Girdhari Lal Gupta vs K. Gian Chand Jain & Co., Delhi-6 on 22 December, 1977

Equivalent citations: AIR1978DELHI146, 14(1978)DLT132, AIR 1978 DELHI 146, ILR (1978) 1 DELHI 472

JUDGMENT

V.S. Deshpande, J.

1. These two appeals against the order of a learned single Judge holding that the High Court of Delhi has jurisdiction to entertain the applications made by the respondents under S. 51-A of the Designs Act, 1911 (as amended) (hereinafter referred to as the Act), have been referred to the Full Bench for a fuller consideration of this important question of jurisdiction than it received in the order of the learned single Judge under appeal or in the judicial decisions relied upon and followed by the learned single Judge.

2. The respondents in these two appeals each filed a petition under S. 51-A of the Act on the following averments supplemented by oral arguments:-

A. Both the respondents and the appellant are carrying on the same trade at Delhi.

B. The appellant has got two designs 131357 and 131364 registered in the Register of Designs maintained under Section 46 of the Act.

C. These designs had, however, been published in India in respect of laces prior to the date of registration secured by the appellant.

D. The trade of the respondents in Delhi is hampered by the trade of the appellant in the same goods, viz. laces, because of the wrongful protection afforded to the appellant by the registration.

E. The respondents, therefore, prayed that the registration of these two designs in favor of the appellant be cancelled by the High Court.

3. The applications were resisted by the appellant and the cases were fixed for recording of evidence. At that stage, the appellant made applications under O. Vi, R. 17, Civil P. C., for amending the appellant's written statement in both the cases with a view to take the plea that the High Court of Delhi has no jurisdiction to entertain the applications of the respondents for the cancellation of the appellant's registration under Section 51-A of the Act and that the jurisdiction for granting such a relief is only in the High Court at Calcutta. The pleas sought to be raised were that the relief of cancellation of registration has to be directed against the Register of Designs maintained at the Patent Office situated at Calcutta. The certificate of registration had been granted by the Controller,

who is also located at Calcutta. The Calcutta High Court has, therefore, the exclusive jurisdiction to entertain an application for cancellation of registration of the design under S. 51-A of the Act.

4. The learned single Judge refused to allow the amendment of written statements prayed for by the appellant on the ground that the amendment would be useless and had no merit. The learned single Judge was of the view that an application under S. 51-A for cancellation of the registration of a design can be filed in any High Court in India for the following reasons:-

> (a) 'High Court' is defined in S. 2(7) of the Act to mean (a) in relation to a State, the High Court for that State; (b) in relation to the Union Territories, the respective High Courts which have been given jurisdiction over the Union Territories.
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> (b) Under the repealed S. 26 of the original Patents & Designs Act, 1911, a petition for revocation of a patent could be made before 'a High Court', meaning any High Court as defined in S. 2(7). Though S. 51-A of the Act (which now takes the place of repealed S. 26 in regard to Designs) uses the words 'the High Court', the legislature did not intend to make a distinction to the effect that while revocation of the patent under the repealed S. 26 could be made by any High Court, the cancellation of the design under S. 51-A could be made only by the High Court of Calcutta.
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> (c) Under the repealed S. 34 of the Patents and Designs Act, 1911, a High Court could dismiss a petition presented to it under the repealed S. 26, if in its opinion the petition could be disposed of more justly and conveniently by another High Court.
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> (d) Similarly, under the repealed Section 28 a High Court could direct that an issue be tried before itself or any other High Court or any District Court.
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> (e) Section 64 differs radically from S. 51-A and the fact that an appeal against the decision of the Controller under S. 64 has to be taken to the High Court of Calcutta is no reason for construing that an application under S. 51-A has to be made to the High Court of Calcutta.
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> (f) Had the legislature intended that the High Court of Calcutta would have the exclusive jurisdiction to entertain applications under S. 51-A, it would have said so rather than given a list of all the High Courts in India in the definition of 'High Court' in S. 2(7).
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> (g) In a suit for an infringement of a patent under the repealed S. 29 if a counter-claim for the revocation of the patent was made in such a suit, then the suit has to be transferred to the High Court to which the District Court was subordinate.

The learned single Judge concluded that any High Court including the Delhi High Court could entertain the application under S. 51-A of the Act in view of the above reasons and the following judicial decisions namely, (1) The Kohinoor Mills Co. v. M/s. Vijay Bharat Thread Mills (India),

Misc. Petn. No. 274 of 1956, decided on 8-7-1957 (Bom) by K. T. Desai J. of the High Court of Bombay, (2) Ailga Rubber Works v. Good Day Rubber Industries, C. O. 2-D of 1966, decided on 25-11-1966 (Delhi), S. K. Kapur J. of this Court, and (3) Neiveli Ceramics v. Hindustan Sanitaryware, F. A. O. (O. S.) , by a Division Bench of this Court.

5. To clarify the understanding of the provisions of the existing Designs Act, 1911 (as amended from time to time), it may be stated that originally there was a Patents and Designs Act, 1911. This Act was amended from time to time. The final amendment was by Act 39 of 1970. By this amendment Part I of the original Patents & Designs Act, 1911 relating to patents and containing Ss. 3 to 42 was totally repealed and a new Act, called the Patents Act, 1970 was enacted. Similarly, the word 'Patents' was deleted from the title of the Act of 1911, which thereafter became the Designs Act of 1911. Part Ii of the old Act of 1911 has been retained to deal with designs only. Part Iii consisting of general provisions has been amended by deletion of those provisions which exclusively dealt with patents and by the retention of other provisions which are general and deal with designs.

6. To arrive at the true meaning of 'High Court' in the Act it is best to consider the scheme of the Act as originally enacted in 1911. At that time there was only one Patent Office maintained under 9. 55 of the Act which was subsequently repealed by the amending Act 39 of 197O. The said Patent Office was under the control of the Controller General of Patents and Designs. The Act did not fix any particular place for the establishment of this office, but in fact it was established by the Central Government by administrative action at Calcutta. This meant that even for designs there was only one office, namely, Patent Office. By the Patents Act, 1970, the originally single Patent Office now consists of a Head Office and certain branches. It may be said, therefore, that the Patent Office since 1970 exists in more than one place. We are informed that the branches of the Patent Office are in Delhi, Bombay and Madras, while the Head Office is in Calcutta. Even now other places in India do not have a Patent Office. There is still only one office, i. e. The Patent Office (Head Office) at Calcutta where designs are registered and the Register of Designs is kept.

DEFINITION Of "HIGH COURT"

7. The first thing to consider is the definition of 'High Court' in 1911 when there was only one combined Patent and Designs Office under the Act, which happened to be established in Calcutta. The definition of 'High Court' in S. 2 (7) of the Patents & Designs Act of 1911, as originally enacted and published in the Gazette of India of March 4, 1911, Part Iv page 5, was as follows:- "'High Court, has the meaning assigned to that expression by the Cr. P. C., 1898, in reference to proceedings against European British subjects."

By the amending Act 12 of 1939 the definition was amended to mean 'a High Court' as defined in S. 219(1) of the Government of India Act, 1935. The definition underwent further changes by statutes and Adaptation of Laws Orders. But the basic feature of the definition throughout was that it was not restricted to any one High Court. The present definition of 'High Court' consisting of a list of the High Courts one each for its own territorial jurisdiction was introduced, by the Adaptation of Laws Orders, 1956. It has never been, suggested that the meaning of the expression 'High Court' as defined in S. 2 (7) has undergone any change by any of these amendments since the original

definition was enacted in 1911. The following significant inferences can be drawn from this definition.

1. Though, there was only one Patent & Designs Office in India from 1911 to 1970, the definition of 'High Court' was never confined to one particular High Court. If the legislature had intended that only one High Court should have jurisdiction to entertain petitions for revocation of patents under the old S. 26 of the Act, repealed in 1970, or for petitions for cancellation of registration of designs under S. 51-A of the Act, as amended in 1970 on the ground that the register of patents as also the register of designs exists only in one Patent Office which could be situated only at one place, then the legislature would have defined the High Court to mean the High Court having jurisdiction over the Controller General of Patents & Designs functioning in the Patent Office. The reason why the legislature did not do so must be that according to the scheme of the Act, the legislature did not intend to confine jurisdiction for the revocation of patents and cancellation of registration of designs to the High Court having territorial jurisdiction over the Patent Office.

2. The words 'in relation to a State, the High Court for that State' and the words 'in relation to a Union Territory, the High Court having jurisdiction over that Union Territory', form the substance of the definition of 'High Court'. The words 'in relation to' connect a particular High Court to a particular territory, whether a State or a Union Territory. At first sight, an impression is likely to be created that a petition for cancellation of the registration of a design under S. 51-A may be filed in any State ox Union Territory and the only thing that the petitioner was to do was to file it in the High Court having territorial jurisdiction over that State or Union Territory. The view originally taken by K. T. Desai J. and followed in three successive decisions of this Court that any of the High Courts enumerated in S. 2 (7) would have jurisdiction to entertain a petition under S. 51-A may have been influenced by a too literal reading of the list of the High Courts given in S. 2 (7). Such an impression rests on a superficial view of the list given in S. 2 (7), which is reproduced below;-

> " 'High Court' means-.
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> (a) in relation to a State, the High Court for that State;
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> (b) in relation to the Union Territory of Delhi, the High Court of Delhi;
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> (bb) in relation to the Union Territory of Himachal Pradesh, the High Court of Punjab and Haryana up to and inclusive of the 30th April, 1967 and the High Court of Delhi thereafter;
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> (c) in relation to the Union Territory of Manipur or Tripura, the High Court of Assam;
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> (d) in relation to the Union Territory of the Andaman and Nicobar islands, the High Court at Calcutta; and

(e) in relation to the Union Territory of the Laccadive, Minicoy and Amindivi Islands, the High Court of Kerala; (ee) in relation to the Union Territory of Chandigarh, the High Court of Punjab and Haryana;

(f) in relation to the Union Territories of Dadra and Nagar Haveli and Goa, Daman and Diu, the High Court at Bombay;

(g) in relation to the Union Territory of Pondicherry, the High Court at Madras."

Such a view would almost mean that it is for the petitioner to choose any of the High Courts from the above list to file a petition under S. 51-A of the Act. The result would be that it is the presence of the petitioner in a particular State or Union Territory for which that High Court has jurisdiction which would connect the petitioner under S. 51-A to the particular High Court. That is to say, the petitioner may choose to file such a petition in any of the High Courts in India as he likes. This view would be opposed not only to the scheme of the Act, but also to our basic notion of the territorial jurisdiction of a High Court or any court.

3. It could not be the intention of the legislature to arm the petitioner under S. 51-A with powers to harass the respondent. On the view that such a petition can be filed in any High Court in India, the petitioner would be able to file it in a High Court in which the respondent would find it most difficult to defend. The presence of the petitioner himself before a particular court has never been the test of the jurisdiction of that court, except where it is specifically so provided, e.g. in S. 62, Copyright Act, 1957. The legislature could not be implied to have intended to depart from the basic concept of jurisdiction and to make such an extraordinary provision capable of being abused and doing no good to any one.

4. What is jurisdiction? It is the power of a court over a territory and a subject-matter. Power over a territory in itself is not sufficient. The territory is significant only as being the place at which the subject-matter is situated. If the subject-matter is outside the territory, the court would not have jurisdiction over it for the simple reason that the subject-matter would fall within the territorial jurisdiction of some other court. The test of the territorial jurisdiction of a court is, therefore, 'whether the case relates to the general category of subject-matter assigned by law to the Tribunal (or the court)'. (Rubinstein-Jurisdiction and Illegality page 218). Dr. Rubinstein supports his proposition by referring to the observation of Dixon J. in R. v. Hickman Exp. Fox & Clinton, (1946) 70 Clr 59,8 at p. 615, holding that a privative clause will not be excluded provided the tribunal's decision 'is a bona fide attempt to exercise its power, that it relates to the subject-matter of the legislation and that it is reasonably capable of reference to the power given to that body'. Thus, the prima facie relationship between the case and the subject-matter prescribed by law is relevant criterion for jurisdiction (ibid 218-219).

NEXUS Between SUBJECT-MATTER & JURISDICTION.

8. Where more than one authorities or courts are invited to exercise jurisdiction, it is relevant to inquire as to which of them has the real connection with subject-matter over which the jurisdiction

is to be exercised. This inquiry will result in giving jurisdiction to the court having the nexus with the subject-matter and correspondingly in showing that the other courts which do not have a similar connection with the subject-matter would not have jurisdiction over it. For instance, S. 2(a)(i) of the Industrial Disputes Act defines 'appropriate Government' to mean the Central Government in relation to industrial disputes concerning certain specified industries. Section 2(a)(ii) of the said Act enacts the residuary definition as follows: "In relation to any other industrial dispute, the State Government". Just as the definition of a 'High Court' in S. 2 (7) gives the list of all the High Courts in India, similarly the expression 'State Government' would bring in each and every State Government in India. Just as the question before us is which of the High Courts has the jurisdiction to entertain an application under Section 51-A, the question arose before the Supreme Court in the case referred to below as to which the State Governments had the jurisdiction to make a reference of an industrial dispute under S. 10(1)(d) of the industrial Disputes Act. The line of reasoning followed by the court in Workmen of Shri Rangavilas Motors (P.) Ltd. v. Shri Rangavilas Motors (P.) Ltd., , is instructive for us. Their Lordships observed as follows: "The order of transfer, it is true, was made in Krishnagiri at the head office, but the order was to operate on a workman working in Bangalore. In our view the High Court was right in holding that the proper question to raise is: where did the dispute arise? Ordinarily, if there is a separate establishment and the workman is working in that establishment, the dispute would arise at that place. As the High Court observed, there should clearly be some nexus between dispute and the territory of the State and not necessarily between the territory of the State and the industry concerning which the dispute arose."

9. What is the subject-matter of an application under S. 51-A? It was argued at length by Mrs. Shyamla Pappu that the subject-matter of such an application was the registration of a design by an entry made in the Register of Designs which is maintained in the Patent Office under S. 46 of the Act. She argued that the subject-matter consisted, therefore, only of the act of registration and continuance of registration both of which were situated at the place at which the Register of Designs happens to be kept. According to the learned counsel, the definition in S. 2 (7) of the Act of 'High Court' can also be explained on the same theory of subject-matter. The legislature did not mention in the Act the place at which the Patent (Designs) Office and the Register of Designs would be maintained. The legislature, therefore, had to provide a list of the High Courts in India in defining a 'High Court', so that the territorial jurisdiction would accrue to that High Court in the local limits of which the registration would happen to be made and would happen to be continued. Her argument, therefore, was that it is a mere accident that the office of the Register of Designs happens to be at Calcutta and, therefore, the High Court at Calcutta would have the jurisdiction over the subject-matter of these applications made under S. 51-A. It was open, however, for the Government to shift the Designs Office to any other place in India with the result that the subject- matter of an application under S. 51-A would then arise at the place where the Designs Office is shifted and such a place may be within the local limits of a High Court other than Calcutta High Court.

10. The strength of this argument depends on the correctness of its assumption that the subject-matter consists only of the registration and the continuance of the registration of a design. This takes into account only the static effect of the registration. But the registration gives the registered proprietor of the design a monopoly of the copyright in the design and this extends to all the territories of India to which the Act applies. The impact of the registration, therefore, travels

beyond the place of registration. This is the dynamic aspect of the effect of registration.

11. An analysis of S. 51-A yields two distinct elements. The first element is the registration of the design and the effects of the registration-static and dynamic. The second is the capacity to make the application being vested only in a person interested. It is only when both these elements co-exist that an application under S. 51-A can be made for the cancellation of the registration on all or any of the grounds specified therein. Let us now further consider each of these two elements of S. 51-A.
EFFECTS Of REGISTRATION.

12. If the cause of action for an application for cancellation is only tile static effect of the registration then it is confined to the place where the registration is made and is continued Since the Register is kept presently at Calcutta, the High Court of Calcutta would have jurisdiction over the place at which the cause of action arises due to the static effect of the registration What about the dynamic effects of 1he registration which prevents any person other than the registered proprietor of the design from using the said design in any of the territories to which the Act applies? This prevention may be of two kinds. Firstly, a person may intend to use the registered design but is prevented from carrying out his intention into practice because he would be thereby infringing the copyright created by the registered design and would, therefore, be contravening the law. The cause of action in favor of such a person consists only of the existence of the registration. Since such a cause of action arises only at the place of the registration, it is only that High Court which has jurisdiction over the place of registration which can entertain an application under Section 51-A for the cancellation of the design from such a person.

13. Secondly, there may be persons who are actually using the said registered design and the use of such design may be interfered with or stopped by the dynamic effect of the registration which prevents such traders all over the country wherever the Act applies from using the design. The legal injury to such traders is caused at the place at which their trade is carried on. This is to be contrasted with the legal injury complained of by a person who merely intends in future to use the design. The injury to the latter person is not caused where the person resides. It is caused at the place where the registration exists.

PERSON INTERESTED.

14. Just as there are two kinds of legal injury that may be caused by the static and dynamic effects of registration, former confined to the place of registration and the latter extending beyond it, similarly, a person interested may fall into either of two categories. Firstly, a person interested may be aggrieved by a legal injury to his own interest in property, business, reputation, etc. He is thus a person aggrieved and as such has locus standi to make the application. The place where the injury occurs is the place where his interest has been adversely affected. The cause of action, therefore, arises at the place where the legal injury to his existing private interest has occurred. As already stated above, if a person merely intends in future to use such a design then no present interest of such a person is injured and, therefore, the only injury of which he can complain is that his future activity is prevented by the existence of the registration. That cause of action will relate to the place of the registration. The expression "person interested" is quite common in legislative drafting. For

instance, it is used in S. 18(1) of the Land Acquisition Act, 1894. Its purpose is to confine the competence to make an application to a person who has his own interest to be served by such application, It intends to exclude a mere busy body from making such an application though none of his interests has been affected. In other words, a person interested is a person aggrieved by the existing situation or by the cause of action.

15. Of late, however, the concept of locus standi which gives competence to a person to make an application or file a suit or a petition has been broadened. It includes not only a legal injury to some private interest of the petitioner, but also a legal injury to some public interest in the redress of which the petitioner has some interest over and above the interest of a mere member of the public. For instance, a neighbour was held to have locus standi to file a writ petition that the resolution of the Municipal Corporation to make a children's park in front of the petitioner's house should be given effect to even though no individual interest of the petitioner was injured by the delay on the part of the Municipal Corporation in implementing the said resolution. For, the petitioner lived very near the site of the children's park and was more interested than an ordinary member of the public in seeing to it that the plot belonging to the Municipal Corporation should be developed as a children's park in accordance with the resolution passed by the Corporation (see Radhey Sham v. Lt. Governor, Delhi, 2nd (1970) 2 Delhi 260). See also an article on Standing and Justiciability in 1971-73, Journal of the Indian Law Institute, pages 164 to 170). While, on the one hand, the location of a pro bono publico interested in vindicating a legal injury to the public interest would not be a part of the cause of action or the subject-matter, on the other hand, the injury suffered to his private interest by a person aggrieved may become a part of the cause of action or the subject-matter for an application under Section 51-A. If, for instance, the Institute of Designs at Ahmedabad or some such person or Institution in public interest makes an application under Section 51-A, the location of such a person or Institution would be no part of the cause of action or the subject-matter under Section 51-A. On the other hand, the respondents in the appeals before us are traders doing business at Delhi. They allege that their trading is injured because of the wrongful protection and monopoly given to the designs registered in favor of the appellant. This injury to the interest of the respondents takes place at Delhi. In this case the appellant is also enforcing his right based on registration by suits filed against the respondents at Delhi. The significance of being "person interested" is, therefore, twofold. Firstly, it gives them the locus standi to make the application under Section 51-A. Secondly, it helps to fix the place at which the applications may be made by them, the place being Delhi where the injury to their interest occurred. The injury to the private interest of the respondents is thus a part of the cause of action or the subject-matter for the applications made under S. 51-A. The rest of the subject-matter or the cause of action consists firstly in the registration and continuance of the design, and secondly in the wrongfulness- of such registration and continuance because of the existence of the grounds or the grounds mentioned in clause (a) of subsection (1) of S. 51-A of the Act, namely, that the design has been previously registered in India or that it has been published in India prior to the date of registration or that the design is not new or original.

16. In Association of Data Processing Service Orgn. v. William B. Camp, (1970) 397 U. S. 159, and Clemon Barlow v. B. L. Collins, (1970) 397 Us 159, the question sharply arose as to what precisely should constitute the standing of a plaintiff as distinct from the reviewability of the dispute by the

court and the merits of the dispute. Justice William Dauglas speaking for the majority expressed the view that not only the competence of the plaintiff to file the suit on the allegation that the has suffered a legal injury in fact, but also the question whether the interest sought to be protected by him by way of the suit is within the range of legally protected interests together formed the locus standi of the plaintiff. Justice Brennan, with whom Justice White joined, expressed the minority view that the allegation of legal injury by the plaintiff was sufficient to confer standing on him and to make him a person interested in filing the suit. The question whether the interest sought for by him was legally protected interest was a part of the merits of the ease or may be a part of the reviewability of the question raised by the plaintiff, but was no part of the plaintiff's capacity to sue. Fortunately in the present case, we are not concerned with the question whether standing includes merely capacity to sue or whether it includes a legal right or a part of the legal right to sue. Under S. 51-A if the petitioner is a mere pro bono publico, he would have to make the application in that High Court within the local limits of which the registration enures and continues attacking it on one of the grounds specified in S. 51-A. But, if the petitioner is a person whose private commercial interests are injured, then the place where the commercial interests are injured is included in the requirement of S. 51-A that the application can be made only by the person interested. A part of the cause of action or the subject-matter is, therefore, situated in Delhi. The application under S. 51-A can, therefore, be made at Delhi or at Calcutta, but in no other High Court.

17. The registration of the design and its continuance in the Register of Designs is only a part of the subject-matter. What the respondents complain is not merely of the registration. They rather complain of the impact or the effect of the registration which extends far beyond the place where the Register of Designs is kept. The effect of the registration of the design under the Act is to confer a copy right in the design on the appellant. This copyright prevents the respondents from using the same design so long as the registration subsists in favor of the appellant. The copyright effect of the registration is felt in Delhi and would be felt at any place where it prevents competitors of the appellant from using the registered design for their own purpose. Viewed in this way a part of the subject-matter of the application under S. 51-A would be seen to be at Delhi where the alleged legal injury and the damage in fact is said to have been suffered by the respondents though the rest of it may be at Calcutta where the entry in the Register of Designs rests. It is not only the static entry in the Register of Designs, but also the dynamic effect of the copyright all over the country, which causes injury to the competitors of the appellant. These injured persons would have the right to make the application to the High Court having jurisdiction over the place in which this injury has occurred. In Workmen of Shri Rangavilas Motors (P) Ltd. v. Shri Rangavilas Motors (P) Ltd., (supra), the order was passed at the Head Office of the company at Krishnagiri. It was that order which was the injury done to the workmen. It was, therefore, argued that the nexus of the subject-matter to the appropriate Government was between Krishnagiri which was in the State of Tamil Nadu and the Govt. of Tamil Nadu at Madras which had the jurisdiction over Krishnagiri, But, the Supreme Court repelled this argument with the statement that "but the order was to operate on a workman working in Bangalore." By that observation the Supreme Court held the subject-matter to be at Bangalore and not at Krishnagiri. The nexus, therefore, was with the appropriate Government, viz., the Government of Mysore.

SECTION 51-A Compared And CONTRASTED.

18. Section 53(1) prohibits piracy of registered design. S. 53(2) enables the registered proprietor of a design to obtain damages for piracy of his design. The learned counsel for the appellant did not dispute that such a suit for damages would lie at a place at which damage has been caused to the registered proprietor of the concerned design. In our view, S. 51-A is the reverse of S. 53. While S. 53 enables the registered proprietor to obtain damages from a person, who violates copyright granted to him by the registration of the design, S. 51-A enables a person to attack the very correctness of the registration and to get it cancelled. While the cause of action of the registered proprietor under S. 53 is the damage caused to him by the piracy of the design, the cause of action of the plaintiff under S. 51-A is the damage caused to him by the enjoyment of the copyright by the registered proprietor based on the registration of the design. If the situs of the damage under Section 53 can be the place where the damage is actually caused, there is no reason why the situs of the damage under Section 51-A should not be a relevant consideration to determine jurisdiction under S. 51-A. If a suit is maintainable because of the nexus in a court having jurisdiction over such a place under S. 53, on the same reasons of the nexus it may be argued that an application should be maintainable in the High Court having jurisdiction over such a place under S. 51-A.

19. Under the repealed S. 26, a petition for the revocation of patent or a counter-claim for such revocation in a suit for infringement of a patent before a High Court may be maintained on grounds some of which are similar to the grounds contained in S. 51-A for the cancellation of designs. Under the repealed S. 28, the High Court in which a petition for the revocation of a patent is pending may direct that an issue in the case may be tried either before itself or any other High Court or any District Court. Similarly, under the repealed S. 29 in a suit for infringement of patent if a counter-claim is made for revocation of the patent the suit along with the counter-claim shall be transferred to the High Court for decision. Under the repealed S. 34, the High Court to which a petition has been presented under the repealed Section 26 may stay proceedings or dismiss the petition if in its opinion the petition would be disposed of more justly or conveniently by another High Court. Copies of a decree in a suit under the repealed S. 29 or an order in a petition under the repealed Section 26 are sent to the Controller, who shall cause an entry thereof and reference thereto to be made in the Register al Patents under the repealed Section 33. Under Section 53(3) also a copy of the decree passed has to be sent to the Controller who shall cause an entry thereof to be made in the Register of Designs. All these provisions show that suits and applications are made to different High Courts in the local jurisdiction of which the cause of action arises or the subject is situated, The legislature contemplated that these High Courts could be different from the High Court having jurisdiction over the Controller. Nevertheless, the decrees and orders passed by these different High Courts would be effective against the registration of design in the office of the Controller. These provisions show that the jurisdiction of a High Court under the Act is determined by the nexus of the cause of action and/or the subject matter with the territory over which the High Court has jurisdiction.

20. It is in this context that the use of the definite article "the" to qualify the court or the High Court in these provisions assumes significance. It is not a High Court or any High Court, but only the High Court which would have jurisdiction meaning that it is the nexus of the subject-matter or the cause of action with the territory of a High Court which fixes jurisdiction and vests it in that particular High Court.

21. For the above reasons, we find that the petition for cancellation of the design under S. 51-A would lie to that High Court within the territory of which subject-matter has the necessary nexus. The subject-matter consists of a series of connected events beginning with the registration of the design In the register of designs by the order of the controller and ending with the impact of the said design on the rights of the competitors at such places at which the trading of the competitors is injured or affected by the enjoyment of the copyright by the registered proprietor of the design basing his right on the registration of the design. An application may, therefore, be filed either in the High Court having jurisdiction over the place at which the design is registered or in the High Court having jurisdiction over the place at which enjoyment of the copyright by the registered proprietor causes injury to the commercial interests of the applicant. Briefly, the application would be made in the High Court, the local jurisdiction of which has a nexus with the subject-matter or the cause of action of the application. It follows, therefore, that the application cannot be made in any other High Court merely because the applicant chooses to do so. The applicant would have to show jurisdiction in the High Court to which the application is made and such jurisdiction can The shown only by establishing connection between the cause of action and/or subject-matter of the application and the territory within the local jurisdiction of the High Court. While such an application can always be made to the High Court within the local limits of which the registration of the design is made, the jurisdiction is not confined to that High Court, but would extend to any other High Court within the local limits of which a part of the cause of action and/or subject-matter of the application may arise. This view differs from the view of the learned single Judge and the other decisions of this court relied in the order under appeal. We also differ from the view expressed by K. T. Desai J. of the High Court of Bombay in the Kohinoor Mills Co.'s Case (Misc. Petn. No. 274 of 1956, D/8-7-1957 (Bom)).

22. We have not considered the question whether the High Court acting under S. 51-A being a court of civil jurisdiction, the procedure laid down in the Code of Civil Procedure would be applicable to the proceedings before it. For, we do not consider it necessary to express any view in this particular case as to whether the determination of jurisdictional facts which have to exist before the High Court can take up jurisdiction would be an enquiry into what procedure would be applicable to an application under S. 51-A after the High Court entertains it. The jurisdictional conditions have to be satisfied before the High Court can entertain such an application. Consequently, we have not considered whether the jurisdiction of the High Court would depend on the presence of the defendant or non-applicant within the local jurisdiction, that is to say, the residence of or carrying on of business by the defendant within the local jurisdiction of the High Court on the analogy of Section 20 of the Code of Civil Procedure. We have, therefore attempted to determine the question of jurisdiction of the High Court independently of the applicability of the provisions of the Civil P. C.

23. The application for amendment made by the appellant was, in our view rejected by the learned single Judge for insufficient reasons, namely, that the amendment would be useless and had no merit. It would be sufficient to inquire whether the pleas proposed to he advanced by amendment were necessary for the determination of the real questions in controversy between the parties. Firstly, the learned single Judge did not purport to reject the application on the ground that it was made too late. Secondly, the learned single Judge purported to discuss the merits of the question as to which High Court would have jurisdiction to entertain the petition under S. 51-A. Such discussion could have been made only if the issue regarding jurisdiction would have been raised.

Unfortunately, the effect of dismissing the application for amendment by the learned single Judge was to prevent the very issue, which he discussed, from coming on the record. Strictly speaking, the discussion regarding the jurisdiction is of an issue which is not contained in the pleadings at all. We, therefore, set aside the order appealed against. We allow the amendment applied for by the appellant in the written statements filed by him in opposition to the applications made by the respondents under S. 51-A. At the request of the parties, however, we did not send the case back to the learned single Judge for the trial of the issue regarding jurisdiction as he had already expressed his opinion about it. At their request we have dealt with the question ourselves and have come to a conclusion different from the one arrived at by the learned single Judge. Our order would take the place of the order of the learned single Judge. The issue of the jurisdiction having been decided in favor of the respondents for reasons different than the reasons which had been given by the learned single Judge, we direct that the applications made by the respondents shall now proceed before the learned single Judge on the basis of the order passed by us. The appeal is allowed in the above terms with no order as to costs.

24. The parties are directed to appear before the learned single Judge on 9th Jan. 1976.

H.L. Anand, J.

25. I have had the benefit of perusing the judgment proposed by my learned brother, Deshpande, J. and, while I respectfully concur in the conclusion that the single Judge should have granted leave to the appellant to amend the written statement so as to raise the plea of jurisdiction, and in the further conclusion that in any event, this Court had ample jurisdiction to entertain the suit of the respondents, I regret my inability to subscribe to the view expressed by Deshpande, J. as to the principles of jurisdiction of the High Court in proceeding under S. 51-A of the Designs Act (for short, the Act). In my view, having regard to the peculiar scheme of the Act, the provisions of S. 2 (7) of it and even on an application of the general principles of jurisdiction of courts, every High Court in India would have jurisdiction to entertain a petition for the cancellation of registration of a design under S. 51-A of the Act by virtue merely of the dynamic effect throughout the territory of India of the registration of a design obviating the necessity of any further action or inaction or any other nexus between the territory and the subject-matter.

26. The facts and circumstances leading to these appeals, in so far as they are necessary for the determination of the question that arises, are appropriately set out in the judgment proposed by my learned brother, Deshpande, J. and, therefore, it is unnecessary to advert to these. The short, though a seemingly difficult question that was posed both before the learned single Judge and before the Full Bench was, if, having regard to the rather unusual provisions contained in that behalf in the Act, Calcutta High Court had exclusive jurisdiction to entertain a petition for cancellation of the registration of a design under S. 51-A of the Act, as contended on behalf of the appellant, or such a petition could be filed by a person interested in any High Court in India, as canvassed on behalf of the respondents. The learned single Judge accepted the respondents' contention and held that such a petition could be filed in any High Court in India. Deshpande, J., however, proposes to reject both the extreme contentions and is inclined to hold that while Calcutta High Court would have undoubted jurisdiction to entertain such a petition by virtue of the situs of the register containing

the registration in the territory within its jurisdiction, other High Courts in India would also have jurisdiction if some overt act, in addition to the dynamic effect of the static entry in the register was committed or a nexus was otherwise established between the subject-matter of the petition and the territory of that High Court, but not otherwise. While the learned single Judge based his decision on the peculiar provisions of S. 2 (7) of the Act, as indeed its overall scheme, and relied on a number of decisions directly on the question, Deshpande, J. justifies the conclusion proposed by him partly with reference to the concept of locus standi to file such a petition and partly on an application of the general principles of jurisdiction known to civil proceedings in India.

27. Jurisdiction connotes the power that a Court or a Tribunal has o take cognizance of a cause and may have reference either to the parties of the subject-matter. It may lay down various limitations such as pecuniary and territorial. The general principles of jurisdiction of courts in civil proceedings with certain refinements and variations are incorporated in the Code of Civil Procedure which ordinarily would regulate such proceedings. Where, however, the statute that confers rights or creates legal remedies also lays down the principles for the delineation of limits of jurisdiction of the Court or Tribunal, the general principles of jurisdiction are inapplicable, but may perhaps be of use as indicating broad and general guidelines. In such cases the jurisdiction of a Court or a Tribunal has to be determined primarily with reference to the special provision contained in the statute. Difficulty may, however, arise where the statute either gives no indication or does not give a clear indication in that behalf. In such class of cases, courts have often, unless there was something in the context which stood in the way, applied the general principles of jurisdiction as contained in the Civil P. C. in determining limits of jurisdiction in so far as such principles could be applicable. An instance in point would be the decision of Chagla, C. J., as he then was, in the case of Lalbhai Tricumlal Mills Ltd. v. Dhanubhai Motilal Vin, , where a question as to the jurisdiction of the Labour Court, Bombay, was resolved with reference to the general principles of jurisdiction in the absence of any indication in the Bombay statute concerned with regard to jurisdiction. This is what that illustrious Chief Justice said:- "But what we are concerned with to decide is: Where did the dispute substantially arise? Now, the Act does not deal with the cause of action, nor does it indicate what factors will confer jurisdiction upon the Labour Court. But applying the well-known tests of jurisdiction, a Court or Tribunal would have jurisdiction if the parties reside within jurisdiction or if the subject-matter of the dispute substantially arises within jurisdiction. And, therefore, the correct approach to this question is to ask ourselves where did this dispute substantially arise and in our opinion the only answer to that question can be that the dispute substantially arose in Bombay and not in Ahmedabad. What is the dispute? The dispute is not as to whether the employee approached the employer in Ahmedabad and no agreement was arrived at. The dispute is whether the employer was justified in dismissing the employee, and inasmuch as the employment was in Bombay, and the dismissal was in Bombay, it is difficult to understand how it can possibly be urged that the dispute did not substantially arise in Bombay."

These observations have since illuminated the course of legal thinking on the question that arose subsequently in a large number of cases as to the territorial limits of the power of the appropriate Government under S. 10 of the Industrial Disputes Act to make a reference of an industrial dispute to a Court or Tribunal and the consequential jurisdiction of such Courts and Tribunals even though the Bombay High Court was concerned with the question as to the territorial jurisdiction of a Labour

Court while the later decisions were concerned with the power of an executive authority to make a reference. Reference may be made to the series of decisions starting from the case of Indian Cable Co. Ltd. v. Its Workmen (1962) 1 Lab Lj 409 (SC) and ending with that of Hindustan Aeronautics Ltd. v. Their Workmen, . All these decisions are referred to in detail in a recent decision of this Court in the case of M/s. Associated Traders & Engineers Pvt. Ltd. v. Shri Bir Singh 2nd (1976) 1 Delhi 6,88: (1977 Lab Ic (NOC) 113). One of these cases, namely, Workmen of Sri Ranga Vilas Motors (P.) Ltd. v. Sri Ranga Vilas Motors (P.) Ltd., has been referred to by Deshpande, J.

28. On a consideration of the rather unusual phraseology and pattern of the provisions of S. 2 (7) of the Act, it appears to me that the provision contains a clear indication that every High Court in India, so long as it is one of the High Courts envisaged by the provision, would have undoubted jurisdiction to entertain a petition under S. 51-A of the Act. The provision refers to the different territories of India and enumerates each of the High Courts having jurisdiction in the different territories of India and contains no words of limitation or any indication of any other condition that must be satisfied to attract the jurisdiction of the High Courts. The pattern of the provision constitutes a deliberate departure from the normal phraseology of provisions in different statutes including some of the sister statutes like the Trade and Merchandise Marks Act, 1958 which clearly limit the jurisdiction. The statute was dealt with by two different Legislatures - one at its inception and the other when the parent Act was bifurcated in the year 1970. Both the Legislatures were fully aware of the normal pattern of provision with regard to jurisdiction, but nevertheless thought it fit to incorporate the provision in its present form initially and decided to continue it in the same form subsequently with a minor modification. Surely, the provision was not intended to publish either the lists of various High Courts in India or to enumerate the territories of India which would fall within the jurisdiction of the one or the other High Courts. If the intention of the Legislature was to limit the jurisdiction or to make it dependent on the satisfaction of any of the usual conditions to attract jurisdiction there was no difficulty for the Legislature to have introduced such limitations and there was no necessity to make a drastic departure from the pattern of the provisions. The unusual phraseology of the provision and the pattern could not have been without a definite purpose. These features of the provision, therefore, leave no manner of doubt that the provision was intended to create a special jurisdiction which could be exercised by every High Court without any limitation whatever.

Deshpande, J.

29. discovered certain limitations of jurisdiction partly because of a concept of locus standi incorporated in S. 51-A of the Act and partly because of a partial application of the general principle of jurisdiction and the consequential need of a nexus between the territory and the subject-matter of the dispute. To my mind, the first approach is not justified, with respect, because locus standi to file a petition and the jurisdiction of a Court to entertain it are conceptually different and one need not necessarily impinge on the other. To my mind, S. 51-A merely lays down the conditions which would justify cancellation of registration and the person who may seek it. It has no relevance to the Court which may entertain such a petition and it would not, therefore, be proper to read into S. 51-A any principles for the determination of the question of the jurisdiction of the Court. So far as the need for a nexus is concerned, it has its genesis in the principles of general jurisdiction which, to my

mind, would be inapplicable because of a clear indication with regard. to jurisdiction in S. 2 (7) of the Act. Even otherwise, any search for a nexus between the subject-matter and the territory would be superfluous because the dynamic effect of the static entry in the register provides sufficient nexus. This is because the static entry in the register maintained in the Registry in Calcutta has, by virtue of the provisions of S. 47 of the Act, a dynamic effect throughout the territory of India in that as a result of registration the person in whose favor the design is registered gets an unrestricted right to use the design implying a prohibition against all persons other than him from the use of the design on pain of prosecution and the civil consequence of damages. What establishes the nexus between the different territories of India and the registration is the fact that the twofold consequence of registration, both positive and negative, operate throughout the territory of India. No further nexus is, therefore, necessary to confer jurisdiction on the High Courts, and if such a nexus was necessary, one would have found appropriate indication of it in the statute itself.

30. Subject to what has been said above, I am in full agreement with the conclusions that, having regard to the importance of the question sought to be raised, the learned single Judge ought to have allowed the amendment and in the further conclusion that, in any event, on account of various factors referred to by Deshpande J. and even otherwise, this Court had undoubted jurisdiction to entertain the petition.

Chadha, J.

31. With respect I concur in the reasoning and conclusion of the proposed judgment of my learned brother Deshpande, J.

32. Answer accordingly.