which the district means the local limits of the jurisdiction of a principal Civil Court of Original Jurisdiction and includes the local limits of the ordinary original Civil Jurisdiction of a High Court. In that connection this Court will have also to consider the Notification of the Government. Relying upon the notification issued by the State Government for creation of Fast Track Courts where the Government has also considered Articles 233, 234 and 235 of the Constitution of India and also Gujarat Judicial Service Recruitment Rules, 1961, and the rules for recruitment of Class III and Class IV services in subordinate courts, the Governor of Gujarat in consultation with the High Court of Gujarat and the Gujarat Public Service Commission makes the rules for regulating the appointments on ad-hoc and purely urgent temporary basis for implementation of the said scheme. If this Court consider the provisions of the Gujarat Civil Courts Act also, Section 3 provides classes of civil courts, Section 4 provides establishment of courts of District Judges, Section 5 provides establishment of courts of Senior Civil Judges, Section 6 provides establishment of courts of Civil Judges, Section 7 provides location of civil court, Section 8 provides seal of a civil court, Section 10 provides posting of District Judges, Senior Civil Judges and Civil Judges, Section 12 provides jurisdiction of a court of District Judge and Section 15 provides appeal. Even Section 19 provides application of the Code. The said section further provides that the procedure prescribed in the Code shall, save in so far as is otherwise provided by this Act, be followed in all civil courts.

14. From all these provisions the intention of the legislature to create the post of

Additional Judges according to the requirement in the district is for the speedy disposal of the cases by the District Judge with the aid of the Additional Judges. In view of this, it can be said that the Fast Track Court Judge decides cases with the aid of Additional Judges, they discharge all functions as Additional Judges in discharge of the functions of the District Judges. Hence, the Fast Track Court Judge is part and parcel of District Judge and is covered within the definition of District Court. Hence, in view of the notification appointment of Fast Track Court Judge and the provisions of the Gujarat Civil Court Act and the order passed by the Fast Track Court Judge for all purposes shall be deemed to have been passed by the District Court, the Fast Track Court Judge is part and parcel of the District Court and for all purposes, it is a District Court within the meaning of the CPC.

15. The intention of the legislature to restrict the institution of suit in a District Court and not in any Court inferior to a District Court is that the District Court may not hear the appeals over the judgments passed by the inferior Court. Hence, the purpose of making such restriction by the legislature would not certainly be defeated if the suit is tried by Additional District Judge appointed by the State Government, after having consulted the High Court for the aid of District Judge. Further, it is a matter of consideration that the word Sany Court inferior to a District Court used in Section 134 of the Act is meant the Court inferior to a District Court in the administrative matter or inferior to a District Court in respect of the exercise of judicial powers. In my considered view, thus the restriction imposed u/s 134 of the Act regarding institution of suit in the inferior Court to District Court connotes in respect of judicial exercise of power and not on administrative side. This section has no concern with the administrative affairs nor with the management of the Courts.

16. It may be noted that even provisions of Civil Court Act provides that the appeal from the District Judges lies to the High Court and similarly the notification of the appointment of Fast Track Court Judges also shows that the method and manner of appointment of District Judge and the Fast Track Court Judge is same, the cadre of Fast Track Court is also same as of District Judge and in view of the provisions of Civil Court Act, only appeal lies to High Court that is also an important aspect to be seen in this behalf.

17. From the provisions of the notification of the District Judge, the provision of Fast Track Court Judge and the provisions of the Civil Court Act, it appears that the Additional Judges are appointed for the aid of District Judges and they discharge all functions as Additional Judges in discharge of the functions of the District Judges. Hence the District Judge has assigned any work to Fast Track Court Judges or to any of the Additional District Judges, the same shall be deemed to discharge the same function as if discharge by the District Judges.

18. I have also to consider the Section 134 of the Act that there is restriction to institute a suit in a Court inferior to the District Court, and in the instant matter certainly the institution has been in the Court of District Judge which has been transferred to Additional District Judge as well as to Fast Track Courts by the

District Judge in view of the provisions of the notification of Fast Track Court Judges read with provisions of Gujarat Civil Court Act. In view of the conjoint reading of notification of Fast Track Court Judges and the provisions of the Gujarat Civil Court Act, it cannot be said that the Fast Track Court has no jurisdiction to try the such suit.

19. In view of this, the contention of Mr.Chhatrapati, learned advocate that the Fast Track Court Judges cannot hear and adjudicate the trade mark proceedings or passing off action that may violate Section 134 of the Trade Marks Act is without any substance. I fully agree with the submissions made by Mr.J.B.Pardiwala, learned advocate appears for the High Court and I also consider the judgment of Allahabad High Court in the case of A.K.Enterprise, Agra (supra) which I have referred in this behalf and other provisions.

20. In view of the same, this Civil Application is rejected with no order as to costs. Rule is discharged. I, therefore, request the learned Principal District Judge, Ahmedabad (Rural) to assign the matter to any Judge including Fast Track Courts to hear and decide the Civil Suit No. 4 of 1997 before the appropriate District Court. As the suit is of 1997 and it pertains to the provisions of Trade Marks Act, the learned District Judge is requested to hear and dispose of the suit as early as possible.