
(2009) 03 DEL CK 0059

In the Delhi High Court

Case No : IA No. 3367 of 2008 in CS (OS) 1717 of 2007

Indian Potash Ltd.

APPELLANT

Vs

Media Contents and Communication Services (India) Pvt. Ltd.
and Another

RESPONDENT

Date of Decision : 04-03-2009

Acts Referred:

Citation : (2009) 03 DEL CK 0059

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : Sudhir Kumar Makkar, for the Appellant; Chetan Sharma Jasmine Dankewala, Jatin Mongia and R.N. Karanjawala, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Narayan Dhingra, J.

IA No. 3367/2008

1. This application under Order 7 Rule 11 CPC has been made by the defendant questioning the territorial jurisdiction of this Court in entertaining the present suit.

2. The present suit has been filed by the plaintiff claiming damages from the defendants to the tune of Rs. 11 crore on the ground that the defendant telecasted a feature on its news channel making defamatory and false allegations of plaintiff's indulging into manufacturing synthetic milk. The news programme shown by the defendant showed factory and workplace and few of the workers of the plaintiff thereby giving an impression as if the plaintiff was indulging into manufacturing of synthetic milk and selling the adulterated and synthetic milk. The report was false, callous and caused damage to the reputation of the plaintiff who was supplying natural milk collected from different dairies to various institutions and milk distributing companies who were selling the same in standardized packets.

3. By way of instant application, the defendant has assailed the territorial jurisdiction of this Court on the ground that plaintiff was having its registered office at Chennai; the address of defendants given by the plaintiff was of Noida, U.P. and the news story about supply of synthetic milk was in respect of U.P. and the telecast was also carried out from Noida; hence no part of cause of action had arisen in Delhi. Defendant relied Section 20 of the CPC to press his point that this Court has no territorial jurisdiction to entertain the present suit. The defendant relied upon Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others, wherein the Supreme Court held that the jurisdiction of Calcutta High Court could not have been invoked because of an advertisement which appeared in "Times of India" at Calcutta seeking bid of the tenders and in response to the advertisements tendered were submitted from Calcutta office in respect of the revised rates. The Supreme Court observed that merely because the respondent advertised in Calcutta and submitted the offer from Calcutta and made representations from Calcutta, would not form an integral part of the cause of action.

4. Defendant also relied upon Eastern Coalfields Ltd. and Others Vs. Kalyan Banerjee, , wherein the Supreme Court observed that cause of action for the purpose of Article 226(2) of the Constitution of India for all intents and purposes must be assigned the same meaning as envisaged u/s 20(c) of the Civil Procedure Code, in order to show that a decision given in a writ petition was equally applicable to Civil suit. Learned Counsel for the defendant also relied upon Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI) and Another, , wherein the Supreme Court observed as under:

16. In Union of India and Others Vs. Adani Exports Ltd. and Another, , it was held that in order to confer jurisdiction on a High Court to entertain a writ petition it must disclose that the integral facts pleaded in support of the cause of action do constitute a cause so as to empower the Court to decide the dispute and the entire or a part of it arose within its jurisdiction.

17. Recently, in National Textile Corpn. Ltd. and Others Vs. Haribox Swalram and Others, , a Division Bench of this Court held:

12.1. As discussed earlier, the mere fact that the writ petitioner carries on business at Calcutta or that the reply to the correspondence made by it was received at Calcutta is not an integral part of the cause of action and, therefore, the Calcutta High Court had no jurisdiction to entertain the writ petition and the view to the contrary taken by the Division Bench cannot be sustained. In view of the above finding, the writ petition is liable to be dismissed.

18. The facts pleaded in the writ petition must have a nexus on the basis whereof a prayer can be granted. Those facts which have nothing to do with the prayer made therein cannot be said to give rise to a cause of action which would confer jurisdiction of the Court.

5. Per contra, counsel for the plaintiff argued that the decisions cited by the

defendant are not in respect of the defamatory claims and are not applicable in the instant case. He submitted that in case of defamation, the place where the publication of defamatory material takes place gives rise to the jurisdiction and it is liberty of the plaintiff to file the case within the jurisdiction where the publication had taken place or where defendant was residing.

6. The reliance placed by the defendant of Section 20 of CPC is misplaced and the suit of the plaintiff is covered u/s 19 of the CPC which reads as under:

19. Suits for compensation for wrongs to person or movable. Where a suit is for compensation for wrong done to the person or to movable property, if the wrong was done within the local limits of the jurisdiction of one Court and the defendant resides, or carries on business, or personally works for gain, within the local limits of the jurisdiction of another Court, the suit may be instituted at the option of the plaintiff in either of the said Courts.

Illustrations

(a) A, residing in Delhi, beats B in Calcutta. B may sue A either in Calcutta or in Delhi.

(b) A, residing in Delhi, publishes in Calcutta statements defamatory of B. B may sue A either in Calcutta or in Delhi.

7. The above Section makes it abundantly clear that any suit for compensation for wrong done to a person can be filed either within the territorial limits of the jurisdiction where the defendant resides or carrying on business or it may be instituted at the option of the plaintiff if the wrong done was within the local limits of the jurisdiction of the Court. In the event of publication of defamatory material, the wrong is done where the defamatory material is communicated and the moment the same is received by the persons, for whom it has been written. The publication of defamatory material against a person gives rise to a cause of action only when it is made known to the third party. The place of the third party and the place where it is known to a third party gains importance. The plaintiff may be living at any place. If publication of defamatory material against him is made at a place different from where the plaintiff lives or defendant lives, the Court at that place will have the jurisdiction to entertain the suit for compensation on the ground of defamation where the defamatory material is printed in books, newspaper is published, through electronic media on TV and the defamatory material directly hits the reputation demolishing the esteem and standing of the plaintiff. It is the choice of the plaintiff to file the suit either at the place where publication has been made or the place where the defendant resides. Since in case of telecasting of a feature on TV by the channel which is for Indian audience and has all India viewers, the plaintiff has a choice to file the suit at those places where the plaintiff has been hit the most. In the present case, the plaintiff was supplying milk to many organizations and institutions and marketing companies in Delhi. The business of the plaintiff was allegedly hit by broadcasting of such publication in Delhi. Therefore, the suit of the plaintiff lies in

Delhi and this Court has jurisdiction to entertain the suit. In T.N. Seshan, Chief Election Commissioner and Others Vs. Dr. M. Karunanidhi, President of Dravida Munnetra Kazhagam Party and Others, , the Andhra Pradesh High Court had similar view and observed as under:

23. Publication of defamatory matter is communicated the moment the same is received by some person other than the person for whom it has been written. Publication of defamatory matter includes communication to third party. Defamatory matter printed in books and distribute for whatever purpose constitutes publication. All the there defendants must have known that the aforesaid books and, particularly, the contents of chapters 9 and 10 may be read at least by the book sellers immediately on their receipt by them because of their curiosity. In the ordinary course of business the sending of books containing defamatory matter by post or otherwise from the place where it is published to book distributor of another place is publication of that matter at latter place, particularly/ when it is read by them and/ or others. Under these circumstances, it can be safely presumed that the importance of the aforesaid book containing chapters 9 and 10 would have aroused the curiosity of at least the book-seller to go through it immediately on its receipt and, therefore, this type of communication amounts to publication at Madras.

24. As noted above, the excerpts of chapters 9 and 10 of the aforesaid book in local newspapers is distinct publication. Much publicity was given for the sale of the book as is evident from the affidavits of the defendants. Therefore, a presumption regarding awareness of the contents of the concerned newspapers can be raised against all the defendants because out of these defendants only the concerned matter would have been passed on to the newspapers concerned and thus all of them, prima facie, appear to be responsible alike for the publication of the alleged defamatory news item in the local newspapers.

8. In view of my foregoing discussion, I find no force in this application. The application is hereby dismissed.