

(2018) 04 DEL CK 0023

In the Delhi High Court

Case No : CS(OS) No.1185 Of 2006 & IA No.11203 Of 2016 (of the plaintiff under Order VII Rule 10 of the Code Of Civil Procedure, 1908)

The Indian Performing Right Society Ltd

APPELLANT

Vs

Aditya Pandey And Anr

RESPONDENT

Date of Decision : 05-04-2018

Acts Referred:

Copyright Act, 1957 — Section 34, 62(2)

Code of Civil Procedure, 1908 — Section 21, Order 7 Rule 10

Citation : (2018) 04 DEL CK 0023

Hon'ble Judges : RAIV SAHAI ENDLAW

Bench : Single Bench

Advocate : Mr. Dayan Krishnan, Mr. Himanshu Bagai, Mr. Abhishek Malhotra, Mr.Angad S. Dugal

Final Decision : Dismissed

Judgement

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1.The plaintiff Indian Performing Right Society Ltd. instituted this suit, as per amended plaint dated 3rd April, 2009, for permanent injunction",,,,

restraining the defendants Synergy Media Entertainment Ltd. and its Senior Manager (Finance) Aditya Pandey, both located at Bhopal and Jaipur",,,,

from broadcasting / performing or communicating to the public literary and / or musical works of the plaintiff Society or those of the foreign sister,,,,

societies of the plaintiff Society and for recovery of damages.,,,,

2.The suit came up first before this Court on 29th May, 2006 and was re-notified from time to time; finally on 12th June, 2006, summons of the suit",,,,

were ordered to be issued though no ex parte ad interim relief sought, granted. Vide order dated 12th March, 2009, amendment of the plaint to add the",,,,

plea that the defendants, since the institution of the suit had commenced the activities of broadcasting from seventeen stations, was allowed and" ,,,,

amended plaint aforesaid taken on record.,,,,

3.Vide judgment dated 28th July, 2011, the applications of the plaintiff for temporary injunction were disposed of by holding that the defendants do not" ,,,,

have to secure a licence from the plaintiff.,,,,

4.Vide order dated 9th January, 2012, M/s. D.B. Corporation Ltd. which was stated to have taken over the business including the assets and liabilities" ,,,,

of Synergy Media Entertainment Ltd. pursuant to sanction of a scheme of arrangement by the High Court of Madhya Pradesh at Jabalpur, was" ,,,,

substituted in place of Synergy Media Entertainment Ltd.,,,,

5.TheÂ plaintiffÂ preferredÂ FAO(OS)Â No.423-24/2011Â against the judgment dated 28th July, 2011 supra and which appeal was dismissed" ,,,,

vide judgment dated 8th May, 2012." ,,,,

6.The matter was carried to the Supreme Court by Civil Appeals No.9412-9413/2014 titled International Confederation of Societies of Authors and ,,,,

Composers Vs. Aditya Pandey & Ors. which has vide judgment dated 20th September, 2016 dismissed the same. Justice Gogoi in his concurring" ,,,,

opinion has however taken notice of no progress having been made in this suit inspite of ten years having elapsed and of the order dated 24th August," ,,,,

2016 in the suit, of the plaintiff having not filed affidavits by way of examination-in-chief also and of closure of evidence of the plaintiff." ,,,,

7.The plaintiff has filed IA No.11203/2016, which came up before this Court on 29th September, 2016, when the following order was passed:-" ,,,,

â??IA No.11203/2016 (of the plaintiff under Order VII Rule 10 of the CPC).,,,

1.The plaintiff seeks return of the plaint for institution in the Court of appropriate jurisdiction.,,,,

2.The counsel for the plaintiff has argued that as per the judgment of the Supreme Court in Indian Performing Rights Society Ltd. Vs. Sanjay Dalia ,,,,

(2015) 10 SCC 161 the plaintiff has realised that this Court does not have territorial jurisdiction and hence this application.,,,,

3.The counsel for the defendants opposes the application.,,,,

4.I find that in the issues framed in this suit on 28th July, 2009, issue no.1 pertains to the territorial jurisdiction of this Court." ,,,,

5.I have enquired from the counsel for the defendants that the defendants having objected to the territorial jurisdiction of this Court and having got,,,,
 issue framed thereon, cannot oppose the application inasmuch as even if this suit were to be decided on merits, in the event of the plaintiff losing on" ,,,,
 the issue of territorial jurisdiction the consequence would be of dismissal of the suit and the plaintiff would have liberty to institute the suit in the Court,,,,
 of appropriate territorial jurisdiction.,,,,,

6.The counsel for the defendants then contends that the suit claim even otherwise is not maintainable.,,,,

7.I have however enquired from the counsel for the defendants whether the defendants are willing to give up the issue as to the territorial jurisdiction.,,,,

8.The counsel for the defendants states that he will give up the issue on territorial jurisdiction and since the plaintiff has failed to lead any evidence and,,,,
 the evidence of the plaintiff has been closed, the suit be dismissed as the plaintiff has failed to prove the issues." ,,,,

9.The counsel for the plaintiff contends that as per Sanjay Dalia supra this Court does not have territorial jurisdiction and notwithstanding the,,,,
 defendants giving up the issue as to territorial jurisdiction this Court cannot dismiss the suit on merits.,,,,

10.As per my understanding, unless there is an inherent lack of territorial jurisdiction in this Court, in the absence of any objection as to the territorial" ,,,,
 jurisdiction, this Court would not lack power to dismiss the suit on merits. Reference in this regard can be made to Section 21Â of the Code of Civil" ,,,,
 Procedure, 1908 (CPC). It cannot also be lost sight of that the plaintiff has pursued this suit in this Court for the last over ten years notwithstanding the" ,,,,
 said objection of the defendants.,,,,

11.The counsel for the plaintiff then states that he is not prepared to argue on the said aspect.,,,,

12.List on 30th September, 2016." ,,,,

13.No further adjournment shall be granted.â?? ,,,,

8.The counsels were heard on 30th September, 2016 and order reserved." ,,,,

9.The plaintiff has invoked the territorial jurisdiction of this Court by pleading as under:- ,,,,
 â??JURISDICTION: ,,,,

27.This Honâ??ble Court has territorial jurisdiction to entertain and try the present suit under Section 62(2) of the Copyright Act, 1957 as the Plaintiff",,,,

carries on business within the jurisdiction of this Honâ??ble Court through its branch office situated at B-317, Som Dutt Chamber-I, Bhikaji Cama",,,,

Place, New Delhi.â??",,,,

10.The defendants in their written statement, in response to the aforesaid paragraph have pleaded as under:-",,,,

â??31.With reference to the contents of paragraph 27 of the plaint, it is stated that in light of the decision of the Honâ??ble Supreme Court of India",,,,

in Dodha House Vs. S.K. Maingi 2006 (32) PTC 1, the Plaintiff has to demonstrate that is carried on business within the territorial jurisdiction of this",,,,

Honâ??ble Court. It is not enough to state that the Plaintiff has a branch office in Delhi. It is accordingly denied that this Honâ??ble Court has the",,,,

territorial jurisdiction to entertain the present matter.â??",,,,

11.The plaintiff, in replication thereto pleaded as under:-",,,,

â??29.The contents of paragraph 31 of the written statement are denied and the contents of paragraph 27 of the plaint are reiterated. It is stated that",,,,

this Honâ??ble court has the territorial jurisdiction to entertain and try the present suit as the Plaintiff carries on business within the territorial limits of",,,,

this Honâ??ble Court as it maintains a fully functioning branch office within Delhi.â??",,,,

S. No,"Place of

Plaintiffâ??s

Principal Office

(Sole office in

S.No.1)","Place of Plaintiffâ??s

Subordinate/Branch

Office","Place where cause

of action arose","Place where

Plaintiff can

additionally sue

under Section 134(2)

and Section 62(2)

1.,A,---,C,A

2.,A,B,A,A

3.,A,B,B,B

4.,A,B,C,A

Rs.2,00,000/- from the plaintiff." ,,,,

Decree sheet be drawn up.,,,,