

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 5<sup>th</sup> April, 2018**

+ **CS(OS) No.1185/2006 & IA No.11203/2016 (of the plaintiff under Order VII Rule 10 of the CPC).**

**THE INDIAN PERFORMING RIGHT  
SOCIETY LTD.**

**..... Plaintiff**

Through: Mr. Dayan Krishnan, Sr. Adv.  
with Mr. Himanshu Bagai, Adv.

versus

**ADITYA PANDEY AND ANR.**

**..... Defendants**

Through: Mr. Abhishek Malhotra and Mr.  
Angad S. Dugal, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

1. The plaintiff Indian Performing Right Society Ltd. instituted this suit, as per amended plaint dated 3<sup>rd</sup> 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 29<sup>th</sup> May, 2006 and was re-notified from time to time; finally on 12<sup>th</sup> June, 2006, summons of the suit were ordered to be issued though no *ex parte* ad interim relief sought, granted. Vide order dated 12<sup>th</sup> 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 28<sup>th</sup> 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 9<sup>th</sup> 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. The plaintiff preferred FAO(OS) No.423-24/2011 against the judgment dated 28<sup>th</sup> July, 2011 supra and which appeal was dismissed vide judgment dated 8<sup>th</sup> 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 20<sup>th</sup> 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 24<sup>th</sup> 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 29<sup>th</sup> September, 2016, when the following order was passed:-

**“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 28<sup>th</sup> 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 21 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 30<sup>th</sup> September, 2016.*

13. *No further adjournment shall be granted.”*

8. The counsels were heard on 30<sup>th</sup> September, 2016 and order reserved.

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

**“JURISDICTION:**

27. *This Hon’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 Hon’ble Court through its branch office situated at B-317, Som Dutt Chamber-I, Bhikaji Cama Place, New Delhi.”*

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

*“31. With reference to the contents of paragraph 27 of the plaint, it is stated that in light of the decision of the Hon’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 Hon’ble Court. It is not enough to state that the Plaintiff has a branch office in Delhi. It is accordingly denied that this Hon’ble Court has the territorial jurisdiction to entertain the present matter.”*

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

*“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 Hon’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 Hon’ble Court as it maintains a fully functioning branch office within Delhi.”*

12. The following issues were framed in the suit on 28<sup>th</sup> July, 2009:-

- “1. Does this Court has jurisdiction to entertain and try the present suit? OPP.*
- 2. Is the suit bad for non-joinder of parties? OPD.*
- 3. Does the plaintiff prove its entitlement to any of the reliefs claimed? OPP.*
- 4. Does the plaintiff prove the defendants are infringing any copyright which it is authorized to administer or enforce under Section 34 of the Copyrights Act, as claimed? OPP.*
- 5. Is the plaintiff entitled to damages; if so, for what amount?*
- 6. Relief.”*

13. It is the case of the plaintiff in IA No.11203/2016 aforesaid that in the light of dicta in *Sanjay Dalia* supra, which is of a date subsequent to the date of institution of the suit, this Court lacks the territorial jurisdiction to try and adjudicate the suit as the suit was filed on the basis of the plaintiff having a branch office at Delhi and it has been held in *Sanjay Dalia* supra that having a branch office alone is not sufficient for creating jurisdiction under Section 62(2) of the Copyright Act. It is further pleaded that the plaintiff has its principal office in Mumbai, Maharashtra and the plaint be returned to be presented before the High Court of Bombay, Maharashtra.

14. The Division Bench of this Court in *Ultra Home Construction Pvt. Ltd. Vs. Purushottam Kumar Chaubey* 227 (2016) DLT 320 (DB) has illustrated four contingencies which may arise through the following table:-

S. No.	Place of Plaintiff's Principal Office (Sole office in S.No.1)	Place of Plaintiff'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

15. This suit was instituted merely on the plea of the plaintiff carrying on business within the jurisdiction of this Court through its branch office. The defendants in their written statement denied that the plaintiff was carrying on any business at Delhi. The plaintiff in replication merely reiterated that it carried on business at Delhi as it maintains a branch

office therein. Else it is not in dispute that the registered office of the plaintiff is at Mumbai. The further plea in the plaint was of the defendants having acquired radio broadcasting licences in the cities of Jaipur, Ahmedabad, Nagpur, Surat, Gwalior, Raipur, Bhopal, Indore, Jabalpur, Bilaspur, Jalandhar, Jodhpur, Kota, Udaipur, Amritsar, Ajmer and Chandigarh. No mention was made of any broadcasting licence having been granted to the defendants at Delhi. It is thus clear that it was not the case of the plaintiff that any cause of action had accrued to the plaintiff against the defendants at Delhi. It was the contention of the senior counsel for the plaintiff that the facts of the present case thus fall in the fourth situation envisaged in *Ultra Home Construction Pvt. Ltd.* supra and the plaintiff, invoking Section 62(2) of the Copyright Act, 1957, can institute the suit only at the place of its registered office and not at the place of its branch office. It was thus contended that the issue framed on the plea of the plaintiff carrying on business at Delhi is immaterial.

16. Per contra, the counsel for the defendants contended that it has already been held in the judgment dated 20<sup>th</sup> September, 2016 of the Supreme Court that the plaintiff has no right for enforcement of which this suit has been filed.

17. Supreme Court, in *Harshad Chiman Lal Modi Vs. DLF Universal Ltd.* (2005) 7 SCC 791, held a) that the jurisdiction of a court may be classified into several categories, with the important categories being (i) territorial jurisdiction; (ii) pecuniary jurisdiction; and (iii) jurisdiction over the subject matter; b) so far as territorial and pecuniary

jurisdictions are concerned, objection to such jurisdiction has to be taken at the earliest possible opportunity and in any case at or before settlement of issues; c) the law is well settled that if such objection is not taken at the earliest, it cannot be allowed to be taken at a subsequent stage; d) jurisdiction as to subject matter however is totally distinct and stands on a different footing; and, e) where a court has no jurisdiction over the subject matter of the suit by reason of any limitation imposed by statute, charter or commission, it cannot take up the cause or matter and an order passed by a Court having no jurisdiction is a nullity. Applying the said principles, it was held that a suit for specific performance of an Agreement of a Sale of immovable property can be instituted only at the place where the property is situated and in no other Court. Thus, institution of such a suit in a Court other than of the place where the immovable property was situated was held to be bad, notwithstanding the consent of the defendant thereto, since the Court of a place other than where the property was situated was held to lack subject jurisdiction with respect thereto.

18. There is no such lack of subject jurisdiction in this Court in the present case. Thus it is open to the defendants to waive the plea earlier taken objecting to the territorial jurisdiction of this Court and on which an issue was also framed. Once the defendants have given up the plea objecting to territorial jurisdiction, there is no impediment to this Court proceeding with the suit.

19. There is another aspect of the matter. It is a well settled principle of law and public policy and essential part of Rule of Law that a person



shall not be vexed twice for the same relief. The plaintiff, by instituting the suit in this Court has vexed the defendants in this Court and in the appeals arising from the suit, for the last twelve years, and for this reason also I am unable to find any equity in favour of the plaintiff for allowing the plaintiff to seek return of the plaint for filing the same in the High Court of Bombay. Rather, allowing the plaintiff to do so will tantamount to this Court allowing its machinery to be used improperly and permitting the process of law to be abused.

20. Though the application for return of the plaint was filed shortly before the date when the evidence of the plaintiff was closed and came up first before this Court after the evidence so stood closed but it cannot be lost sight of that the said application was filed beyond the time which was granted to the plaintiff on 24<sup>th</sup> May, 2016, of one week, for filing the affidavit of examination-in-chief. On 24<sup>th</sup> May, 2016, last opportunity was granted to the plaintiff to so file the affidavit subject to payment of costs. No such affidavit was filed and the application under Order VII Rule 10 of the Code of Civil Procedure, 1908 (CPC) is dated 8<sup>th</sup> August, 2016 and was filed on 22<sup>nd</sup> August, 2016. It is thus clear that the application itself was an attempt to get over the order of closure of evidence which was bound to follow on 24<sup>th</sup> August, 2016.

21. I am therefore of the opinion that the plaintiff should now not have a second round of litigation against the defendants before the High Court of Bombay and should be bound by the present *lis*.

22. Resultantly, IA No.11203/2016 is dismissed.

23. The plaintiff having led no evidence and the evidence of the plaintiff having already been closed and which order also has attained finality and the onus of the main issues being on the plaintiff, the suit has necessarily to be dismissed and is dismissed. The defendants shall be entitled to costs of Rs.2,00,000/- from the plaintiff.

Decree sheet be drawn up.

**APRIL 05, 2018**  
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**RAJIV SAHAI ENDLAW, J.**



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