

GAHC010269472025



2026:GAU-AS:5695

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : FAO/79/2025

JAY BABA BAKRESWAR RICE MILL PRIVATE LIMITED
AN EXISTING COMPANY WITHIN THE MEANING OF THE COMPANIES ACT,
2013, HAVING ITS OFFICE AT 1413, 14TH FLOOR, DIAMOND HERITAGE, 16,
STRAND ROAD, KOLKATA-700001 REPRESENTED BY SRI PARTHO
SARATHI MONDOL, AGED ABOUT 60 YEARS, S/O SUDHIR KUMAR
MONDAL, RESIDENT OF LALUNGGAON, HARA GAURI BHAWAN, VIP
ROAD, P.O. AND P.S.- GORCHUK, DIST- KAMRUP (M), ASSAM, PIN-781035

VERSUS

LUNIA MARKETING PRIVATE LIMITED
AN EXISTING COMPANY WITHIN THE MEANING OF THE COMPANIES ACT,
2013, HAVING ITS OFFICE AT 156A MAHATMA GANDHI ROAD, 3RD FLOOR,
KOLKATA- 700007 AND ALSO AT BLOCK-II, BAJRANGBALI REAL ESTATE,
PAMOHI, RAMCHARANI, KAMRUP- 781034, GUWAHATI

Advocate for the Petitioner : S K PODDAR, MS. N PODDAR, MR. C SHARMA, DARAK
ULLAH

Advocate for the Respondent : A R PAL,

**BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND**

ORDER

24.04.2026

Heard learned counsel Mr. S.K. Poddar for the appellant. Also heard learned Senior Government Advocate Mr. S. Basu, assisted by Mr. K. Kashyap, learned counsel for the respondent.

2. This appeal is filed under Section 104 of the Code of Civil Procedure, 1908, (CPC, for short), read with Order 43 Rule 1(r) of the Code, challenging the order dated 20.09.2025, passed by the learned Court of Civil Judge (Senior Division) No.1 cum Commercial Court, Kamrup(M), Guwahati, in Misc.(J) Case No.30/2025 arising out of Commercial Suit No.07/2025, against the present appellant, granting temporary injunction against the present appellant, restraining the appellant from infringing the copyright and trademark registered in the name of the respondent.

3. The learned counsel for the appellant has drawn the attention of this court to the Notification No.54 dated 10.05.2023, which reads as follows :-

“ In terms of Section 5 of the Commercial Courts Act, 2015, Hon’ble the Chief Justice has been pleased to constitute the Commercial Appellate Division Bench for the Hon’ble Gauhati High Court, comprising of Hon’ble Mr. Justice Kalyan Rai Surana and Hon’ble Mr. Justice Manish Choudhury.

This Notification shall come into force with immediate effect.”

4. The learned counsel for the appellant has also drawn the attention of this court to the Notification No.62 dated 26.09.2024, which reads as follows:-

*“The Gauhati High Court has been pleased to notify that henceforth, all appeals from decrees of Commercial Courts and Commercial Divisions to the Commercial Appellate Division Bench u/s 13(1A) of the Commercial Courts Act, 2015, shall be registered as “**Comm. App. Div.**” under the category code **10306**. An ad valorem Court Fee corresponding to the value of the original suit shall be levied in consonance with the Court Fees Act, 1870, as amended by the Assam Amendment Act, 1972, for filing such Comm. App. Div. cases in the Gauhati High Court.*

This notification will come into force with immediate effect.”

5. Thereafter, the learned counsel for the appellant has relied on the decision of the Division Bench in *M/s Brahmaputra Distillery and Anr. Vs. Associated Alcohol and Beverages Company* in connection with FAO No.73/2025, wherein vide order dated 08.12.2025, it has been held that:-

“16. The Notification No. JDJ-111/2018-ESTT-JUDL-12 dated 13.02.2019, issued by the Judicial Department, Govt. of Assam, issued under the repealed Ordinance, would not have any effect whatsoever.

*** *** ***

17. Therefore, till the appropriate Government takes remedial measures, on the principle that a litigant cannot be left remediless, the instant appeal, having been filed under the provisions of Order XLVII, Rule 1(r) of the Civil Procedure Code, ought to be filed before the Court of the District Judge, Jorhat, as per the mandate of Section 13(1) of the Commercial Courts Act, 2015.

*** *** ***

19. It may be stated that as per the notification no.56, dated 16th August, 2024, issued by this Court, civil appeal valued at Rs.20,00,000/- (Rupees Twenty lakh only) and above can be taken up by the High Court. However, none of the provisions of the Commercial Courts Act, 2015, prescribes the upper pecuniary limit of the Court of District Judge to take-up appeals. Therefore, ouster of jurisdiction of Gauhati High Court inhere in Section 13(1) of the Commercial Courts Act, as this

Court does not have original civil jurisdiction and is not the designated appellate court for the purpose of suits and proceedings under the Commercial Courts Act, 2015.

*** *** ***

21. Therefore, in light of the discussions above, the present appeal is liable to be returned to the appellant so as to enable the appellant to present this appeal before the Court of learned District Judge, Jorhat.

24. The Registry shall send a copy of this order to (i) the Ministry of Law and Justice, Govt. of India for information; and to the Legal Remembrancer-cum-Commissioner and Secretary to the Govt. of Assam, Judicial Department to examine the order and to do the needful at the earliest."

6. On the other hand, the learned Senior Counsel for the respondent has drawn the attention of this Court to the Notification No.JDJ-111/229/2018-ESTT-JUDI-2-A, dated 13.02.2019.

7. I have considered the submissions at the Bar.

8. The notification dated 13.02.2019 issued by the Judicial Department, Govt. of Assam was held not to have any effect whatsoever as the notification was issued under the ordinance repealed, in the case of *M/s Brahmaputra Distillery (supra)*.

9. The learned counsel for the respondent has submitted that in the same judgment, it has been observed that

“Till the appropriate Government take remedial measures, on the principle that a litigant cannot be left remedy less, the instant appeal, having filed under the provisions of Order XLVII, Rule 19(r) of the CPC ought to be filed before the Court of District Judge, Jorhat, as per

mandate of Section 13(1) of the Commercial Courts Act, 2015."

10. It is further submitted that the present appellant is not left with any relief and till the Government takes remedial measures, this appeal can be returned to the Court of the District Judge, Kamrup(M).

11. The learned counsel for the respondent has also relied on a decision of this Court in *Lokesh Anand Singhal and Anr. Vs. Pride Realty and Ors.* in connection with Arb.A./5/2026, wherein, it has been held that :-

"13. The Government of Assam, by its notification dated 13th of February 2019, has designated all the courts of Civil Judges, Senior Division as Commercial Courts.

*** *** ***

15. Section 13(1) of the Commercial Court Act provides that "any person aggrieved by the judgment or order of a Commercial Court below the level of a District Judge may appeal to the Commercial Appellate Court within the period of sixty days from the date of judgment or order".

*** *** ***

16. Since, by the aforementioned notification dated 13.02.2019, all the District Judges of the State of Assam has been designated as Appellate Courts at district level under Commercial Courts Act, 2015, the appeal from a Commercial Court i.e., the Court of learned Civil Judge(Senior Division), Kamrup(M) No. 1, would lie before the Court of District Judge, Kamrup(M), as same is the Commercial Appellate Court.

*** *** ***

20. Thus, it appears from the observation made by the Apex Court in Paragraph No. 24 of the aforesaid judgment that since the Commercial Courts Act, 2015 has been enacted later in point of time than the Act of the Arbitration and Conciliation Act, 1996, it is the latter Act which shall prevail.

*** *** ***

21. Accordingly, in view of the provisions contained in Section 3(3), 3A and 13(1) of the Commercial Courts Act, 2015, read with Section 37(1) of the Arbitration and Conciliation Act, 1996, an appeal from order, granting or refusing to grant any measure under Section 9 of the Arbitration and Conciliation Act, 1996, of a commercial court below the level of District Judge would lie under Section 13(1) of the Commercial Courts Act in the Commercial Appellate Court, which is in the instant case, is the Court of District Judge, Kamrup(M)."

12. It is true that the Commercial Court's Act is a latter Act. Thereby, I find substance in the submission of the learned counsel for the respondent.

13. Considering the entire aspect of the matter, let this appeal along with a certified copy of the impugned order and vakalatnama, be returned to the appellant after keeping a photocopy, thereof, for the record.

14. This appeal as it was presented on 03.12.2025, the intervening court holidays are considered in the remaining part of the month of December 2025 and January 2026 and it is provided that in the event, the appeal is presented before the Court of the District Judge at Kamrup(M), Guwahati from the date of this order, the time spent in this Court from 03-12-2025 till presentation of appeal within the outer limit of 3(three) weeks from the date of this order, shall be treated as time bonafide spent before this Court pursuing this appeal as per Section 14 of the Limitation Act, 1963.

15. This appeal will thus lie, in the Court of the District Judge as the impugned order was passed by the Court below the level of the District Judge and would lie under Section 13(1) of the Commercial Court's Act in the Commercial Appellate Court, which is the Court of the District Judge, Kamrup(M).

16. In terms of the above observation, this appeal stands disposed of.

JUDGE

Comparing Assistant