Legal Issues in 'Maintainability of Appeals to Division Bench in Trademark Matters'

Topic: 'Is an Intra-Court Appeal against the Decision of Single Judge of High Court in Trademark Appeals Maintainable?'

Relevant Legal Provisions

- **Section 100A, Civil Procedure Code, 1908**

"No further appeal in certain cases.

Notwithstanding anything contained in any 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, where any appeal from an ***original or appellate decree or order*** *is heard and decided by a Single Judge of a High Court, no further appeal shall lie from the judgment and decree of such Single Judge."* (Emphasis supplied)

- **Section 10, The Delhi High Court Act, 1966**

"Powers of Judges

(1) Where a Single Judge of the High Court of Delhi exercises ordinary original civil jurisdiction conferred by sub-section (2) of Section 5 on that Court, ***an appeal shall lie from the judgment of the Single Judge to a Division Court*** *of that High Court."* (Emphasis supplied)

Relevant Legal Provisions

- **Section 76, Trade Marks Act, 1940**

"(1) 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 72[* *] under this Act or the rules made thereunder to the High Court having jurisdiction:….*

(3) ***Subject to the provisions of this Act*** *and of rules made thereunder, the* ***provisions of the Code of Civil Procedure, 1908 (5 of 1908)****, shall apply to appeals before a High Court under this Act."* (Emphasis supplied)

Relevant Legal Provisions

- **Section 108, Trade & Merchandise Marks Act, 1958**

"(1) An application for rectification of the register made to a High Court under section 46, sub- section (4) of section 47 or section 56 shall be in such form and shall contain such particulars as may be prescribed.

(2) Every such application shall be heard by a single Judge of the High Court: Provided that any such Judge may, if he thinks fit, refer the application at any stage of the proceedings for decision to a Bench of that High Court.

(3) Where ***any such application is heard by a single Judge of the High Court, an appeal shall lie from the order made by him o****n application to a Bench of the High Court.*

(4) ***Subject to the provisions of this Act*** *and the rules made thereunder, the* ***provisions of the Code of Civil Procedure, 1908, (5 of 1908 .)*** *shall apply to applications to a High Court under this section."* (Emphasis supplied)

Relevant Legal Provisions (Contd.)

- **Section 91, Trade Marks Act, 1999**

  " (1) Any person aggrieved by an order or decision of the Registrar under this Act, or the rules made thereunder may prefer an appeal to the [High Court] within three months from the date on which the order or decision sought to be appealed against is communicated to such person preferring the appeal."

Relevant Judicial Decisions

- ***Gandla Pannala Bhulaxmi v. Managing Director, A.P. SRTC*** **[AIR 2003 AP 458 (FB)]**

  - *"11. .... it is implicit in the said judgment that* ***statutory enactment concerned can always exclude and affect the power flowing from the paramount charter*** *under which an appeal may have been provided against the decree and judgment or order of a learned Single Judge"* (Emphasis supplied)

- **Kamal Kumar Dutta & Anr. v. Ruby General Hospital Ltd. & Ors. [(2006) 7 SCC 613]**

"22. So far as the general proposition of law is concerned that the appeal is a vested right there is no quarrel with the proposition but it is clarified that ***such right can be taken away by a subsequent enactment, either expressly or by necessary intendment.*** *Parliament while amending Section 100-A of the Code of Civil Procedure, by amending Act 22 of 2002 with effect from 1-7-2002, took away the Letters Patent power of the High Court in the matter of appeal against an order of the learned Single Judge to the Division Bench."* (Emphasis supplied)

Relevant Judicial Decisions

- **United India Insurance Co. Ltd., Palamaner Branch, Tirupathi v. S. Surya Prakash Reddy & Ors. [2006 SCC OnLine AP 434]**

*"**39.** ... the competent Legislature can amend and even abolish the Letters Patent. Undisputedly, Section 100-A of the Code is a piece of legislation enacted by the competent Legislature i.e., the Parliament. The non-obstante clause contained in Section 100-A of the Code, as amended by 2002 Act, has the effect of taking away the right of appeal which may earlier be available either under the Letters Patent or any provision of law, including the Code. The use of the expression **"in any Letters Patent for any High Court or in any other instrument having the force of law or in any other law for the time being in force"** in Section 100-A is clearly indicative of the Legislature's intention to bar Letters Patent Appeal against the judgment rendered by a Single Bench in an appeal arising from an original or appellate decree or order. **The language of Section 100-A does not suggest that the exclusion of the right of appeal available under the Letters Patent is confined only to the matters arising under the Code and not other enactments.** Therefore, ...it must be held that an appellate judgment rendered by the Single Bench in matters arising out of the Code, **as also other enactments,** is expressly barred with effect from 1-7-2002."* (Emphasis supplied)

Relevant Judicial Decisions (Contd.)

- ***Resilient Innovations Pvt. Ltd v. Phonepe Private Limited & Anr.*** **[RFA(OS)(COMM) 8/2021]**

"insofar as the 1940 TM Act was concerned, in the chartered High Courts, an intra-court appeal could be preferred under the Letters Patent. In the 1958 TM Act, the provision for intra-court appeal, against a decision on a rectification application rendered by a Single Judge under Section 56 of the said Act could lie under Sub-section (3) of Section 108 of the said Act. 24. In the 1999 (Unamended) TM Act, the appeal, as noticed above, against a decision rendered by the Registrar on a rectification application filed under Section 57 of the said Act, could be preferred to the High Court. However, from a decision on a rectification application rendered by the IPAB under Section 57 of 1999 (Unamended) TM Act, no appeal was provided, perhaps for the reason that the original jurisdiction conferred on the High Court to decide rectification applications, as provided in the 1940 TM Act and 1958 TM Act, was taken away."

"...there is ***nothing in the framework of the 1999 TM Act*** *which suggests that the legislature, by implication,* ***sought to exclude one level of scrutiny that would be available by way of an intra-court appeal preferred under Clause 10 of the Letters Patent.*** *Concededly, there is no provision in the 1999 (Amended) TM Act, which expressly excludes the applicability of the provision for appeal provided under Clause 10 of the Letters Patent."* (Emphasis supplied)

Relevant Judicial Decisions (Contd.)

- ***Promoshirt SM SA v. Armasuisse and Another*** **[LPA 136/2023]**

"We doubt that the provisions of Section 100A of the Code could be either stretched or interpreted as being intended ***to cover all appeals*** *that may otherwise be presented or be available to be instituted in* ***terms of provisions contained in special enactments."*** (Emphasis supplied)

"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."*** (Emphasis supplied)

"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."*** (Emphasis supplied)

"In the ***absence of any such provision*** *either regulating or restricting the right of appeal in Section 91 of the 1999 TM Act,* ***the LPA remedy would not be barred by Section 100A of the Code and would be applicable****."* (Emphasis supplied)

Conclusion

- The law is fairly established on the point that special enactments, like any amendment brought forth in light of a particular existing problem may take away what the original charter provided forth, to restrict the right to second appeal in certain cases. Therefore, while the right to appeal is a vested right, it can be curtailed by subsequent enactments, such as an amendment to Section 100A of the CPC.
- The legal stance observed by the Delhi High Court, seems to protect the vested rights of applicants seeking second appeal from the order of Single Judge. However, the respective interpretations taken by the Court has significantly differed.
- When the High Court dealt with a Rectification Petition dismissed by the Single Judge, it dug into the provisions of appeal especially in respect of Rectification matters and held that intention of the statutes in trademark jurisprudence have rather kept the doors of appeal open and so it may be maintainable.
- On the other hand, when the matter came from an original ruling of Registrar, the High Court preferred to state that such order is not a decree and therefore, Section 100A will have no application. Besides, there is no explicit bar against second appeal in the current trademark statute.

Thank you!

Questions?

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