
(2002) 05 DEL CK 0043

In the Delhi High Court

Case No : IA No. 2631/02 in Suit No. 348/02

Haryana Milk Foods Ltd.

APPELLANT

Vs

Chambel Dairy Products

RESPONDENT

Date of Decision : 31-05-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 1, Order 7 Rule 11, 20

Citation : (2002) 98 DLT 359

Hon'ble Judges : D.K. Jain, J

Bench : Single Bench

Advocate : S.K. Bansal, for the Appellant; Rajiv Nayar and Rahul Gupta, for the Respondent

Judgement

D.K. Jain, J.—In a suit seeking to restrain the defendant from manufacturing, marketing, selling or advertising any milk and dairy product under the trade mark "Madhuratan", the defendant has filed this application under Order 7 Rule 11 CPC for rejection of the plaint on the ground that it does not disclose any cause of action and this court lacks territorial jurisdiction to deal with it.

2. The plaintiff's case in brief is that it is engaged in the business of processing, manufacturing and marketing a wide range of milk and dairy products, including ghee under the trade mark "Madhu" since the year 1970; it is proprietor of the said trade mark on account of its honest and bona fide prior adoption; it has been using "Madhu Label" in an artistic make up and distinctive and associated get up and owns the copyright on it; its trade mark has already become distinctive and associated with the plaintiff's goods on account of its continuous, extensive and exclusive user and the public at large associates the said trade mark to the goods of the plaintiff. It is stated that the defendant, who is also engaged in the manufacture and sale of milk and dairy products, has adopted and started using the trade mark "Madhuratan" in respect of its products on or about September 2001, out of greed with a view to take advantage and trade upon the reputation of the plaintiff; the impugned trade mark of the defendant is

identical with and deceptively similar to the plaintiff's said trade mark and, Therefore, it is bound to cause deception and confusion in the normal course of business activities of the plaintiff. It is averred that immediately on coming to know of the impugned adoption and user by the defendant, the plaintiff issued a Cease and Desist notice to the defendant vide their letter dated 11 September 2001; the defendant refuted the plaintiff's claim in its reply dated 26 September 2001. Since the defendant did not stop user of the said trade mark, the present suit was filed.

3. The defendant in its written statement has taken a preliminary objection to the maintainability of the suit on the ground that this court lacks territorial jurisdiction as no part of cause of action has arisen within the territorial jurisdiction of this court. It is claimed that the defendant is carrying on its business activities in Gwalior, Madhya Pradesh and has never sold and marketed goods in Delhi or New Delhi. On merits, it is denied that the trade mark "Madhuratan" is in any manner identical with or deceptively similar to the plaintiff's trade mark "Madhu" label, visually or phonetically or that it is likely to cause any deception or confusion in the mind of the purchasers.

4. In the wake of its preliminary objection that this Court lacks territorial jurisdiction, the defendant has now filed this application for rejection of the plaint.

5. The application is resisted by the plaintiff on the pleas that the defendant does work for gain in Delhi which fact is admitted by the defendant in its reply dated 26 September 2001 to the plaintiff's legal notice, claiming that its goods under the trade mark "Madhuratan" are sold throughout India by stating that brand name "Madhuratan" commands reputation and goodwill not only in whole of Madhya Pradesh but whole of India, which includes Delhi; the defendant is procuring the empty containers printed with impugned trade mark for packing its goods from Delhi and, Therefore, the cause of action does arise in Delhi, conferring jurisdiction on this court to try the suit.

6. To controvert the stand of the plaintiff the defendant has filed rejoinder affidavit, wherein, while reiterating that this court does not have jurisdiction to grant the relief prayed for in the suit, it is asserted that the defendant is permanently settled and carrying on its business activities at Gwalior, which fact is borne out from the plaint itself; there is no averment in the plaint either that the defendant has its office or place of work in Delhi or that it has ever done any business or sold its goods in Delhi and plaintiff's averment to the contrary is a blatant lie.

7. I have heard Mr. S.K. Bansal for the plaintiff and Mr. Rajiv Nayar, senior counsel for the defendant.

8. Reiterating the afore-noted stand of the defendant, Mr. Rajiv Nayar has vehemently submitted that there is neither any specific averment nor has the plaintiff placed on record any document to show that the defendant was or is selling its products in Delhi. It is also urged that in the replication filed by the

plaintiff the averment of the defendant in the written statement to the effect that none of the 72 bills filed by the plaintiff pertain to any transaction in Delhi has not been controverted. In support reliance is placed on two decisions of this court in *Lok Nath Prasad Gupta v. Bijay Kumar Gupta*, 57 (1995) DLT 502 and *Gupta Brothers Conduit Pipe Manufacturing Co. Pvt. Ltd. v. Anil Gupta and Anr.*, 2001 7 DEL 838. Mr. Bansal, learned counsel for the plaintiff, on the other hand, while asserting that this Court does have the jurisdiction, has submitted that in addition to afore-noted two factors, which give rise to cause of action in Delhi, the defendant has also applied for registration of its trade mark for use in the entire country, including Delhi, which clearly shows that the defendant is intending to sell its goods in Delhi. In support of the proposition that in such a situation, the plaintiff can claim injunction to prevent any sale of infringing goods in Delhi, reliance is placed on the decisions of this Court in *Jawahar Engineering Co. and Others Vs. Jawahar Engineering Private Ltd.*, , *ITC Limited v. Golden Tobacco Company Limited*, 1988 PTC 260, *The T.I. & S. Co Ltd v. Mahavir Steels*, 1992 (1) ALR 417 and *Royal Biscuits Pvt. Ltd. v. Sethi Bakers and Confectioners*, 1993 (1) ALR 13. Mr. Bansal contends that for the purpose of considering an application for grant of temporary injunction and forming a prima facie opinion, the court is required to look into only the allegations made in the plaint and the jurisdiction of the court does not depend upon the defense of the opposite party, and for it relies on the decisions of this court in *Ruchi Pvt. Ltd. and Ors. v. Indian Flame Enterprises and Ors.*, 2001 PTC (Del) 876, *Smithline Beecham Plc and Anr. v. Sunil Singhi and Anr*, 2001 PTC 321(Del) and a division bench decision of the Madras High Court in *Ramu Hosieries rep. by M. Murugesan v. Ramu Hosieries*, rep. by Pandela Ramu and Anr, 1999 (19) PTC 183.

9. Broadly speaking, u/s 20 of the CPC (for short the Code) a plaintiff has the option of suing at a place either: (i) where the cause of action has accrued or (ii) in the forum of the defendant, i.e., where the defendant actually resides or carries on business or personally works for gain. A "cause of action" is a bundle of facts, which taken with the law applicable, gives the plaintiff a right to relief against the defendant. It must, however, include some acts done by the defendant, since in the absence of such an act, no cause of action can possibly accrue. Similarly the expression "carries on business", relevant for the present case, is intended to relate to business in which a person may contract debts and is liable to be sued by persons having business transactions with him.

10. Order VII Rule 1 of the Code enjoins that a plaint shall contain the particulars as to the facts Constituting the cause of action and the facts showing that the Court has jurisdiction. It is, Therefore, mandatory that a plaintiff must give such particulars as will enable the Court to ascertain from the plaint whether in fact and in law a cause of action did arise as alleged or not. Similarly, if a plaintiff relies on defendant's place of business as giving jurisdiction, the facts showing this must be stated in the body of the plaint. It is imperative that the plaint must aver all the facts showing how the Court has the jurisdiction.

11. It is trite law that the question of jurisdiction has to be decided, prima facie, by looking into the averments made in the plaint and not by the defense which may be set up by the defendant. It also does not depend upon the character of the relief prayed for by the plaintiff. [See *Jawahar Engineering Company (Supra)*]. It is equally true that to determine the question of jurisdiction of the Court on the basis of bundle of acts, it is not enough to look only at a paragraph of the plaint, the entire plaint must be taken into consideration to ascertain the bundle of facts which give rise to the cause of action and to determine whether any one or more of such facts occurred within the territorial jurisdiction of the Court.

12. Bearing in mind these broad principles, I revert to the facts in hand. In para 17 of the plaint, which is the jurisdiction clause, the plaintiff states thus:

"That the defendant works for gain in Delhi as the Defendant is also selling and marketing his impugned goods under the impugned trade mark in Delhi. The defendant is selling and marketing his impugned goods in a clandestine manner. Thus this Hon"ble Court has jurisdiction to entertain and adjudicate the present suit."

Apart from the above statement there is not even a whisper in the entire plaint as to how and in what manner the defendant is carrying on the business of selling and marketing its goods within the territorial jurisdiction of this Court or what is the other act performed to constitute "cause of action" to confer jurisdiction upon this Court. The plaintiff does not allege even a single transaction of sale of his product by the defendant either by himself or through any one else on his behalf, within the territorial jurisdiction of this Court. Though it is not relevant to look at the defense put up by the defendant to determine the question of jurisdiction but as a passing reference, it is pertinent to note that in the written statement the defendant has specifically pleaded that he has never sold his product within the jurisdiction of this Court at any point of time, which fact goes unrebutted in the replication. In my view, a bald assertion in para 17 of the plaint, reproduced above, without giving further facts or particulars is not sufficient to confer this Court with the territorial jurisdiction over the suit. Merely because the defendants in their reply to the legal notice, which may at best be taken into account to ascertain the bundle of facts, had taken the stand that they command reputation and good will in the whole of India, I felt it does not ipso facto confer territorial jurisdiction on this court. As noticed above, no other fact, which is now pleaded in reply to the present application has been stated in the plaint.

13. The afore-noted decisions of this Court, relied upon by Mr. Bansal do not advance the case of the plaintiff inasmuch as in all those cases the Court had found clear averments in the plaint with regard to either the filing of the application of registration in Trade Mark Registry in Delhi or the advertisement indicating that the goods of the defendants were actually sold in Delhi. As already pointed out above. there is no such averment in the present plaint. The

plaint clearly fails to show that the defendant carries on business in Delhi.

14. In my view the averments, as they stand in the plaint, fail to confer territorial jurisdiction on this Court and, Therefore, I hold that the suit does not lie within the territorial jurisdiction of this Court. Accordingly, the application is allowed and the plaint is directed to be returned to the plaintiff for presentation to the proper Court.

15. The suit and the application seeking interim relief (IA No. 1540/2002), shall be treated as disposed of. Interim order dated 18 February 2002 stands vacated. There will be no order as to costs.