APPELLATE CIVIL

Before Khosla and Falshaw, JJ.

M/s TAPTON TEA COMPANY,—*Appellant*

versus

THE LIPTON LTD. AND OTHERS,—*Respondents*

First Appeal From Order No. 93 of 1953.

1954

July, 26th

Trade Marks Act (V of 1940), Section 7—Registrar of Trade marks refusing to register a trade mark—Appeal against the order, where lies—Office of the Registrar of Trade Marks situate in Bombay—Petitioner firm residing in Amritsar—High Court of Punjab whether can hear the appeal.

Held, that the Punjab High Court had no jurisdiction to entertain the appeal against the order of the Registrar of Trade Marks, Bombay, refusing to register the trade mark. If the expression, 'the High Court having jurisdiction' was intended to give a free choice to any person to go to his own local High Court against an order of the Registrar at Bombay the proviso in this subsection would become meaningless, according to which, if there is already litigation pending in a High Court or a District Court regarding the trade mark such as a passing off action, then the High Court of that State can entertain an appeal of this kind.

First Appeal from the Order of Shri *S. Venkateswaran, Deputy Registrar of Trade Marks, Bombay, dated the 9th April, 1953, dismissing the application with costs to the defendants.*

BHAGIRATH DASS, for Appellant.

K. L. KAPUR, for Respondents.

JUDGMENT

FALSHAW, J. This is an appeal filed by the proprietors of a firm styled Tapton Tea Company against the order of the Deputy Registrar of Trade Marks at Bombay, refusing the application of the appellants for the registration of the trade mark

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'Tapton Tea' on the opposition of Messrs. Lipton, Limited, a company registered in England with its Head Office in India at Calcutta.

The appeal has apparently been filed in this Court simply because the appellants' firm is located at Amritsar, and the objection has been taken that the appeal should have been filed in the High Court at Bombay.

Section 76(1) of the Trade Marks Act, 1940, under which the appeal has been filed reads—

> "Save as otherwise expressly provided in this Act, an appeal shall lie, within the period prescribed by the Central Government, from any decision of the Registrar under this Act or the rules made thereunder to the High Court having jurisdiction:
>
> Provided that if any suit or other proceeding concerning the trade mark in question is pending before a High Court or a District Court, the appeal shall be made to the High Court or, as the case may be, to the High Court within whose jurisdiction that District Court is situated."

There is a decision by Abdur Rahman, J., in *Abdul Ghani Ahmad* v. *Registrar of Trade Marks* (1), which is directly in point. In that case a firm of Lahore had applied to the Registrar of Trade Marks at Bombay for the registration of three different trade marks and the applications had been rejected, and the three appeals were filed in the High Court at Lahore under section 76 and it was held that the appeals lay in the High Court at Bombay and not in the High Court at Lahore.

(1) A.I.R. 1947 Lah. 171

It was contended on behalf of the appellants that if section 76 had been intended to provide that appeals from the orders of the Registrar should only lie to the High Court of Bombay, the section would have said so plainly instead of using the phrase 'the High Court having jurisdiction'. I do not agree with this argument since obviously the office of the Registrar of Trade Marks could at any time be transferred from Bombay to some other place, and in fact it would appear from certain observations of Abdur Rahman, J., in the case cited above that another office for registration of trade marks had been opened at Calcutta, and obviously appeals against the orders of an officer at Calcutta would lie to the High Court there. It seems to me that if the expression 'the High Court having jurisdiction' was intended to give a free choice to any person to go to his own local High Court against an order of the Registrar at Bombay the proviso in this subsection would become meaningless, according to which, if there is already litigation pending in a High Court or a District Court regarding the trade mark such as a passing off action, then the High Court of that State can entertain an appeal of this kind.

Reliance was placed on the decision of Kapur, J., in the case of *Messrs. Watkins Mayor and Company, Jullundur* v. *The Registrar of Trade Marks and a Bombay Firm* (1), but this case does not appear to be really relevant since the application filed in this Court was under section 46 of the Act, under which the interested party is given the option of applying either to the Registrar or to a High Court and it is clear from the judgment that in fact there had already been a suit in the Court of District Judge at Jullundur, in which the petitioner

(1) 54 P.L.R. 176

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firm had obtained an injunction against the Bombay firm, which was the second respondent, and the application clearly lay to the Court under the terms of section 72 of the Act which provides that where under the Act the applicant has the option of applying either to a High Court or the Registrar the application shall lie to the High Court within whose jurisdiction the District Court is situated, if any suit or other proceeding concerning the trade mark is pending. The suit itself was not pending in that case, but execution proceedings in connection with it were. Reliance was also placed on a remark by Das, J., in the *India Electric Works, Ltd.* v. *Registrar of Trade Marks* (1), which reads—

> "It is not quite intelligible as to what is precisely meant by the expression 'High Court having jurisdiction' in section 76(1) quoted above. There is no indication in the Act as to the conditions the fulfilment of which constitutes any particular High Court as 'the High Court having jurisdiction' or as to the particular jurisdiction of the High Court which is contemplated. All that I find is that 'High Court' is defined in section 2(d) as meaning a High Court as defined in section 219, Government of India Act, 1935."

It is, however, quite clear that the point now under consideration was not in issue in that case and the learned Judge was careful not to express any opinion about the meaning of the words. What had happened there was that an appeal was filed in the High Court at Calcutta against the order of the Registrar refusing to register the appellant's trade mark and the appeal had been dismissed by

(1) A.I.R. 1947 Cal. 49

McNair, J. A Letters Patent Appeal was filed and the whole of the judgment of Gentle, J. and Das, J., who wrote separate but concurrent judgments, was devoted to the question whether a Letters Patent Appeal lay against an order of this kind, and the order of the learned Single Judge was held not to have been passed either in the exercise of the ordinary original civil jurisdiction of the Court or in exercise of its ordinary civil appellate jurisdiction, it therefore, being held that no appeal lay to two Judges of the Court from the order of the Single Judge. The question of whether the appeal in the first place lay at all to the Calcutta High Court was not even considered and although the judgments themselves do not make it clear, it is obvious that the appeal may in the first instance have been against an order passed by an officer at Calcutta.

Perhaps because the decisions in appeals of this kind are not generally thought worth reporting there do not appear to be many reported decisions of the Bombay High Court, but it is clear from one such case, *James Chadwick and Bros., Ltd.* v. *The National Sewing Thread Co., Ltd.* (1), that a Madras firm which was aggrieved by the refusal of the Registrar at Bombay to register its trade mark on the opposition of a British firm had filed its appeal against this order in the High Court at Bombay.

Our attention was also drawn to the fact that the definition of High Court in section 2 of the Act had now been changed so as to give jurisdiction to this Court with regard to cases arising under the Act from Bilaspur and Himachal Pradesh, but this change in the definition makes no difference to the point which we are considering and in my opinion, the view taken by Abdul Rahman, J., in the case

(1) A. I.R. 1951 Bom. 147

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cited above was quite correct, and this Court has no jurisdiction to entertain the present appeal which will accordingly be returned to the appellants for presentation to the proper Court. I would make no order as to costs.

Khosla, J.

KHOSLA, J.—I agree.

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