

The Indian Performing Right Society Ltd. Vs Sanjay Dalia and Another

Court: Delhi High Court

Date of Decision: Aug. 31, 2007

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Section 20, 4
Copyright Act, 1957 â€” Section 33, 62, 62(2), 62(2)(1)

Hon'ble Judges: Badar Durrez Ahmed, J

Bench: Single Bench

Advocate: Rajiv Shakdhar and Himanshu Bagai, for the Appellant; Rajiv Nayar Mahesh Agarwal, Rishi Agarwal, Bhagvan Swarup Shukla and Sagar Pathal, for the Respondent

Judgement

Badar Durrez Ahmed, J.

An objection with regard to the territorial jurisdiction of this Court in entertaining the present suit has been taken

by the defendants. In paragraph 25 of the plaint it has been stated that this Court has territorial jurisdiction to entertain and try the present suit by

virtue of Section 62(2) of the Copyright Act, 1957 as the plaintiff ""carries on business"" through its branch office situated at B-317, Som Dutt

Chamber-1, Bhikaji Cama Place, New Delhi within the territorial limits of this High Court. The objection raised by the defendants is that the

expression ""carries on business"" appearing in Section 62(2)(1) of the Copyright Act, 1957 has to be understood in the manner indicated in the

Explanation to Section 202 of the Code of Civil Procedure, 1908 (hereinafter referred to as the "CPC"). It has been contended on behalf of the

defendants that the said Explanation clearly stipulates that a corporation is deemed to carry on business at its sole or principal office in India. If it

has a subordinate office and any cause of action arises at the place of the subordinate office, then the corporation shall be deemed to carry on

business at the place of such subordinate office also. The contention is that the plaintiff has filed this suit on the basis of the existence of a purported

branch office at New Delhi. But Delhi can only be regarded as a place where the plaintiff carries on business if the cause of action has arisen at

Delhi. And, according to the defendants, no part of the cause of action has arisen in Delhi. Therefore, they say, this Court would not have

jurisdiction.

2. The plaintiff is a company limited by guarantee and registered under the Companies Act, 1956. It is also registered as a copyright society u/s 33

of the Copyright Act, 1957. The registered office of the company is at Mumbai. The plaintiff, as per the statements made in the plaint, is a non-

profit making body established for the purposes of monitoring, protecting and enforcing the rights, interests and privileges of its members

comprising of authors, composers and publishers of literary and/or musical works as well as on behalf of the members of other sister societies who

are owners of copyrights in their literary and musical works. The defendant No. 1 is the Chief General Manager of defendant No. 2 (Cineline

Cinemas). The defendant No. 2, as per the averments in the plaint, are pioneers in cinema exhibition with 33 screens up and running in various

locations and 97 screens in the making. It is alleged that the defendants have been indulging in continuous violation of the rights of the plaintiff by

communicating to the public/publicly performing, literary and/or musical works from the plaintiff's repertoire without having obtained a license from

the plaintiff to do so. It is alleged that the defendants had been put on adequate notice of the plaintiff's rights but to no avail. On the basis of the

averments made in the plaint, the plaintiff has prayed for an order of permanent injunction restraining the defendants from

performing/communicating to the public literary works and/or musical works/playing of live music or any other means, or by way of mechanical

devices at any premises, literary and/or musical works of the plaintiff by way of live performances or mechanical devices such as public address

systems/radio/ T.V. sets/cinema theaters without obtaining a license from the plaintiff and without paying the requisite license fee. Damages have

also been claimed to the tune of Rs. 20,01,000/-.

3. The defendants have raised objections with regard to the territorial jurisdiction of this Court in entertaining the suit filed by the plaintiff. It has

been submitted that the entire cause of action has arisen at Mumbai. Both the plaintiff and the defendant No. 2 have their principal offices in

Mumbai. It was further submitted that the plaintiff is seeking its rights under assignments of musical works by lyric writers and music composers.

The assignments deeds that have been filed by the plaintiff are all executed at Mumbai by artists residing at Mumbai. The licenses filed by the

plaintiff along with the plaint have all been executed in Mumbai. The notices issued by the plaintiff to the defendant, all mention only the plaintiff's

address at Mumbai. Apart from all this, it was contended that the suit has been signed and verified at Mumbai. The affidavits have been attested at

Mumbai. Even the replies to applications have been verified at Mumbai. The affidavit in support of the replication has also been verified at

Mumbai. It was also contended that the defendants also reside at Mumbai. As its major defense, the defendants have relied upon the licenses

issued by Phonographic Performance Limited, a society under the Copyright Act, 1957. These licenses have also been issued in Mumbai. The

defendants presently have cinema halls in Maharashtra/Mumbai. No part of the cause of action, according to the defendants, has arisen at New

Delhi. In fact, they contend that the entire cause of action, as per allegations in the plaint, has arisen at Mumbai alone.

4. Mr Rajiv Nayar, the learned senior counsel who appeared on behalf of the defendants, submitted that Section 62(2) of the Copyright Act

provided an additional forum where a plaintiff could institute the suit. But this did not mean that the provisions of Section 20 CPC have to be

ignored. Only the impediment that was placed by Section 20 CPC with regard to filing of a suit by a plaintiff based upon the place where the

plaintiff actually and voluntarily resided or carried on business or personally worked for gain, was removed. He submitted that Section 20 CPC

permitted suits to be filed only at places where the defendant actually and voluntarily resided or carried on business or personally worked for gain.

Section 62(2) of the Copyright Act, 1957, according to Mr Nayar, provided an additional forum for a plaintiff and permitted him to also institute a

suit where he actually and voluntarily resided or carried on business or personally worked for gain. It was contended by him that in the present

case the plaintiff being a corporation the expression 'carries on business' as appearing in Section 62(2) of the Copyright Act, 1957 has to be

construed in the sense given in the Explanation to Section 20 CPC. He submitted that a corporation would be deemed to be situated at its

registered office in view of the decision of the Supreme Court in the case of Morgan Stanley Mutual Fund Vs. Kartick Das,

5. Mr Nayar referred to the decision of the Supreme Court in the case of Dhodha House Vs. S.K. Maingi, wherein the Supreme Court observed

that the territorial jurisdiction conferred upon the Court in terms of the provisions of the CPC indisputably shall apply to a suit or proceeding under

the Copyright Act, 1957 (see para 44). The Supreme Court also observed that Sub-section (2) of Section 62 of the Copyright Act, 1957

provided for an additional forum so as to enable the author to file a suit who may not otherwise be in a position to file a suit at different places

where his copyright was violated. In the very same decision the Supreme Court also observed that it is well settled that the Court shall not readily

presume the existence of jurisdiction of a court which was not conferred by the statute. In this context, the Supreme Court observed:

For the purpose of attracting the jurisdiction of a court in terms of Sub-section (2) of Section 62 of the 1957 Act, the conditions precedent

specified therein must be fulfilled, the requisites where for are that the plaintiff must actually and voluntarily reside or carry on business or personally

work for gain.

The Supreme Court also observed that ordinarily, the residence of a company would be where the registered office is. This observation was made

with reference to its earlier decision in the case of Morgan Stanley Mutual Fund (supra).

6. In Dhodha House (supra), the Supreme Court also considered the expression ""carries on business"". While construing the same, it was of the

view that for the purpose of carrying on business only presence of a man at a place is not necessary. Such business may be carried on at a place

through an agent or a manager or through a servant. The owner may not even visit that place. The phrase ""carries on business"" at a certain place

would, Therefore, mean having an interest in a business at that place, a voice in what is done, a share in the gain or loss and some control

thereover. The Court also cited with approval the passage in Mulla on the Code of Civil Procedure, 15th Edn. that one of the conditions which

must be satisfied before it can be said that a business is carried on at a particular place is that the essential part of the business must take place in

that place. Then, in paragraph 47 of the said decision, the Supreme Court observed as under:

47. A corporation in view of Explanation appended to Section 20 of the Code would be deemed to be carrying on business inter alia at a place

where it has a subordinate office. Only because, its goods are being sold at a place would thus evidently not mean that it carries a business at that

place.

7. Mr Rajiv Nayar referred to the decision of a learned Single Judge (R.C. Lahoti, J as he then was) of this Court in the case of Lok Nath Prasad

Gupta v. Bijay Kumar Gupta 57 (1995) DLT 502. The very question that arose in that case was ""which would be the forum before which a suit

could be filed by the plaintiff in respect of infringement of a copyright or infringement of any other right conferred by the Copyright Act, 1957 in

view of the provisions of Section 62 thereof read with Section 20 CPC"" The averment made in the plaint in that case was that this Court had

jurisdiction to entertain and try the suit as the defendant was selling its products within the territorial jurisdiction of this Court. It was further

contended that this Court had jurisdiction u/s 62(2) of the Copyright Act, 1957 as the plaintiff carried on its business within the territorial

jurisdiction of this Court. In the said decision it is observed that apart from the aforesaid statement contained in the plaint, it has not been

mentioned as to how and in what manner the plaintiff carried on his business within the jurisdiction of this Court. After referring to provisions of

Section 20 CPC as also Section 62 of the Copyright Act, 1957, the learned Single Judge was of the view that the effect of Sub-section (2) of

Section 62 of the Copyright Act, 1957 is that a suit in respect of infringement of a right could be filed not only in a District Court having jurisdiction

by reference to the CPC but also in a District Court within the local limits of whose jurisdiction, at the time of the institution of the suit or other

proceeding, the person instituting the suit or other proceeding or, where there are more than one such person, any of them, actually and voluntarily

resides or carries on business or personally works for gain, though such a District Court would not have had jurisdiction but for the provisions of

Section 62(2) of the Copyright Act, 1957. More importantly the Court held:

8. "Actually and voluntarily resides", "carries on business" and "personally works for gain" have the same meaning to be assigned in Section 20 of

the Code or in Section 62(2) of the Act.

Having so held, the plaint was directed to be returned to the plaintiff for presentation before the proper court.

8. Mr Rajiv Nayar also referred to a decision of Bombay High Court in the case of Arun Digamber Varangaonkar Vs. M/s. Kharpe Gruth Udyog

and others, However, in my view no further discussion of this decision is necessary as it would not have much bearing on the present case.

9. Mr Rajiv Shakhdar, the learned senior Counsel appearing on behalf of the plaintiff, submitted that it is stated in the plaint that the plaintiff carries

on business at Delhi through its branch office. He further submitted that the documents filed with the plaint, for example, the plaintiff's annual report

also shows this office at Delhi. He contended that at this stage where the question of return of the plaint is to be considered, only the averments in

the plaint and the documents filed along with the plaint are to be seen. So, according to the averments made in the plaint and the documents filed

along with it, it is clear that the plaintiff has stated that it carries on business at Delhi. According to Mr Shakhdar this alone is sufficient to clothe this

Court with territorial jurisdiction insofar as the present suit is concerned.

10. He submitted that Section 62(2) of the Copyright Act, 1957 is a radical departure from the normal rules of jurisdiction provided for u/s 20

CPC. Referring to the Supreme Court decision in the case of Exphar SA and Another Vs. Eupharma Laboratories Ltd. and Another, . He

submitted that the objection and the reason for introduction of Section 62(2) was not to restrict the owners of the copyright to exercise their rights

but to remove any impediment from doing so. The Court had observed that Section 62(2) cannot be read as limiting the jurisdiction of the District

Court only to cases where the person instituting the suit or other proceeding, or where there are more than one such persons, any of them actually

and voluntarily resides or carries on business or presently works for gain. It prescribes an additional ground for attracting the jurisdiction of a Court

over and above the "normal" grounds as laid down in Section 20 of the CPC. In my view, there can be no dispute with these observations. Even

the defendants had submitted that Section 62(2) provides an additional forum as was indicated in the Supreme Court decision in Dhodha House

(supra). There is no doubt that Section 62(2) of the Copyright Act, 1957 does not take away anything from Section 20 CPC but adds something

to it. The something that it adds is that even the plaintiff's place of residence, the plaintiff's place of business and where the plaintiff works for gain

have been nominated as places where the suit could be instituted. Therefore, in my view there is nothing in Exphar SA(supra) which militates

against the submissions made on behalf of the defendants or enables the Court to take a view that this Court would have jurisdiction in the present

case.

11. Mr Shakhdar also referred to the Joint Committee deliberations in respect of the Copyright Bill, 1955 prior to the enactment of the Copyright

Act, 1957 in its present form. He referred to the following words of the Joint Committee:

"Clause 61 (Original Clause 65)." Sub-clause (2) of the original Clause 65 has been omitted and replaced by a new sub-clause. The Committee

feels that the provisions of the original Sub-clause (2) would virtually make registration of copyright compulsory and would be an undue restriction

on the owner of the copyright to exercise his rights. In the opinion of the Committee many authors are deterred from instituting infringement

proceedings because the court in which such proceedings are to be instituted is situated at a considerable distance from the place of their ordinary

residence. The Committee feels that this impediment should be removed and the new Sub-clause (2) accordingly provides that infringement

proceedings may be instituted in the district court within the local limits of whose jurisdiction the person instituting the proceedings ordinarily

resides, carries on business etc.

According to Mr Shakhdar the Explanation to Section 20 would run counter to the intent behind the introduction of Section 62(2). A

reference was also made by him to Section 4 of the CPC to submit that the CPC itself gave precedence to the applicability of special and local

laws in force. He submitted that the Copyright Act, 1957 was a special law promulgated to amend and consolidate the law relating to copyrights

and, Therefore, Section 62(2) cannot be read as being subject to the Explanation appended to Section 20 CPC. He further submitted that the non

obstinate clause contained in Clause 62(2) was equivalent to saying that in spite of the provisions of the CPC, the provisions of Section 62(2)

would apply. This, he submitted on the strength of the Supreme Court decision in the case of Chandavarkar Sita Ratna Rao Vs. Ashalata S.

Guram, wherein the scope of a non obstinate clause was considered. He submitted that it is well settled that the expression ""notwithstanding"" is in

contradistinction to the phrase ""subject to"", the latter conveying the idea of a provision yielding place to another provision or other provisions to

which it is made subject to. He submitted that the words ""subject to"" are not mentioned in Section 62(2). Instead the word ""notwithstanding"" is

used. Therefore, Section 62(2) has to be given its full meaning notwithstanding anything that may be contained in the CPC. Reference was also

made to the decision of the Supreme Court in the case of Narcotics Control Bureau Vs. Kishan Lal and others, for showing the importance of the

intendment of a statute. However, no further discussion in respect of that case would be necessary as in my view the said decision is not relevant

for the purposes of the present case as would be clear from the discussion below.

12. Lastly, it was contended by Mr Shakhdar that the cause of action had also arisen in part in Delhi because the defendants carry on business all

over India and the plaintiff envisages an imminent threat and apprehension of the defendants expanding their business to Delhi. The threat in itself

would mean a cause of action and if the threat is felt in Delhi then the cause of action would have arisen in Delhi. For this proposition, he relied

upon the decision in the case of Pfizer Products Inc. Vs. Rajesh Chopra and Others, However, I find that that decision would not be applicable to

the facts of the present case. That was a suit for injunction against infringement of a trade mark. The present case falls under an entirely different

category and is one under the Copyright Act, 1957. That decision would not be applicable to the facts and circumstances of the present case.

13. There is no doubt that the Explanation in Section 20 CPC has reference to the expression ""carries on business"" appearing in Clauses (a) and

(b) of Section 20 which in turn speaks of a defendant or defendants. This Explanation creates a fiction that a corporation carries 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. The

meaning is very clear. If a corporation has a sole or principal office at place ""A"", it will be deemed to carry on business at place ""A"". However, if it

has a subordinate office at place ""B"" then it will be deemed to carry on business at place ""B"" only if the cause of action also arises at place ""B"". The

meaning, Therefore, is that a corporation would be deemed to carry on business at a subordinate office or a branch office only in respect of any

cause of action arising at the place where the branch office or the subordinate office is situated. As pointed out above, this Explanation has

reference to a defendant because it is only where the defendant actually and voluntarily resides, or carries on business, or personally works for gain

that a suit can be instituted under Clause (a) [or Clause (b) where there are more than one defendant] of Section 20 CPC. But this defendant ?

centric impediment has been removed by virtue of Section 62(2) of the Copyright Act, 1957 and, now, not only the courts at the place where the

defendant actually or voluntarily resides, or carries on business, or personally works for gain but also the courts at the place where the plaintiff

actually and voluntarily resides, or carries on business, or personally works for gain, would have jurisdiction to entertain a suit for infringement of a

right under the Copyright Act, 1957. Therefore, what Section 62(2) has done is to remove the fetter and expand the scope of Section 20 CPC by

extending the jurisdiction with reference to not only the defendant but also the plaintiff. Construed in this sense the Explanation appears to be

neutral. In other words, it can have reference both to the defendant and to the plaintiff because what is being explained is the place where a

corporation is deemed to carry on business. The corporation may be a plaintiff or a defendant.

14. In *Dodha House* (supra), as already pointed out above, the Supreme Court while construing the expression ""carrying on business"" in the

context of Section 62(2) of the Copyright Act, 1957 specifically referred to and relied upon the Explanation appended to Section 20 CPC. That

being the position, the contention of the learned Counsel for the plaintiff that the Explanation appended to Section 20 CPC cannot be looked into

for the purposes of Section 62(2) of the Copyright Act, 1957, would not be tenable. Moreover, this Court has expressly considered this question

in *Lok Nath Prasad Gupta* (supra) wherein it specifically observed that the expressions ""actually and voluntarily resides"", ""carries on business"" and

personally works for gain"" have the same meaning both in Section 20 of the CPC and in Section 62(2) of the Copyright Act, 1957. Therefore, the

contention of the learned Counsel for the defendants has to be accepted that the Explanation appended to Section 20 has to be read into the

provisions of Section 62(2) of the Copyright Act, 1957.

15. The present suit has been filed in this Court on the basis that this Court has territorial jurisdiction to entertain and try the same by virtue of

Section 62(2) of the Copyright Act, 1957 inasmuch as the plaintiff is said to carry on business within the jurisdiction of this Court through its

branch office situated in New Delhi. In view of the foregoing discussion, merely having a branch office at Delhi would not mean that the plaintiff

carries on business in Delhi. The plaintiff would be deemed to carry on business at a branch office only if a cause of action had arisen in Delhi. The

plaint does not disclose any cause of action having arisen in Delhi. In the absence of such an averment and in the absence of any cause of action

having arisen in Delhi, the plaintiff cannot be deemed to carry on business in Delhi. Therefore, the pre-condition for attracting Section 62(2) of the

Copyright Act, 1957 has not been satisfied. The result is that this Court would not have territorial jurisdiction in respect of the present plaint.

Accordingly, the plaint is directed to be returned to the plaintiff for presentation to the proper court.

The suit as well as all pending IAs stand disposed of accordingly.