

(2019) 01 DEL CK 0430

In the Delhi High Court

Case No : Civil Suits (COMM) no. 51 Of 2016

Travellers Exchange Corporation Limited & Ors

APPELLANT

Vs

Celebrities Management Private Limited

RESPONDENT

Date of Decision : 31-01-2019

Acts Referred:

Copyright Act, 1957 — Section 62
Trademarks Act, 1999 — Section 134
Code of Civil Procedure, 1908 — Section 20

Citation : (2019) 01 DEL CK 0430

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : J. Sai Deepak, Sangeeta Goel, Mohit Goel, Abhishek Kotnala, Ashutosh Nagar, Sudhir Chandra, Abhishek Puri, Surbhi Gupta, Yasharth Misra

Judgement

IA No.5793/2016 (of defendant u/O VII R-10 CPC)

1. The legal question for adjudication is, whether what has been held in Indian Performing Rights Society Vs. Sanjay Dalia (2015) 10 SCC 161 is only qua Sections 62 of the Copyright Act, 1957 and 134 of the Trademarks Act, 1999 or also interprets Section 20 of the Code of Civil Procedure, 1908 (CPC) and applies to determination of territorial jurisdiction under Section 20 of the CPC in relation to suits under the said Acts.

2. I have in order dated 27th November, 2017 in CS(OS) No.971/2011 titled Anandji Virji Shah Vs. Eros International Media Ltd. held that Sections 62 and 134 supra are in addition to Section 20 of the CPC and even if the Court would not have territorial jurisdiction under Section 134 but has jurisdiction under Section 20 of the CPC, the Court would retain territorial jurisdiction to entertain the suit. The same view, according to the counsel for the plaintiffs, has also been taken in Burger King Corporation Vs. Techchand Shewakramani 2018 SCC OnLine Del 10881.

3. The contention of the senior counsel for the applicant/defendant however is

that Anandji Virji Shah and Burger King Corporation supra are contrary to Sanjay Dalia supra, particularly to paras 6&7 thereof containing submissions of the parties therein and paras 14, 15, 18, 19, 21, 22, 25, 26 & 52 thereof returning findings thereon. The said paragraphs have been read by both the counsels, with the senior counsel for the applicant/defendant contending that on the basis of what was for adjudication therein and held therein, this Court does not have territorial jurisdiction and the counsel for the plaintiff contending that the jurisdiction of this Court is invoked under Section 20 of the CPC, as stated on and recorded in the order dated 15th November, 2018.

4. The senior counsel for the applicant/defendant otherwise does not controvert, that if Section 20 of the CPC were to apply and it were to be held that what was for interpretation in Sanjay Dalia supra does not apply to Section 20 of the CPC, this Court would have territorial jurisdiction.

5. Before proceeding to meet the controversy, I may record that it is also the contention of the senior counsel for the applicant/defendant that the view taken in Anandji Virji Shah and Burger King Corporation supra by benches of Single Judges of this Court, is contrary to the view taken in Louis Vuitton Malletier Vs. Kapil Pahuja MANU/DE/0318/2018 by another learned Single Judge of this Court. However, a reading of the said judgment shows that the territorial jurisdiction of this Court therein was invoked only under Section 134 of the Trademarks Act and not under Section 20 of the CPC, which does not even find mention in the judgment, save in the quoted paragraph of Sanjay Dalia supra. It thus cannot be said that there are conflicting views of Co-ordinate Benches of this Court.

6. I may add that I have in Millenium & Copthorne International Ltd. vs. Aryans Plaza Services Pvt. Ltd MANU/DE/1854/2018 and in EIH Ltd. vs Sahana Realty 2018 (75) PTC 154 also held that a suit for infringement can be instituted in the Court within whose territorial jurisdiction cause of action arises, under Section 20 of the CPC.

7. Before proceeding further, the factual position may be summarised. This suit for permanent injunction restraining infringement and passing off and for ancillary reliefs has been filed by three plaintiffs, of which plaintiffs No.1&2 namely Travellers Exchange Corporation Limited and Travelex Holdings Limited are foreign companies having no office in India, save for having a constituted attorney who also is a resident of Faridabad and the plaintiff No.3 namely Travelex India Private Limited is an Indian Company which has its registered office at Mumbai. The defendant also has its registered office at Mumbai. The territorial jurisdiction of this Court is invoked pleading that the defendant, using the impugned mark, is carrying on business within the territorial jurisdiction of this Court and thus cause of action for the suit has accrued at Delhi.

8. The contention of the senior counsel for the applicant/defendant is that since the registered office of the applicant/defendant is at Mumbai and the cause of action if any of the plaintiffs, besides at New Delhi as claimed, has also accrued

at Mumbai, in terms of Sanjay Dalia supra, the suit could have been filed at Mumbai alone and not in this Court.

9. The senior counsel for the applicant/defendant has with respect to the paragraphs aforesaid of Sanjay Dalia supra emphasised (i) that the Explanation to Section 20 of the CPC has been read by the Supreme Court in Sections 62 and 134 supra; (ii) that what has been held by this Court in Anandji Virji Shah and Burger King Corporation supra is what was also canvassed before the Supreme Court on behalf of the plaintiffs but which did not find favour; (iii) that it has been unequivocally held in para 19 that if cause of action has also arisen to a corporation at the place where the registered office or principal place of business of the corporation is, and then the corporation has to institute a suit at the said place and not at any other place and in accordance with the said dicta, this suit could have been filed against the applicant/defendant at Mumbai only; (iv) that what has been laid down by the Supreme Court is that there should be no harassment of the defendant; (v) that since the plaintiff No.3 also has its registered office at Mumbai, the plaintiffs could have filed the suit against the applicant/defendant at Mumbai but have sued the applicant/defendant at Delhi, to harass the applicant/defendant; (vi) that in para 21, it has been held that the right of the plaintiff under Section 20 of the CPC to sue the defendant where the cause of action has accrued is subject to the rider "in case the plaintiff resides or has its principal place of business/carries on business or personally works for gain at a place where the cause of action has also arisen, suit should be filed at that place not at other places where the plaintiff is having branch offices, etc."; (vii) that what the Supreme Court has held is, that Sections 62 & 134 supra and Section 20 of the CPC read conjunctively, do not authorise a plaintiff to institute a suit at a different place than the place where the plaintiff is ordinarily residing or has its principal office and where the cause of action has also accrued; and,

(viii) that in para 26, it has been reiterated that "the right to remedy given is not unbridled and is subject to the prevention of abuse of the aforesaid provisions....".

10. Per contra, the counsel for the plaintiffs with reference to the aforesaid paragraphs has highlighted (a) that the question before the Supreme Court was, whether the Explanation to Section 20 of the CPC is to be read into Sections 62 and 134 supra and not the other way round; (b) that what was for consideration and interpretation before the Supreme Court was only the provisions of the Trademarks Act and the Copyright Act and not Section 20 of the CPC; (c) that in para 14, it has been unequivocally held that Sections 62 and 134 supra provide an additional fora and/or an additional remedy, indicating that what was already in existence i.e. Section 20 of the CPC was not for interpretation; (d) that the same is also reflected in para 18 from the sentence "The very intendment of the insertion of the provision in the Copyright Act and the Trademarks Act is the convenience of the plaintiff" (e) that in para 21, it has been held that Sections 62 and 134 supra removed the impediment imposed under Section 20 of the CPC;

(f) that it has been reiterated in para 22 that Sections 62 and 134 supra create an additional forum; (g) that thus what has been held is applicable only qua Section 62 of the Copyright Act and Section 134 of the Trademarks Act and not to Section 20 of the CPC, jurisdiction of this Court whereunder is not controverted; and, (h) that the Division Bench of this Court in *Ultra Home Construction Pvt. Ltd. Vs. Purushottam Kumar Chaubey* (2016) 227 DLT 320 has also interpreted *Sanjay Dalia supra* as creating an additional forum and conferring territorial jurisdiction in addition to that under Section 20 of the CPC.

11. The senior counsel for the applicant/defendant in rejoinder has argued that it is not open to the High Court to interpret a judgment of the Supreme Court. However, on enquiry, whether the same would not halt the entire adjudicatory process before the Courts other than the Supreme Court, the senior counsel for the applicant/defendant states that he is not contending so widely but his contention is that it is not open to the High Court "to distinguish judgment of the Supreme Court on the ground that it is not clear".

12. I have bestowed thought to the contentions.

13. There is nothing in Sections 134 and 62 supra to indicate that the same are in supersession of or derogation of Section 20 of the CPC. On the contrary, both are "...notwithstanding anything contained in the Code of Civil Procedure, 1908". A non obstante clause is used to preclude any interpretation contrary to the stated object or purpose. The stated object of Sections 134 and 62 supra is to enable a plaintiff suing for infringement of trade mark or copyright to sue where the plaintiff actually and voluntarily resides or carries on business or personally works for gain, in variance with the scheme of Section 20 requiring the suit to be instituted where the defendant resides or carries on business or personally works for gain. Supreme Court, in *Geeta Vs. State of U.P.* (2010) 13 SCC 678 reiterated that a non-obstante clause gives a overriding effect over anything contained in the relevant existing law which is inconsistent with the new enactment. *Varadarajulu Vs. State of Tamil Nadu* (1998) 4 SCC 231 and *Madhav Rao Scindia Vs. Union of India* (1971) 1 SCC 85 holding that when the non obstante clause does not refer to any particular provision of the statute which it intends to override but refers to the provisions of the statute generally, it is not permissible to hold that it excludes the whole Act and stands alone by itself, were also reiterated. The judgment, in that case, of the High Court interpreting the non obstante clause as totally obliterating the Act in entirety, was set aside. Thus, Sections 134 and 62 cannot be read as obliterating Section 20 of the CPC or overriding Section 20 of the CPC in terms whereof this Court admittedly has territorial jurisdiction.

14. The matter is put beyond any doubt by the dicta of Division Bench of this Court in *Intas Pharmaceuticals Limited Vs. Allergan Inc.* AIR 2007 Del 108 unequivocally holding that Section 134 supra is in addition to provisions of CPC. The said dicta was noticed in *Sanjay Dalia supra* and it was held that the question posed in *Sanjay Dalia* was different from as was for adjudication in this

judgment. It was not held that what was held by the Division Bench of this Court was not correct. For this reason alone, the contention of senior counsel for defendant / applicant cannot be accepted.

15. I have re-read Sanjay Dalia supra including with reference to the paragraphs aforesaid which were highlighted by senior counsel for applicant /defendant and am unable to agree with the contention of the senior counsel for the applicant/defendant. A reading of the judgment does not indicate that the territorial jurisdiction of the Courts under Section 20 of the CPC in respect to suits under the Copyright Act and Trademarks Act was for consideration. What was for consideration was only the conferment of territorial jurisdiction in addition to Section 20 of the CPC, by Sections 62 and 134 supra. It is for this reason only that repeatedly the expression "additional remedy", "additional jurisdiction" and "additional forum" find mention in the judgment including in the paragraphs which are highlighted.

16. Thus, in my view, what has been held in Sanjay Dalia supra is applicable only if territorial jurisdiction is invoked by invoking Sections 62 or 134 supra and not if the territorial jurisdiction of the Court is invoked under Section 20 of the CPC, as the plaintiffs are doing in the present case and territorial jurisdiction of this Court whereunder is not in dispute.

17. Qua the last contention aforesaid of the senior counsel for applicant/defendant, it is not the contention of counsel for plaintiffs that judgment of the Supreme Court is not clear. Else, the Supreme Court itself has repeatedly held that a judgment is a precedent on what was for adjudication and what has been adjudicated and no more. What I have held above is that the question, whether the ambit of Section 20 of CPC is curtailed in relation to suits under Trade Marks Act and Copyright Act was not for adjudication in Sanjay Dalia. Otherwise, I have disagreed with the said contention.

18. No merit is thus found in the application.

19. Dismissed with costs of Rs.50,000/- to the counsel for plaintiffs.

IA No.1152/2017 (of the plaintiffs u/S 124 of the Trademarks Act, 1999)

20. After some arguments, the counsel for the plaintiffs withdraws the application with liberty to apply again, after seeking amendment of the plaint.

21. Dismissed as withdrawn with liberty aforesaid.

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22. Needless to state that it will be open to the defendant to take such pleas as may be available to it as to the application for amendment and/or to the fresh application, if any filed by the plaintiffs under Section 124 of the Trademarks Act.

23. List for framing of issues, if any and for consideration of the application for interim relief on 9th April, 2019.