

(2017) 12 DEL CK 0213

In the Delhi High Court

Case No : Civil Suit (COMM) No. 51 Of 2016, Miscellaneous Application No. 1110 Of 2016

Travellers Exchange Corporation Limited & Ors

APPELLANT

Vs

Celebrities Management Private Limited

RESPONDENT

Date of Decision : 07-12-2017

Acts Referred:

Code Of Civil Procedure, 1908 — Order 6 Rule 10, Order 7 Rule 10
Trade Marks Act, 1999 — Section 134

Citation : (2017) 12 DEL CK 0213

Hon'ble Judges : S.P.Garg, J

Bench : Single Bench

Advocate : J. Sai Deepak, Mohit Goel, Sidhant Goel, Bharadwaj Jaishankar, Ashutosh Nagar, Abhishek Puri, V.Siddharth, Yasharth Misra, Surbhi Gupta

Judgement

S.P.Garg, J

IA No.12078/2016 [u/O 11 R-1 (5) CPC]

1. The instant IA has been filed by the plaintiffs to place on record additional documents detailed in para (6) of the application. It is contested by the defendant.
2. The suit is still at an initial stage and issues have not yet been framed. It is urged by the learned counsel for the plaintiffs that these documents are material and were not in their knowledge earlier.
3. Considering the facts and circumstances of the case, the plaintiffs are permitted to place on record the additional documents, as prayed for.
4. The application stands disposed of.

IA Nos.5793/2016 (u/O VII R-10 CPC) and 8144/2016 (u/O VI R-17 CPC)

1. The plaintiffs have filed IA No.8144/2016 to seek amendment of para No.33 of the plaint. It is contested by the defendant.

2. IA No.5793/2016 has been filed on behalf of the defendant for return of the plaint as this court has no territorial jurisdiction to entertain and decide

the present suit. It is contested by the plaintiffs.

3. I have heard the learned counsel for the parties and have examined the file. On perusal of the record it reveals that the present suit has been filed

by the plaintiffs against the defendant for permanent injunction restraining infringement of trademarks, passing off, dilution of goodwill, unfair

competition, rendition of accounts of profits/damages, delivery up, etc. Vide order dated 25.01.2016, interim ex-parte stay was granted and the

defendant was restrained from using the offending mark till the next date of hearing. The said order was challenged in FAO(OS) (COMM) 25/2016; it

resulted in dismissal by an order dated 3.5.2016. In the said appeal, seemingly, the defendant did not raise the issue of lack of territorial jurisdiction. By

an order dated 9.5.2016 in IA No.4315/2016 (u/O 39 R-4 CPC), ex-parte orderÂ dated 25.01.2016 was modified and the defendant was restrained

not to use the mark â??TRAVELXPâ?? in relation to business falling in classesÂ 16, 35 and 36.

4. Learned counsel for the defendant urged that the application for seeking amendment of the plaint cannot be allowed to enable the plaintiffs to bring

their case within the territorial jurisdiction of this Court, the amendment sought is not bona fide. All these facts were within the plaintiffsâ??

knowledge. It is a belated attempt by the plaintiffs to improve upon their case before this Court.

5. Para 33 of the original plaint reads as under:

â??That this Honâ??ble Court has the necessary territorial jurisdiction to entertain and try this Suit by virtue of Section 134 of the Trade

Marks Act as the plaintiff No.3 has a physical place of business in Delhi from where it carries on business for profit and gain. Additionally

the plaintiffs have a virtual presence in Delhi through their websites and through which the

plaintiffs also carry out business of profit and gain. The Honâ??ble Court also has the necessary jurisdiction as the illegal business

activities of the Defendant under the infringing trade mark are being carried out

in Delhi. The Defendant's website on which the

Infringing Trade Name of the Defendant has been published, namely, , is easily accessible for concluding business

transactions by a person/consumer in New Delhi. The said website can be accessed by a consumer in Delhi to avail services being offered

by the Defendant under the Infringing Trade Name.

6. By this amendment, the plaintiffs seeks to amend para 33 to further elaborate as under:-

That this Hon'ble Court has the necessary territorial jurisdiction to entertain and try this Suit by virtue of Section 134 of the Trade

Marks Act as the Plaintiff No.3 has a physical place of business in Delhi from where it carries on business for profit and gain. Additionally

the plaintiffs have a virtual presence in Delhi through their websites www.travelex.co.in and www.travelex.com through which the plaintiffs

also carry out the business for profit and gain. The Hon'ble Court also has the necessary jurisdiction as the illegal business activities of

the Defendant under the infringing trade mark are being carried out in Delhi. The Defendant's website on which the Infringing Trade

Name of the defendant has been published, namely, www.travelxp.tv, is easily accessible for concluding business transactions by a

person/consumer in New Delhi. The said website can be accessed by a consumer in Delhi to avail services being offered by the Defendant

under the Infringing Trade name. The Defendants also run a website named , which specifically targets consumers

based in Delhi amongst others. A transaction can be concluded through this website with any consumer based in Delhi. Moreover, the

Defendant also runs a Television channel by the name 'travelxp hd' which can be viewed openly by a person/consumer in Delhi. The

Defendant also runs a Youtube channel named 'travelxp', with the names 'travelxp hd' and 'travelxp 4k' on its videos.

The Defendant's Youtube channel is also openly accessible by a person/consumer based in Delhi.

7. Apparently, the plaintiffs do not intend to introduce any fresh cause of action to bring their case within the territorial jurisdiction of this Court. In the

initial para 33 of the plaint, it was categorically claimed by the plaintiffs that this

Court has territorial jurisdiction for various reasons detailed therein.

By this amendment, the plaintiffs intend to incorporate certain more facts which were not purportedly in their knowledge earlier to buttress their plea

that this Court has territorial jurisdiction to entertain and decide the instant suit.

8. In *LT Foods Limited vs. Heritage Foods (India) Limited* 2014 SCC OnLine Del 2918, this Court observed

“It is well settled proposition of law that in examining the case from the stand point of Order VII Rule 10 CPC, the plaint must be taken as

it is and the averments made therein must be accepted as true. Only if, on assuming the averments made in the plaint to be true and correct,

the Court comes to the conclusion that it would not have territorial jurisdiction, could be plaint be returned for filing it in a Court having

jurisdiction. The Court, while examining this aspect of the matter cannot go beyond the facts stated in the plaint. In other words, the court

cannot examine any defence contained in the written statement filed on behalf of the defendant.”

9. This Court is of the view that the proposed amendment is necessary to ascertain and to decide the IA under order VII rule 10 CPC. In a recent

judgment titled *Subhashini Malik vs.S.K.Gandhi and Ors.* [CS(OS) No.1416/2009] of Full Bench of this Court, it was held that an application under

Order VI Rule 10 CPC moved for amendment of a plaint to bring the suit within the pecuniary jurisdiction of this Court can be considered.

10. In the instant case by the proposed amendment, the plaintiffs only intend to elaborate the grounds in para No.33 of the plaint to assert that this

court has territorial jurisdiction to entertain and decide the suit. IA No. IA No.5793/2016 filed by the defendant for return of the plaint can be

considered on merits after the plaintiffs are permitted to amend the plaint incorporating the additional facts in Para 33 of the plaint. At the time of

consideration of the amendment application, its merits and demerits cannot be gone through; it is a question which can be decided at the trial of the

suit.

11. Considering the facts and circumstances of the case, the proposed IA No.8144/2016 seeking amendment in para 33 of the plaintiffs is allowed

subject to costs of Rs. 40,000/- to be paid to the defendant by the plaintiffs.

12. IA No.5793/2016 shall be considered on merits taking into consideration the

proposed amendment and response to it.

13. In view of above, IA No.8144/2016 stands disposed of.

14. IA No.5793/2016 shall be listed before the Roster Bench.

CS(COMM) 51/2016, and I.As. No.1110/2016 (u/O 39 R 1 & 2 CPC) 1152/2017 (u/S 124 of the Trademarks Act), 5793/2016 (u/O VII

R-10 CPC)

1. Amended plaint is on record.

2. List the matter before Roster Bench on 19th December, 2017 for directions.