

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Pronounced on: 2nd March, 2022**
+ **CS(COMM) 214/2021**

SAISONS TRADE AND INDUSTRY PRIVATE LIMITED
..... Plaintiff

Through: Mr. Neeraj Grover, Mr. Abhijeet
Deshmukh, Ms. Meenakshi Ogra
and Mr. Vikram Singh, Advocates.

versus

MAITHRI AQUATECH PRIVATE LIMITED & ORS.
..... Defendants

Through: Mr. Vinay Navare, Senior
Advocate with Mr. Jay Kishor
Singh, Advocate for D-1.
Mr. Prithvi Raj Sikka, Advocate
for D-2 & D-3.

CORAM:
HON'BLE MS. JUSTICE ASHA MENON

ORDER

I.As. 13230/2021 (by the defendant No.1 under Order VII Rule 10 read with Section 151 CPC for return of plaint) & 6064/2021 (by the plaintiff under Section 20(b) r/w 151 CPC seeking leave of the court to file the suit in Delhi)

1. This order will dispose of the application filed on behalf of defendant No.1 under Order VII Rule 10 read with Section 151 of the Civil Procedure Code 1908 (for short 'CPC') for return of the plaint as well as the application of the plaintiff under Section 20(b) of the CPC seeking leave to file the suit in Delhi.

2. It is the contention of Mr. Vinay Navare, learned senior counsel for the defendant No.1, that the suit has been filed in Delhi, whereas neither the plaintiff nor the defendant No.1 was located in Delhi. According to learned senior counsel for defendant No. 1, the plaintiff had an office in Mumbai and the defendant No.1 was located in Hyderabad and therefore, under Section 20 CPC, leave of this court to file the suit here could not have even been sought.

3. Relying on the judgment of a Coordinate Bench of this Court in ***Escorts Limited v. Tejpal Singh Sisodia***, 2019 SCC OnLine Del 7607, it was submitted that online activity through a website, which was accessible from all parts of the world could not vest any and every court with jurisdiction. Moreover, there was no document placed on the record to show that the defendants No.2 and 3 had any business in Delhi or that some person had actually accessed the website in Delhi and purchased the commodity from the defendants No.2 and 3. Thus, when the defendant No.1 had not acquiesced to the jurisdiction of this court, the plaint was liable to be returned. Reliance in this regard has been placed on the order of a Coordinate Bench of this Court in ***Ajay Pal Sharma vs. Udaiveer Singh*** [Order dated 28th July, 2020 in CS(OS)139/2020].

4. In the application, however, several other grounds have also been taken. Rejection of the plaint was sought on the ground that, though the plaintiff had come to know of the alleged infringement some time in 2019, the suit was filed only on 28th April, 2021. Further, the plaintiff's suit patent was expiring on 25th February, 2022, and it had approached the court at the fag end of the expiry of its patent. Thus, there was no urgency

disclosed by the plaintiff. Further, there was no averment that the plaintiff enjoyed exclusivity to the patent as the plaintiff was only a licensee and the suit filed by it was not maintainable.

5. It was further stated that this court has no territorial jurisdiction, as not even a single transaction has been shown to have taken place within the jurisdiction of this Court. Further, the plaintiff at best could claim only rights to design and not to a scientific invention and since the process involved in the products of the defendant No.1 was different, there was no relief that could be claimed against defendant No.1. Finally, it was stated in the application that the plaintiff's pre-grant opposition was pending before the Patent Office and thus, the suit was without cause of action.

6. Learned senior counsel for the defendant No.1, however stressed the lack of jurisdiction. The learned senior counsel urged that the plaint be returned for being filed in the court with jurisdiction, namely Hyderabad, where the defendant No.1 was located.

7. In the reply filed to this application, as also urged during arguments on behalf of the plaintiff by Mr. Neeraj Grover, learned counsel for the plaintiffs, the suit had been filed for permanent and mandatory injunction against the three defendants to restrain them from violating and infringing the rights of the plaintiff in the suit patent. Therefore, the application under consideration had no substance whatsoever. In the reply, it has been stoutly denied that the suit was filed beyond limitation, or that there was no urgency, or that the plaintiff being a licensee had no right to file the present suit. It was submitted that these

averments were not relevant to the disposal of an objection under Order VII Rule 10 CPC which related to only the jurisdiction of the court.

8. The learned counsel for the plaintiff submitted that the jurisdiction of the court had been invoked under Section 20(b) CPC. The defendant No.1 was carrying on business through an interactive official website, which could be accessed from anywhere in India, including Delhi. The defendants No.2 & 3 were marketing and selling agents of defendant No.1, having their registered offices in Delhi, and thus, Delhi could be deemed to be its principal place of business. Reliance has been placed on the judgment of a Division Bench of this Court in ***World Wrestling Entertainment v. Reshma Collection***, 2014 SCC OnLine Del 2031. Therefore, the Delhi courts had jurisdiction to try the matter. It was submitted that on the averments in the plaint, there was nothing whereby it could be held that this court has no jurisdiction for the plaint to be returned. At best, if two courts had jurisdiction, then the plaintiff had sought leave to sue in Delhi, which may be granted.

9. Reliance has also been placed on the decision of the Bombay High Court in ***Suresh Kumar Vs. Maharashtra State Electricity Distribution Company Ltd.***, 2014 SCC OnLine Bom 2873, to submit that where two courts had jurisdiction, the leave of the court alone was required to proceed in one of the jurisdictions, which the plaintiff had sought, but in any case, the suit could not be dismissed as prayed for in the application. Further, it has been submitted that merits of the case cannot be considered at this juncture. Reliance has been placed on ***Exphar SA & Anr. Vs Eupharma Laboratories Ltd. & Anr.***, 2004 (3) SCC688, ***Begum Sahiba***

Sultan Vs. Mohd. Mansur Ali Khan & Ors, 2007 SCC OnLine SC 504, and *RSPL Limited Vs. Mukesh Sharma & Ors.*, 2016 SCC OnLine Del 4285.

10. The Patents Act, 1970 provides in Section 104 that no suit for a declaration under Section 105 or for any other relief under Section 106 or for infringement of patents, shall be instituted in a court inferior to that of a District Court “having jurisdiction to try the suit”. Therefore, the situs for filing of this suit would be governed by the provisions of CPC. Section 15 of the CPC provides that every suit is to be instituted in the lowest grade competent to try it. Section 16 of the CPC provides that subject to pecuniary and other limitations prescribed by law, suits in respect of the immovable property of various kinds are to be instituted in the court within whose local limits the property is situated. If immovable property was situated within jurisdiction of different courts, the suit could be instituted in any one of these courts within the local limits of whose jurisdiction any portion of the property was situated. Section 18 of the CPC deals with the place of the institution of the suits when local limits of jurisdiction of courts were uncertain. Section 19 of the CPC provides that a suit for compensation for wrong done to the person or to movable property, if done within the local limits of the jurisdiction of one court whereas the defendant resided or carried out business, etc., within the local limits of the jurisdiction of another court, the suit could be instituted at the option of the plaintiff in either of the said courts. Finally, Section 20 of the CPC provides as under: -

“20. Other suits to be instituted where defendants reside or cause of action arises.—Subject to the limitations aforesaid,

every suit shall be instituted in a Court within the local limits of whose jurisdiction—

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally works for gain, as aforesaid, acquiesce in such institution; or

(c) The cause of action, wholly or in part, arises.

[Explanation].—A corporation shall be deemed to carry on business at its sole or principal office in [India] or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place. ”

11. In the present case, the ‘memo of parties’ states that the plaintiff has its address at Andheri, Mumbai. The defendant No.1 is located at Cherlapally, Hyderabad, Telangana. The defendant No.2 is located at Mayapuri Industrial Area, Phase-II, New Delhi and the defendant No.3 has its address at Karol Bagh, New Delhi, while the defendant No.4 is located in Las Vegas, USA. It is apparent that out of the four defendants, two are located in Delhi. Merely because the defendant No.1 claims that he has not acquiesced to the institution of the suit in Delhi, does not render the court powerless under Section 20(b) of the CPC. The plaintiff has in fact filed I.A. 6064/2021 for leave of the court to institute the suit at Delhi. The plaintiff has, therefore, complied with the provisions of

Section 20(b). It would, of course, lie within the discretionary powers of the court to grant or refuse the leave.

12. That apart, Section 20(c) of the CPC provides for jurisdiction inhering in that court where the cause of action, wholly or in part, arises. The plaintiff has filed as Document No.23, printout of the IndiaMart Web-page for Water Treatment and Purification Plant and Atmospheric Water Generator, where there is a product brochure relating to brand/make W360 and at the 'contact seller', the details of the defendant No.2/Sophisticated Industrial Materials Analytic Labs Pvt. Ltd., is given. A brochure of the Defendant No.2 of the product 'MEGHDOOT-Atmospheric Water Generator with Remineralizer', is placed at Page no.443 of the Plaintiff's Documents which is the product manufactured by the Defendant No.1 (printout of the website of defendant No.1 placed as Document No.12), wherein the defendant No.2 is named as the promoter and marketer while the defendant No. 3 is named as the seller.

13. It is well-settled that while dealing with an objection of jurisdiction raised pre-trial under Order VII Rule 10 CPC, the averments in the plaint and the documents annexed thereto are alone to be considered. Thus, it has to be seen whether the plaintiff has disclosed sufficient justification for permitting the trial of the suit in this court. [See: *Exphar SA & Anr. (supra)*]

14. Though in *Exphar SA & Anr (supra)*, the issue related to Section 62 of the Copyrights Act, 1957, what is relevant for our purpose is the following observation of the Supreme Court: -

“9. Besides, when an objection to jurisdiction is raised by way of demurrer and not at the trial, the objection must proceed on the basis that the facts as pleaded by the initiator of the impugned proceedings are true. The submission in order to succeed must show that granted those facts the court does not have jurisdiction as a matter of law. In rejecting a plaint on the ground of jurisdiction, the Division Bench should have taken the allegations contained in the plaint to be correct....”

(emphasis added)

15. The judgment of the Division Bench of this Court in **RSPL Limited (supra)** was again in relation to infringement of trademark and copyright, but while dealing with the application under Order VII Rule 10 CPC, it was held that the objection of territorial jurisdiction has to be construed after taking all averments in the plaint to be correct and that while *“considering a plaint from the standpoint of Order VII Rule 10 CPC, it is only the plaint and the documents filed along with it that need to be seen”*.

16. In **World Wrestling Entertainment (supra)**, the Division Bench of this Court held that in a website transaction, the ad on the website was only an invitation to offer and not an offer, just as a menu in a restaurant. If an invitation is accepted by a customer in Delhi, then it becomes an offer made in Delhi for purchasing of the goods advertised on the website, as is the case in the present matter where advertisement is made on IndiaMart by the defendants No.2 & 3 of the products of the defendant No.1. The Division Bench in **World Wrestling Entertainment (supra)** considered it safe to presume that though the web server was not located in Delhi, but the customers in Delhi who wished to purchase an article

available on the website of the appellant in that case, could access the website on their computer. The purchaser would place the order for the article from his computer in Delhi. The payment would be made either through credit or debit card or through cash on delivery again in Delhi and ultimately, the goods would be delivered to the customer in Delhi. Therefore, it was concluded that the rules that applied to contracts concluded over the telephone would apply with equal vigour to contracts concluded over the internet. In other words, contracts would be completed at the place where the acceptance is communicated. When the transaction between the seller and purchaser occurs through internet i.e., on a website, the offer and acceptance take place instantaneously and the acceptance is also instantaneously communicated to the customer through the internet at Delhi. Therefore, in such a case, part of the cause of action would arise in Delhi.

17. We can apply these principles to the facts of the present suit. From the documents filed at pages 437-466 of the Plaintiff's Documents, it is not only evident that the website can be accessed by the residents of Delhi and the products of defendant No.1 would be delivered to them at Delhi, additionally, the advertisers/sellers of the products being defendants No.2 & 3 are actually located in Delhi carrying on business and working for gain here. The product, as reflected in the brochure of the Defendant No. 2 at page no. 443 and as advertised on IndiaMart by the defendants No.2 & 3 at page no. 437 establish that it is the same product of the defendant No.1 that is advertised on its website, the printout of which is placed on the record as Document No.12 of the

Plaintiff's Documents. Any one, accessing the website can place an order for the products of defendant No.1 from Delhi, make payments to the seller and obtain the product in Delhi. Thus, seen from all angles, it is clear that the plaintiff is entitled to file the suit before this Court and the leave, as sought for, is to be granted.

18. As regards the judgments relied upon by the learned counsel for the defendants, the facts in *Escorts Limited (supra)* as also *Ajay Pal Sharma (supra)*, relate to defamatory statements, whereas, the judgments relied upon by the plaintiffs are apposite, as they relate to conclusion of contract in relation to sale, and cause of action in respect of online sale transactions. Therefore, the judgments relied upon by the learned counsel for the defendant No.1, are not applicable to the facts of the present case.

19. Accordingly, the application i.e., 6064/2021 for leave is allowed. The application I.A. 13230/2021 under Order VII Rule 10 CPC is dismissed.

20. The applications are disposed of.

CS(COMM) 214/2021 & I.A. 6062/2021 (under Order XXXIX Rules 1 and 2 read with Section 151 CPC seeking ex-parte ad interim injunction against defendant nos.1-3)

21. An opportunity is granted to the defendants No.2 & 3 to file written statements alongwith affidavit of admission/denial of documents filed by the plaintiff, within four weeks, with advance copies to the learned counsel for the plaintiff, who may file replications to the written statements alongwith affidavit of admissions/denial of documents filed by

defendants No.2 & 3, within four weeks thereafter. Only one opportunity shall be given to the defendants No.2 & 3 to do the needful.

22. The case be listed now for framing of issues on 21st July, 2022.

23. The order be uploaded on the website forthwith.

(ASHA MENON)
JUDGE

MARCH 02, 2022

ck

