Anil Sabharwal And Anr. vs Arun Sabharwal And Ors. on 14 January, 2008

Equivalent citations: AIR2008P&H157, (2008)2PLR481, AIR 2008 PUNJAB AND HARYANA 158, 2008 (5) ALL LJ NOC 1124, 2008 (3) AJHAR (NOC) 1055 (P&H), 2008 AIHC NOC 857, (2008) 2 CIVILCOURTC 690, 2008 HRR 2 87, (2008) 3 LANDLR 503, (2008) 2 PUN LR 481, (2008) 2 RECCIVR 222, (2008) 1 CURLJ(CCR) 509, 2008 (5) ALJ (NOC) 1124 (P.&H.) = AIR 2008 PUNJAB AND HARYANA 158, 2008 (6) AKAR (NOC) 945 (P.&H.) = AIR 2008 PUNJAB AND HARYANA 158, 2008 (3) AJHAR (NOC) 1055 (P. & H.) = AIR 2008 PUNJAB AND HARYANA 158, 2008 AIHC (NOC) 857 (P. & H.) = AIR 2008 PUNJAB AND HARYANA 158

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Bench: Ranjit Singh

JUDGMENT

Ranjit Singh, J.

1. This order will dispose of two Civil Revision Nos. 1805 of 2007 (Anil Sabharwal and Anr. v. Arun Sabharwal and Ors.) and 1806 of 2007 (Sunil Sabharwal and Ors. v. Arun Sabharwal and Ors). The facts are being taken from Civil Revision No. 1805 of 2007.

2. Petitioners and respondents, a closely related business family, are contesting a suit which arises out of the Memorandum of Understanding/Family Settlement giving rise to subsequent disputes and differences between them. Respondents Arun Sabharwal and others filed a suit in the Court of Civil Judge (Junior Division), Patiala for declaration that Memorandum of Understanding/Family Settlement entered in between the petitioners and respondents No. 1 and 2 a legal, valid, binding between the parties and further for rendition of accounts in regard to the profits made by defendants-petitioners by sale of products in the area of the respondents under the Trademark of Kesh Nikhar etc. and for payment of damages on account thereof. When served with the notice, the petitioners filed application dated 1.2.2007 for rejection of the plaint. Plea is that the petitioners are not residing within the territorial jurisdiction of the Court at Patiala and there is no cause of action against petitioner No. 2. It is further pleaded that the dispute raised is regarding trade mark and as such Court of District Judge alone would be competent to adjudicate upon the alleged infringement and not the Court of Civil Judge (Junior Division), Patiala. Even objection in regard to suit having not been properly valued for the purposes of court fee is also raised.

3. The respondent-plaintiffs filed reply to the said application pointing out that subject matter of the family settlement, profits and business is regulated at, Patiala. According to the respondents, the case has no concern with the trademark and hence the suit is properly instituted before the Civil Judge. It is further pleaded that the suit is properly valued for the purposes of court fee.

4. Civil Judge has found that respondent-plaintiffs have not alleged any violation of any trademark in the plaint and the present suit filed is for declaration and rendition of accounts and for damages for the loss caused. Reference is made to the ratio of law laid down in Kuldip v. Babita Nayar 2004 (2) Civil Court Cases 673, wherein it is held that there is no objective standard for valuation on the basis of which Court can arrive at a definite conclusion under Order 7 Rule 11(b) CPC for directing a plaintiff to affix the court fee on that basis. Further reference is made to the case of Mamaleshwer Kishore Singh v. Paras Nath Singh 2002 (1) L.J.R. 773 to say that the court fee has to be paid on the plaint as framed and not on the plaint as it ought to have been framed. It is further observed that it is the substance of the relief sought and not the form which will be determinative of the valuation and the payment of the court fee. By referring to the case of State of Punjab v. Jagdip Singh Chowhan 2005 (2) C.C.C. 37, it is noted that when the court is unable to say what the correct valuation of the relief is, it cannot require the plaintiff to correct the valuation as has been made by him. It is further observed that in such cases the court has no other alternative than to accept the tentative valuation made by the plaintiff and that in cases of compensation there is no objective standard available which can help to determine the amount to which the plaintiff should value the relief claimed by him. Accordingly, the application moved for rejection of the plaint is-dismissed, which is impugned by way of the present revision petition.

5. Mr. M.L. Sarin, the learned Senior counsel has made three-fold submission before me. He would first contend that the suit is grossly undervalued and as such the civil Judge is misconceived in passing the impugned order declining the application in regard to this obligation. Me would also contend that the dispute clearly relates to a trademark as can be seen from the plaint and accordingly the Civil Judge (Junior Division), Patiala would not have any jurisdiction to entertain this suit. Mr. Sarin has emphasised the provisions of Section 134(1)(b) of the Trade Marks Act, 1999 in support of this submission. Mr. Sarin points out that in September, 2006 respondents No. 1 and 3 had filed a suit in High Court of Delhi against petitioner No. 1 and respondents No. 5 and 6 alleging violation of a trademark. It is urged that respondents No. 1 and 3 based the said suit on an alleged Memorandum of Settlement which was denied by petitioner No. 1 and respondents No. 5 and 6. This suit was valued at Rs. 20 lacs by respondents No. 1 and 3. On an objection raised by petitioner No. 1 and respondents No. 5 and 6, this suit was withdrawn on 21.11.2006 and then this present suit is filed seeking rendition of accounts etc. According to the petitioners, this would show that the suit relates to a dispute of trademark and also that the same has been grossly undervalued.

6. Reference is made to the case of Abdul Hamid Shamsi v. Abdul Majid and Ors. . While interpreting Section 7(iv)(f), the Hon'ble Supreme Court has held that the valuation of relief by plaintiff should not be arbitrary and whimsical and in case an arbitrary undervaluation, the plaint would be liable to be rejected by the court. Reference is also made to the case of Kamaleshwar Kishore Singh v. Paras Nath Singh and Ors. to say that it is the substance of relief sought that is important and not the form. In Kamaleshwar's case, it is observed that court fee has to be paid on a

plaint as framed and not on a plaint as it ought to have been framed unless by astuteness employed in drafting the plaint the plaintiff had attempted to evade payment of court fee or unless there be a provision of law requiring the plaintiff to value the suit and pay the court fee in a manner other than one adopted by the plaintiff. Mr. Sarin would highlight the part where the court has observed that it shall begin with an assumption, for the purpose of determining the court fees payable on plaint, that the averments made therein by the plaintiff are correct. Yet, an arbitrary valuation of the suit property having no basis at all for such valuation and made so as to evade payment of court fees and fixed for the purpose of conferring jurisdiction on some court which it does not have, or depriving the court of jurisdiction which it would otherwise have, can also be interfered with by the court. It is said that it is the substance of the relief sought for and not the form which will be determinative of the valuation and payment of court fee. Reliance is also placed on the case of Sujir Keshav Nayak v. Sujir Ganesh Nayak , where it is observed that the valuation disclosed by the plaintiff has normally to be accepted, but the court on being prima facie satisfied that valuation of suit was arbitrary, can direct the suit to be properly valued.

7. To substantiate his submission that the District Judge would have jurisdiction to entertain this suit, Mr. Sarin refers to Section 134(1)(b) of the Trade Marks Act, 1999. The section provides a forum where suit for infringement of trademark is to be to be instituted. It lays down that Section (a) for the infringement of a registered trade mark; or (b) relating to any right in a registered trade mark; or (c) to a District Court having jurisdiction to try the suit. The submission of the counsel is that the suit filed by the respondents relates to the right in a registered trade mark and as such was bound to be instituted in the District Court and hence the Civil Judge (Junior Division), Patiala would not have jurisdiction to try this suit. Though not pleaded in this manner in the petition, Mr. Sarin has also urged that even the present suit as filed claiming relief, actually is a suit for specific performance of a Memorandum of Understanding, which would also show that the suit has not been properly valued for the purposes of court fees.

8. Mr. Arun Palli, Senior counsel appearing for the respondents, however, would say that it is not clear to the respondents as to how much loss has been caused by the petitioners in resorting to the sale of the products in an area which was agreed to be an area of the respondents and as such they are in no position to evaluate the suit, for the purpose of affixing the court fee. He would refer to provision to Order 7 Rule 11(b) CPC to say that even if it is found that the suit is undervalued, the court can always require him to correct the valuation and in a decree even if granted and require the plaintiff to make up the requisite court fee. He also joins issue with Mr. Sarin and says that by no stretch of imagination, the present dispute can be said to be relating to violation of a trade mark. This is a case of pure and simple plea regarding Memorandum of Understanding, which has been violated leading to causing loss to the respondents recovery of which is the aim of the suit. It is a suit for declaration that the Memorandum of Understanding/Family settlement is a legal, valid and binding between the parties and they should be directed to respect the same. The suit is also for rendition of accounts to disclose the profits made by the petitioners due to the sale of their products in the area assigned to the respondents and' in this regard reference is made to those products which have been sold in this area under the trade mark Kesh Nikhar, Kesh Nikhar Label etc.

9. have considered the rival submissions made by the counsel for the parties. Concededly the suit filed in this case relates to the alleged Memorandum of Understanding/Family Settlement. The family settlement apparently is to settle the differences between the parties for smooth running of a business being carried out by Sabharwal family at Patiala and Gurgaon. It is pleaded that both the parties agreed to have an exclusive territory for selling these products and agreed to not sell the same in the respective territories assigned to petitioners and respondents. Claim further is that the petitioners had violated this settlement by selling the products in the area meant for the respondents and in this regard reference is made to the products, which have been sold and they are relating to trade mark of Kesh Nikhar and Kesh Nikhar Label etc. It is, thus, obvious that dispute is not concerning the use of trade mark. As such, both the petitioners and respondents are entitled to sell the products with the trade mark of Kesh Nikhar, which they had agreed to do so in an area assigned to each other. This is according to the Memorandum of Understanding/Family Settlement. As per the respondents, this Family Settlement or Memorandum of Understanding stands violated by the petitioners and they had, thus, earned a profit on this count for which the respondents want them to render the account. This liability would also rise on account of Memorandum of Understanding. Mr. Sarin has made endeavor to bring this dispute within the ambit of Trade Marks Act by saying that the suit relates to a right in a registered trade mark. The learned Counsel has also made reference to the averment made in para 8 of the plaint which reads "the plaintiff submit that in view of the family settlement, the plaintiffs have an exclusive and statutory right to use the above said Trademarks in the area/territories, which have come into the share of the plaintiffs. The defendants have derived all benefits of family settlement." He would then refer to the part of averment in para 9 of the plaint which is "the plaintiffs have exclusive right to use of the trademark and to which the defendants are not entitled to do so. The defendants ore liable to be restrained not to use the trademarks Kesh Nikhar, Kesh Nikhar Label, Pesco, M/s Pesco Products in respect of soap and shampoo and any other cognates goods in the territory allotted to the plaintiffs and an injunction is the appropriate remedy in this regard. Referring to these pleadings, it is urged that the suit is relating to a right in regard to trademak and thus within the purview of Section 134(1)(b).

10. Apparently, it may appear so. However, deeper analysis of facts pleaded in entirety would dearly show that there is no dispute between the petitioners and the respondents in regard to use of trademark. Cane set up is that both the petitioners and respondent entitled to use this trademark, but only in the area assigned as per the agreement reached between them. Dispute as such is neither regarding use of trademark nor it is relating to a right in the trademark. It is a dispute on account of sale of the product of this Mark in the area as agreed and not of any trademark. It is clear to me that this dispute is not relating to right in a registered trademark but is basically concerning the Memorandum of Understanding reached between the, parties and declaration in regard to which is sought in the suit. Basic issue is the Family Settlement or Memorandum of Understanding and not a trademark as made out by the petitioners.

11. Similarly, it can also not be said that the suit as framed is regarding specific performance of a Family Settlement or Memorandum of Understanding. The suit filed by the respondents is for declaration that this Memorandum of Understanding and Family Settlement is a legal, valid and binding between the parties and not for specific performance of this settlement or understanding.

12. Much emphasis was laid by the learned Counsel for the petitioners that the suit has been grossly undervalued and has been evaluated arbitrarily for the purpose of court fee. No doubt, the judgments referred to by the learned Counsel are to the effect that where the valuation is found to be arbitrary and un-acceptable, then the same is liable to be rejected by the court. Mr. Sarin is not fully unjustified in saying that the suit is highly under valued. Mr. Palli, however, respond by saying that the respondent is not aware of the exact amount of a loss suffered by him or a profit earned by the petitioners to affix the proper court fee. He also seems to be justified in his submission. It is seen that as on date, the respondents perhaps are not aware of the exact amount of profit that the petitioners would have earned, in case ultimately it is found that the Memorandum of Understanding or a Family Settlement is violated. It may turn out to be a case of loss even. Prayer is for rendition of accounts. The court has power at any stage of the proceedings to direct the respondents to affix the court fees according to the damages assessed by it.

13. In cases of undervaluation or improper fraction of the court fee, the court has ample power to direct a party to affix a proper court fee. There is thus enough safeguard to check the aspect of undervaluation. During the course of arguments, it was put to the counsel for the petitioners to disclose as to what would be valuation of the suit for the purposes of court fee. The counsel responded by saying that it is for the respondents to evaluate the same with some reasonable figure and it would not be for the petitioners to venture any guess or estimate in this regard. Can the respondent be in any position to make a guess in this regard?. appears, it is not possible. Since this aspect can always be covered at the time of final adjudication, the plaint would not call for rejection at the threshold on this ground.

14. The trial court however would keep this aspect in view and at any stage of the proceedings would be at liberty to direct the respondents to make up the court fee if some estimation comes on record during the course of proceedings. No case for interference otherwise is made out in the impugned order and the revisions arc accordingly dismissed.