

TM No. 13745/16

Tag Heuer SA Vs. Ravinder Pal

29.05.2017

Present: Shri Kamal Naresh, Ld. Counsel for the plaintiff.

None for the defendant.

This suit has been filed by plaintiff M/s. Tag Heuer SA against the defendant whereby ad-interim ex-parte order was passed by this Court on 19.08.2016. Thereafter, summons of the suit and Order 39 Rule 3 CPC compliance were served. Instead of filing the written statement, defendant chose to file an application under Order 7 Rule 11 CPC on 29.11.2016. Defendant was directed to supply copy of this to the plaintiff. However, record shows that since on as many as today is 4th date of hearing but none has appeared on behalf of the defendant. Even the copy of the application has not been supplied to the plaintiff. Perusal of application shows that defendant is selling watches at his shop at Sector-22, Chandigarh and as such Courts at New Delhi have no territorial jurisdiction. On the contrary, it is argued on behalf of the plaintiff that they have categorically pleaded in this suit that the defendant is supplying the infringed products within the territory of New Delhi is soliciting clients in the area of New Delhi.

It is argued on behalf of the plaintiff that Courts at New Delhi does have territorial jurisdiction. It is submitted that the issue of jurisdiction in such like cases, is a mixed question of facts and law and as such it cannot be decided at this juncture. At this stage, since the submissions are being made only on

under Order 7 Rule 10 CPC application, as such the contents of the plaint alone can be considered and relied.

In case titled **Alberto Co. Vs. R.K. Vijay & Ors., 2010 (42) PTC 300 Delhi**, Hon'ble Delhi High Court ruled-

“While considering the question of jurisdiction on the averments in the plaint and the documents filed alongwith the plaint should be seen and no other material”.

The relevant paras of the plaint which mention about the existence of territorial jurisdiction in Court at New Delhi are Para 27 which read as under-

27. *That this Hon'ble Court has the territorial jurisdiction to try and adjudicate the present suit. The defendant is soliciting and have intention to sell their products under the impugned mark/labels in New Delhi are viz. Connaught Place, Barakhamba, Vasant Kunj, Gole Market, Bengali Market, Lodhi Colony, Sarojini Nagar etc. The defendant is committing the impugned acts of infringement and passing-off in the markets of New Delhi area viz. Connaught place, Barakhamba, Vasant Kunj, Gole Market, Bengali Market, Lodhi Colony, Sarojini Nagar etc. within the jurisdiction of this Hon'ble Court by selling, soliciting, trade, distribution, and marketing networks in relation to the impugned goods under the impugned trademark/label. The plaintiff's abovesaid proprietary rights are being prejudicially affected or likely to be so affected in New Delhi due top the defendant impugned activities. The defendant has all the intention to use/sell/solicit the impugned/counterfeit goods under the impugned trademark/label*

in the markets of New Delhi viz. Connaught place, Barakhamba, Vasant Kunj, Gole Market, Bengali Market, Lodhi Colony, Sarojini Nagar etc. The impugned products of the defendant is available in New Delhi area. The defendant is committing act of infringement of plaintiff's trademark and copyright and passing-off within the territorial jurisdiction of this Hon'ble Court. The carrying of business by the defendant as well as whole or part of cause of action for filing the suit has arisen within the territorial jurisdiction of this Hon'ble Court within the meaning of Section 20 of Code of Civil Procedure, 1908. Further, the plaintiff has been carrying on business within the jurisdiction of this Hon'ble Court through its Special Agent/exclusive store and also are commercially available for sale at Vasant Kunj Ambience Mall, G-19 Ground Floor, Ambience Mall Nelson Mandela Marg, Vasant Kunj, New Delhi-110070 and Vasant Kunj- Emporio Mall, Shop No.243, Emporio Mall, Nelson Mandela Marg, Vasant Kunj, New Delhi-110070 and Johnson Watch Company, C-16, Connaught Place, New Delhi-110001. The plaintiff has extensive goodwill and reputation under the said trademark on account of voluminous sales and advertisement within the jurisdiction of the Hon'ble Court. The plaintiff's goods are also available, sold, purchased and delivered through its interactive websites www.tagheuer.com, www.us.tagheuer.com as well as through big online marketplaces like Flipkart, Amazon, Snapdeal etc. which

are freely accessible including within the jurisdiction of this Hon'ble Court. This Hon'ble Court thus further has the territorial jurisdiction within the meaning of Section 134 (2) of the Trade Marks Act, 1999 and also under Section 62(2) of the Copyright Act, 1957.

In para 27, noted above, it has specifically been pleaded by the plaintiff that defendant has been selling goods to dealers and distributors in New Delhi area.

Para 27 contains a specific mention that all this is being carried out in a clandestine and surreptitious manner. Para 27 also clearly pleads that defendant is committing both infringement as well as passing-off in New Delhi area by selling, soliciting, distributing and marketing the impugned goods and carrying out impugned business and that this action on the part of plaintiff gives rise to a cause of action interms of **Section 20 CPC**.

These factual pleading have been clearly denied by the defendant in para 5 of his application. Although application under Order 7 Rule 11 CPC is not akin to pleadings but since the defendant has chosen not to file Written Statement, their denial to the plaintiff's factual pleadings is writ large from the contents of application under disposal. This denial makes the issue of territorial jurisdiction a disputed question of fact and the same can only be decided after both the parties lead their respective evidence during the Trial at the stage of final arguments. As mention supra the defendant cannot, under the law, dispute the factual contents of the plaint and still pray for return of the plaint more so when the pleadings of the plaint are duly supported with

affidavit.

In this regard a judgment of Hon'ble High Court titled **Marico Ltd. Vs. Gayatri Sevashram Pvt. Ltd. & Ors, CS (COMM) 114/2016** is on identical facts. Hon'ble High Court has observed-

“Once and if the defendant nos.1 to 3 and 9 to 13 dispute the contents of the plaint then as regards the averments of territorial jurisdiction the same would result in a disputed question of fact requiring trial before the decision of the issue of territorial jurisdiction.....It is for this reason that the last three lines of para 78 which are reproduced above also invoke the jurisdiction of this Court in terms of Section 20 CPC by referring to the last lines of para 62 of the plaint. As already stated above, applications filed under Order 7 Rule 10 CPC do not proceed on the admitted averments in the plaint, and the defendants/applicants deny the contents of paras 62 and 78 of the plaint, and hence the issue of territorial jurisdiction becomes a disputed question of fact which can only be decided after evidence is led by both the parties viz after the trial and at the stage of final arguments. At this stage, therefore, the suit plaint cannot be returned under Order 7 Rule 10 CPC.”

(Emphasis supplied)

Similarly, in case titled **Pfizer Enterprises Sarl Vs. Cipla Ltd., 2009 (39) PTC 358 (Del.) (DB)** it was held that disputed question of fact cannot be decided before allowing the parties to lead evidences in support of their respective cases.

The Division Bench in this case ruled,

*“if the territorial jurisdiction is invoked by the plaintiff on the ground of cause of action having arisen in the form of sale of the offending goods within the territories of this Court, the question of defendant activity would be relevant and plaintiff's activity would become irrelevant. Likewise, if the plaintiff discloses that defendant has violated plaintiff's Trademark or Copyright in a particular place the cause of action would arise therein and observations in Laxman Prasad would cloth the Court with jurisdiction.....***whether the plaintiff discloses a cause of action or not is essentially a question of fact but whether it does not must be found out from the reading of plaintiff itself. In the said purpose the averments in the plaintiff in its entirety must be held to be correct.** *The test is as to whether if the averments made in the plaintiff are taken to be correct in their entirety, a decree would be passed.....otherwise the provisions of* **Order 14 Rule 2 CPC** *enjoin with issues both on law and of fact would be decided at the end of suit.* The said rule emphasize that if the issue is relating to a jurisdiction of the Court is a issue of law only, in contradistinction to an issue of law and of fact, it may try such an issue first. Seen from all perspectives, therefore, it would be in very rare cases, (such a admission of fact by a adversary) that the plaintiff can be returned or rejected as the case may be otherwise as applies to both the plaintiff and the Written Statement, the pleadings at the initial stages must be approached as if they are correct either for rejecting the plaintiff or decreeing the suit.....**Division Bench judgment of this Court therefore, leave**

no doubt in the averment and taking them correct which has to be considered at the stage of disposing an application under Order 7 Rule 11 CPC. Thus qua passing of this issue in this suit the Court has jurisdiction continued in para 23 of the plaint reads above and the Courts in Delhi for territorial jurisdiction in as much as appellant/plaintiff alleged that defendant/respondent are selling impugned goods in Delhi. In so far as violation of Copyright is concerned it could not be decided under Section 62 (2) Copyright Act, 1957 it is where the plaintiff resides/carries on business such Court would have jurisdiction. The appellant/plaintiff carries out business in Delhi as per the case of the appellant in the case and therefore, even qua the cause of action infringement of Copyright the Civil Courts at Delhi will have territorial jurisdiction.....contains, therefore, clear that the impugned order returning the plaint under Order 7 Rule 10 CPC is illegal because jurisdiction questions are decided after evidence is led by both the parties”.

(Emphasis supplied)

it has to be borne in mind that Territorial Jurisdiction provisions in Section 134 of Trademark Acxt and Section 62 of Copyright are not in derogation of Section 20 CPC but are only to supplement and widen the territorial jurisdictional scope in favour of the plaintiff.

From the conjoint reading of above three statutory provisions, following legal ratios can be construed:

(1) That **Section 134 of Trade Mark Act and Section 62 of Copyright Act** are not in derogation to **Section 20 of CPC** but are aimed at widening the

jurisdictional scope of the Courts over and above what CPC provides for.

(2) **Section 20 (a) (b)** primarily confers jurisdiction on the Courts where the defendant or one of the defendants

: resides, or

: carries on business, or

: personally works for gain.

(3) The Explanation to **Section 20** applies to corporations. They are deemed to be carry business at its sole or principal office or at a place where cause of action arose and it has a subordinate office.

(4) While **Section 20 (c)** simply provides that **every Civil Court would have the jurisdiction** to entertain a suit when it is based on a **cause of action which has arisen wholly or in part** within its local limits.

(5) While CPC provided for filing the suit only where defendant resides or the cause of action accrued but **Section 134 of Trade Mark Act** enlarged the above two options for the purpose of cases of Trade Mark infringement by adding that even the Court where the **PLAINTIFF** -

: resides, or

: carries on business, or

: personally works for gain.

(6) Likewise **Section 62 of Copyright Act** also enlarges the jurisdictional scope of CPC by including that even the Court where the **PLAINTIFF** -

: resides, or

: carries on business, or

: personally works for gain.

In the light of the aforesaid statutory provisions and the guiding judgments I have no hesitation in concluding that the issue of territorial jurisdiction at this initial stage of pleadings, has to be decided only on the basis of facts pleaded in the plaint. For the purpose of deciding Order 7 Rule 11 CPC application, the contents of the plaint alone have to be treated as binding and correct and defendant cannot dispute the facts and simultaneously claim rejection of the plaint. The sheer act of defendant of disputing the contents of the plaint amounts to admitting that issue of territorial jurisdiction is a mixed question of fact and law, has rendered the application in hand to be totally misconceived. The simple reason that he relies on material facts which are beyond the plaint the application must fail. The allegations in the plaint at paras 32 and 35 clearly show that Courts at New Delhi have territorial jurisdiction in so far as it is pleaded that part cause of action occurred in New Delhi area in terms of Section 20 CPC. Application is dismissed with cost of Rs.10,000/- to be paid to National Relief Fund, NDBA.

Defendant is given four weeks' to file the written statement.

To come up for replication, if any, admission/denial and framing of issues on **02.08.2017**.

(Surinder S. Rathi)
ADJ-03/PHC/NEW DELHI
29.05.2017