

(1997) 10 DEL CK 0034

In the Delhi High Court

Case No : IA. No. 7105/96 in suit No. 1255/96

Syndet and Chemical Industries Ltd.

APPELLANT

Vs

Mr. Kishan Aggarwal and Others

RESPONDENT

Date of Decision : 22-10-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151, 21
Copyright Act, 1957 — Section 62(2)

Citation : (1997) 10 DEL CK 0034

Hon'ble Judges : Kripa Shankar Gupta, J

Bench : Single Bench

Advocate : Sh. Hemant Singh, for the Appellant; Sh. T.V.S.R.Krishnamurthy, for the Respondent

Judgement

K.S. Gupta, J.—Defendants have filed this application under Order 7 Rule 10 read with Sections 21 and 151 CPC alleging that the defendants are permanently residing at Shikohabad (U.P.) and are carrying on business there. They never sold any goods in Delhi. plaintiff has got no copyright in the alleged artistic work shown on the poly bags/wrappers of their detergent powder and cakes. Section 62(2) of the Copyright Act, 1957 does not apply and this Court has no jurisdiction to try the present suit. It was prayed that the plaint be returned to the plaintiff.

2. In the reply, it is alleged that the plea taken by the defendants that the case of the plaintiff in respect of infringement of copyright is not maintainable, is an issue to be adjudicated by the Court in the suit and cannot be a ground either for return or rejection of the plaint u/s 21 or Order 7 Rule 10. CPC. It is stated that the plaintiff is carrying on business in Delhi. In Para 19 of the plaint, plaintiff has made categorical averment that this Court has jurisdiction u/s 62(2) of the Copyright Act, 1957. It is reiterated that the goods of the defendants are being sold at Delhi in clandestine manner.

3. In support of the application, contention advanced by the learned counsel for

the defendants was two fold. First, that the plaintiff has not made, out any case of infringement of copyright against the defendants. Second, that the defendants never sold their detergent powder or cakes in Delhi.

4. plaintiff has filed suit for permanent injunction and rendition of accounts etc. against the defendants. Para No.19 of the plaint which is relevant for deciding the controversy at hand reads thus:-

"This Hon"ble Court has the jurisdiction to entertain and try the present suit u/s 62(2) of the Copyright Act 1957 as the plaintiff is carrying on business at Delhi. Further the goods of the defendants are also being sold in the impugned packaging at Delhi and, Therefore, the cause of action has also arisen at Delhi."

5. Section 62 of the Copyright Act which too is relevant provides as under:-

(1) Every suit or other civil proceeding arising under this chapter in respect of the infringement of copyright in any work or the infringement of any other right conferred by this Act shall be instituted in the district court having jurisdiction.

(2) For the purpose of sub-section (1), a "district court having jurisdiction" shall notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908) or any other law for the time being in force, include a district court within the local limits of whose Jurisdiction, at the time of the institution of the suit or other proceeding, the person instituting the suit or other proceeding or, where there are more than one such persons, any of them actually and voluntarily resides or carries on business or personally works for gain."

6. It may be noticed that as per the averments made in aforesaid para 19 of the plaint jurisdiction on Delhi Courts is sought to be conferred on the grounds of the plaintiff carrying on business at Delhi and the defendants selling their detergent powder and cakes at Delhi. In the cause title of the plaint, address of the plaintiff is noted that of A-237, Okhla Phase-I, New Delhi. In paras 1 & 2 of the plaint, it is stated that the plaintiff is an existing company under the, Companies Act, 1956 having its registered office at A-237, Okhla Phase-I. New Delhi and is engaged in the business of manufacturing and selling consumer non-durables including soaps, deter-gents, cleaning preparations etc. since 1976. Merits of the two fold pleas referred to above advanced on behalf of the defendants can be gone into in the suit and not at this juncture. By virtue of the plaintiff carrying on business in Delhi, this Court has the jurisdiction to try the suit under aforesaid Section 62(2) of the Act. Application, Therefore, deserved to be dismissed.

Accordingly, application is dismissed.