

IP Case Law Development

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This Paper identifies and analyses the decisions of the Supreme Court of India (*hereinafter*, the Supreme Court) relating to intellectual property (IP) reported¹ in the year 2024. The paper seeks to answer the following questions: (i) how the Supreme Court interpreted-constructed the text of the IP statutes through her law declaring power under Article 141 of the Constitution of India; (ii) what has been the approach of the Supreme Court in deciding these cases in the year 2024; and (iii) whether or not the Supreme Court has contributed to the development of IP jurisprudence in the year 2024 through these decisions.

Keywords: Supreme Court of India, The Constitution of India, IP Statutes, IP Case Law, Principles of IP Law, Law Declared, Interpretation-Construction, IP Jurisprudence, Reportable Decisions, Bench, 2024, JUDIS, SCR, SCC OnLine, Approach, Stare Decisis

The Paper is in continuation to the paper '*IP Case Law Development*'² published in the the *Journal of Intellectual Property Rights* (*hereinafter*, *JIPR*) which covered all the decisions of the Supreme Court of India (*hereinafter*, the Supreme Court) delivered in the year 2023. The Supreme Court by virtue of Article 141³ of the Constitution of India (*hereinafter*, the Constitution) not only decides a lis by answering the questions before her but also iron out the creases of law through interpretation-construction⁴ by reading, reading down, or reading up the text of the statutes. The Supreme Court also makes and unmakes law⁵ and helps law secrete through the interstices of statutory text. Statutory text is both abstract and opaque by nature.

According to the constitutional scheme only judiciary has the power and competence to make abstract text concrete and opaque text transparent in the light of the facts of a particular case. Courts do so by deciding three types of questions: (a) questions of facts, (b) questions of law, and (c) mixed questions of facts and law. It is clarified that the Supreme Court does not decide questions of facts in cases relating to IP because it does not have original⁶ jurisdiction in IP disputes. Cases relating to IP reach to the Supreme Court generally when special leave to appeal is granted by the Supreme Court under article 136⁷ of

the Constitution. On rare occasions, IP cases reach the Supreme Court under article 134A⁸ read with either article 132,⁹ article 133,¹⁰ or article 134¹¹ of the Constitution. In other words, IP cases land up in the Supreme Court under her appellate jurisdiction. It does not follow from here that the writ jurisdiction or the jurisdiction to do complete justice¹² vested in the Supreme Court cannot be invoked in IP cases. Generally and theoretically, only two types of questions relating IP may land up in the Supreme Court on the appellate side: cases involving substantial questions of law and cases involving mixed question of facts and law. Particularly and practically only mixed questions of facts and law land up in the Supreme Court on the appellate side. Reason is that all IP infringements are mixed questions of facts and law.¹³ In other words, questions of any infringement under any IP statute or common law are not pure questions of law. The following seeks to find out and explain: (i) what mixed questions of facts and law have been answered by the Supreme Court in the year 2024, (ii) how the Supreme Court interpreted-constructed the text of the IP statutes through her law declaring power under article 141 of the Constitution of India; (iii) what has been the approach of the Supreme Court in deciding these cases in the year 2024; and (iv) whether or not the Supreme Court has contributed to the development of IP jurisprudence in the year 2024 through these decisions.

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There are seven IP statutes in force in India.¹⁴ In the year 2024, only four (04) reportable decisions of the Supreme Court are available. These decisions relate to two IP statutes, namely: The Copyright Act, 1957; and The Trade Marks Act, 1999. No decision of the Court is available on the Patents Act, 1970; The Geographical Indications of Goods (Registration and Protection) Act, 1999; The Designs Act, 2000; The Semiconductor Integrated Circuits Layout-Design Act, 2000; and The Protection of Plant Varieties and Farmers' Rights Act, 2001.

Of these four decisions, one decision by a Division Bench is on the Copyright Act.¹⁵ Remaining three decisions are on the Trade Marks Act,¹⁶ out of which two decisions are of Full Bench and one decision is of Division Bench. In the year 2024, only seven judges of the Supreme Court sat on benches constituted to decide IP cases. Of these seven judges, four judges were part of two Division Benches. These four judges were Justice Vikram Nath, Justice Sanjay Kumar, Justice B R Gavai, and Justice Prashant Kumar Mishra. These four judges were part of only one Division Bench. In other words, none of these four judges were part of any other Division Bench in the year 2024 constituted to decide IP dispute. Further, no women judge was part of either of the two Division

Benches. Chief Justice of India was not on any of the two Division Benches. Justice Sanjay Kumar and Justice B R Gavai authored unanimous judgment of their respective Bench.

In two Full Bench decisions, Chief Justice Dr D Y Chandrachud and Justice J B Padriwala and Manoj Mishra were common on both the benches. Chief Justice Dr D Y Chandrachud authored unanimous judgment of one Full Bench and Justice J B Padriwala authored unanimous judgment of another Full Bench (Table 1). There was no women judge on any of the Full Bench. Chief Justice of India was part of both the Full Benches. In other words, in the two Full Bench decisions there was neither a separate but concurring opinion nor was there any dissenting opinion. Absence of separate but concurring as well as dissenting opinion in the year 2024 in IP decisions shows that Indian IP jurisprudence has come out of fermentation and is now fairly settled as will be evident from the unanimous approach of the Supreme Court and also from the following analysis.

*State of Jharkhand v Sandeep Kumar*¹⁷ is a Division Bench decision of the Supreme Court. Justice Sanjay Kumar penned down the unanimous judgment of the Court. It is a decision relating to anticipatory bail of the Investigating Officer (IO) who had changed the

Table 1 — Reportable IP Decisions (2024)

S. No.	Name of Judgment	Date of Judgment	Type of Bench	Judges*	Concurring Opinion	Dissenting Opinion	Whether the Court Declared Principle of Law?	Whether Interpreted-Constructed	Unanimous Judgment/Order?
The Copyright Act, 1957									
1	<i>State of Jharkhand v Sandeep Kumar</i> , 2024 SCC OnLine SC 240	6 March 2024	Division	Vikram Nath, and <i>Sanjay Kumar, JJ.</i>	No	No	No	No	Yes
The Trade Marks Act, 1999									
2	<i>Jaipur Vidyut Vitran Nigam Ltd v MP Power (Madhya Pradesh) Ltd</i> , (2024) 8 SCC 513	8 January 2024	Division	<i>B R Gavai</i> and Prashant Kumar Mishra, <i>JJ.</i>	No	No	No	No	Yes
3	<i>Arif Azim Company Limited v Aptechn Limited</i> , (2024) 5 SCC 313	1 March 2024	Full	D Y Chandrachud, <i>CJI</i> ; and <i>J B Padriwala</i> , and Manoj Misra, <i>JJ.</i>	No	No	No	No	Yes
4	<i>Airports Economic Regulatory Authority of India v Delhi International Airport Ltd</i> , 2024 SCC OnLine 2923	18 October 2024	Full	<i>D Y Chandrachud, CJI</i> ; and J B Padriwala, and Manoj Misra, <i>JJ.</i>	No	No	No	No	Yes

*Name of the judge in bold and italics refers to the judge who delivered the judgment on behalf of the Court,

father's name of the accused. It is not a decision relating to copyright. However, the complaint case was registered by the IO under the provisions of the Indian Penal Code, 1860¹⁸ and the Copyright Act.¹⁹ Because the decision makes a reference to the Copyright Act it is quite in order to include this decision in this paper to show that the reference to the Copyright Act does not make this decision a copyright decision. As the case involved the question of grant of anticipatory bail of IO, and not of the alleged infringement of copyright, the Supreme Court did not and perhaps could not have discussed copyright law in this decision. Therefore, in the year 2024 the Supreme Court did not decide any case relating to copyright and therefore did not have the opportunity to make any contribution to the development of copyright jurisprudence in the year 2024.

Jaipur Vidyut Vitran Nigam Ltd v MP Power (Madhya Pradesh) Ltd,²⁰ is a Division Bench decision of the Supreme Court. Justice B R Gavai penned down the unanimous decision on behalf of the Court. The Court did not go into the question of trade mark law, but reiterated the principles laid down in its previous decisions in *Whirlpool Corporation v Registrar of Trade Marks, Mumbai*²¹ and *Jaipur Vidyut Vitran Nigam Ltd v M P Power (Madhya Pradesh) Ltd*.²² These principles relate to maintainability of petition under Article 226 of the Constitution of India. The Court relied on the dictum in *Whirlpool Corporation v Registrar, Trade Marks*:²¹

‘Under Article 226 of the Constitution, the High Court has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged...’²³

‘In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or

proceedings are wholly without jurisdiction or the vires of an Act is challenged.’²³

In *Arif Azim Company Limited v Aptech Limited*,²⁴ Justice J B Padriwala delivered the unanimous judgment on behalf of the Full Bench of the Court. This case primarily deals with the Arbitration and Conciliation Act, 1996²⁵ (*hereinafter*, the Arbitration Act). In this case, the Petitioner was granted a non-exclusive license to establish and operate business under the trade names of the Respondent.²⁶ The Court did not go into the question of trade marks law as no such question was involved in this case. Also, the Court did not discuss the interface of the Arbitration and Conciliation Act and the Trade Marks Act. The case pertains to Section 11 of the Arbitration Act and the Court requested the Parliament to prescribe specific period of limitation within which a party may move the Court for making an application for appointment of arbitrators.²⁷

*Airports Economic Regulatory Authority of India v Delhi International Airport Ltd*²⁸ is a Full Bench unanimous decision of the Court. Chief Justice Dr D Y Chandrachud delivered the judgment on behalf of the Court. On the issue of appearance of the Registrar of Trade Marks (being a Court of First Instance) before the Second Appellate Court, the Court referred to the earlier decision of the Bombay High Court in *Md Omer v S Nooruddin*.²⁹ In *Md Omer* case, an appeal was preferred against an order of the Trade Marks Registrar before the High Court of Bombay. The Solicitor General of India put an appearance for the Registrar. The Solicitor General submitted that ‘[H]e appeared to help the Court by pointing out certain errors in the judgment of the lower Court.’ The Division Bench of the Bombay High Court held that though there are certain cases in which the Registrar should appear, this was not one such case. The Court in *Arif Azim*, reiterated Chief Justice Chagla’s observation on behalf of the Division Bench:

‘[T]he Solicitor General made a startling proposition by which the Judge of the Court of first instance appears before the Court of second appeal to argue that his judgment was correct and the judgment of the Court of the first appeal was wrong. The Bench observed that: (a) *there may be cases in which the Registrar could be a contesting respondent*; and (b) *the Registrar acting as a Court of first instance cannot appear before the second appellate Court “merely” to point the errors in the judgment of the Court of first appeal.*’³⁰

Conclusion

In the year 2024, the Supreme Court did not get any opportunity to decide any case relating to infringement of any of the IPs. The Court adhered to the well-established principle of *stare decisis*. It is clear from the above analysis that the appeals from the High Courts are not going to the Supreme Court. It could be for two reasons: firstly, the High Courts are not leaving the question of law or question of fact or mixed question of law or fact unanswered; and secondly, the decisions of the High Courts are sound. The approach of the Supreme Court has been consistent and certain, and the adherence to the precedent has been the norm in 2024. It may be safely concluded that IP jurisprudence as evolved by the Supreme Court did not grow in 2024 and remained what it was in 2023.

References

- 1 Reportable decisions of the Supreme Court of India have been taken from JUDIS, SCR, and SCC OnLine.
- 2 Raza A & Alam G, IP case law development, *Journal of Intellectual Property Rights*, 29 (4) (2024) 347.
- 3 Article 141 of the Constitution of India reads as: '*Law declared by Supreme Court to be binding on all courts.*— The law declared by the Supreme Court shall be binding on all courts within the territory of India.'
- 4 The expression 'interpretation-construction' has been used in the same sense as explicated by Lawrence B Solum. See: Solum L B, The interpretation-construction distinction, *Constitutional Commentary*, 27 (2010) 95.
- 5 The Court unmakes law when it declares the statute or the provisions of the statute as unconstitutional. The constitutionality of none of the IP statutes has been challenged before the Supreme Court in the last seventy-four years.
- 6 Article 131 of the Constitution of India reads as: '*Original jurisdiction of the Supreme Court.*— Subject to the provisions of this Constitution, the Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute—
(a) between the Government of India and one or more States; or
(b) between the Government of India and any State or States on one side and one or more other States on the other; or
(c) between two or more States,
if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends:
Provided that the said jurisdiction shall not extend to a dispute arising out of any treaty, agreement, covenant, engagement, *sanad* or other similar instrument which, having been entered into or executed before the commencement of this Constitution, continues in operation after such commencement, or which provides that the said jurisdiction shall not extend to such a dispute.
- 7 Article 136 of the Constitution of India reads as: '*Special leave to appeal by the Supreme Court.*—
(1) Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.
(2) Nothing in clause (1) shall apply to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces.'
- 8 Article 134-A of the Constitution of India reads as: '*Certificate for appeal to the Supreme Court.*— Every High Court, passing or making a judgment, decree, final order, or sentence, referred to in clause (1) of article 132 or clause (1) of article 133, or clause (1) of article 134,—
(a) may, if it deems fit so to do, on its own motion; and shall, if an oral application is made, by or on behalf of the party aggrieved, immediately after the passing or making of such judgment, decree, final order or sentence, determine, as soon as may be after such passing or making, the question whether a certificate of the nature referred to in clause (1) of article 132, or clause (1) of article 133 or, as the case may be, sub-clause (c) of clause (1) of article 134, may be given in respect of that case.'
- 9 Article 132 of the Constitution of India reads as: '*Appellate jurisdiction of the Supreme Court in appeals from High Courts in certain cases.*—
(1) An appeal shall lie to the Supreme Court from any judgment, decree or final order of a High Court in the territory of India, whether in a civil, criminal or other proceeding, 3[if the High Court certifies under article 134A] that the case involves a substantial question of law as to the interpretation of this Constitution.
(2)
(3) Where such a certificate is given, any party in the case may appeal to the Supreme Court on the ground that any such question as aforesaid has been wrongly decided.
Explanation. — For the purposes of this article, the expression "final order" includes an order deciding an issue which, if decided in favour of the appellant, would be sufficient for the final disposal of the case.'
- 10 Article 133 of the Constitution of India reads as: '*Appellate jurisdiction of the Supreme Court in appeals from High Courts in regard to civil matters.*—
(1) An appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court in the territory of India if the High Court certifies under article 134A—
(a) that the case involves a substantial question of law of general importance; and
(b) that in the opinion of the High Court the said question needs to be decided by the Supreme Court.
(2) Notwithstanding anything in article 132, any party appealing to the Supreme Court under clause (1) may urge as one of the grounds in such appeal that a substantial question of law as to the interpretation of this Constitution has been wrongly decided.
(3) Notwithstanding anything in this article, no appeal shall, unless Parliament by law otherwise provides, lie to the Supreme Court from the judgment, decree or final order of one Judge of a High Court.'

- 11 Article 134 of the Constitution of India reads as:
'Appellate jurisdiction of the Supreme Court in regard to criminal matters.— (1) An appeal shall lie to the Supreme Court from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India if the High Court—
 (a) has on appeal reversed an order of acquittal of an accused person and sentenced him to death; or
 (b) has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death; or
 (c) certifies under article 134A that the case is a fit one for appeal to the Supreme Court:
 Provided that an appeal under sub-clause (c) shall lie subject to such provisions as may be made in that behalf under clause (1) of article 145 and to such conditions as the High Court may establish or require.
- (2) Parliament may by law confer on the Supreme Court any further powers to entertain and hear appeals from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India subject to such conditions and limitations as may be specified in such law.'
- 12 Article 142 of the Constitution of India reads as:
'Enforcement of decrees and orders of the Supreme Court and orders as to discovery, etc.—
 (1) The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe.
 (2) Subject to the provisions of any law made in this behalf by Parliament, the Supreme Court shall, as respects the whole of the territory of India, have all and every power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself.'
- 13 *University of Oxford v Rameshwari Photocopy Services*, 2016 SCC OnLine Del 5128 and *Monsanto Technology LLC v Nuziveedu Seeds Ltd*, (2019) 3 SCC 381.
- 14 The seven existing IP statutes are: (1) The Copyright Act, 1957 [Act 14 of 1957]& The Copyright Rules, 1958 [SRO 270 dated 21 January 1958 published in the Gazette of India, *Extraordinary*, Part II, Section 3(i) dated 21 January 1958];
(2) The Patents Act, 1970 [Act 39 of 1970]& The Patents Rules, 2003 [SO 493(E) dated 2 May 2003 published in the Gazette of India, *Extraordinary*, Part II, Section 3(ii) dated 2 May 2003]; (3) The Trade Marks Act, 1999 [Act 47 of 1999] & The Trade Marks Rules, 2002 [GSR 114(E) dated 26 February 2002 published in the Gazette of India, *Extraordinary*, Part II, Section 3(i) dated 26 February 2002]; (4) The Geographical Indications of Goods (Registration and Protection) Act, 1999 [Act 48 of 1999] & The Geographical Indications of Goods (Registration and Protection) Rules, 2002 [GSR 176(E) dated 8 March 2002 published in the Gazette of India, *Extraordinary*, Part II, Section 3(i) dated 8 March 2002]; (5) The Designs Act, 2000 [Act 16 of 2000] & The Designs Rules, 2001 [SO 414(E) dated 11 May 2001 published in the Gazette of India, *Extraordinary*, Part II, Section 3(ii) dated 11 May 2001]; (6) The Semiconductor Integrated Circuits Layout-Design Act, 2000 [Act 37 of 2000] & The Semiconductor Integrated Circuits Layout-Design Rules, 2001 [GSR 892(E) dated 10 December 2001 published in the Gazette of India, *Extraordinary*, Part II, Section 3(ii) dated 10 December 2001]; and (7) The Protection of Plant Varieties and Farmers' Rights Act, 2001 [Act 53 of 2001] & The Protection of Plant Varieties and Farmers' Rights Rules, 2003 [GSR 738(E) dated 12 September 2003 published in the Gazette of India, *Extraordinary*, Part II, Section 3(i) dated 12 September 2003].
- 15 The Copyright Act, 1957 [Act 14 of 1957].
- 16 The Trade Marks Act, 1999 [Act 47 of 1999].
- 17 2024 SCC OnLine SC 240.
- 18 The Indian Penal Code, 1860 [Act 45 of 1860].
- 19 2024 SCC OnLine SC 240, para 3.
- 20 (2024) 8 SCC 513.
- 21 *Whirlpool Corporation v Registrar of Trade Marks, Mumbai*, (1998) 8 SCC 1.
- 22 *Jaipur VidyutVitrans Nigam Ltd v M P Power (Madhya Pradesh) Ltd*, (2024) 8 SCC 513, 561.
- 23 (2024) 8 SCC 513, 562.
- 24 (2024) 5 SCC 313.
- 25 The Arbitration and Conciliation Act, 1996 [Act 26 of 1996].
- 26 (2024) 5 SCC 313, 324.
- 27 (2024) 5 SCC 313, 357.
- 28 2024 SCC OnLine 2923.
- 29 AIR 1952 Bom 165.
- 30 2024 SCC OnLine 2923, para 19.