

# The Indian Performing Right Society ... vs Sanjay Dalia & Anr. on 19 November, 2008

**Author: Vikramajit Sen**

**Bench: Vikramajit Sen, S.L. Bhayana**

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ FA0(OS) 359/2007 & CM 12471/2007

# THE INDIAN PERFORMING RIGHT SOCIETY LTD.

! ..... Appellant  
Through: Mr. A. S. Chandhiok, Sr. Adv.  
with Mr. J. Sagar, Ms. Sweta  
Kakkad & Mr. Arjun Pratap,  
Advs.

versus

\$ SANJAY DALIA & ANR. .... Respondent

^ Through: Mr. Rajiv Nayyar, Sr. Adv.  
with Mr. Rishi Agrawala,  
Adv.

Date of Hearing : November 14, 2008

% Date of Decision : November 19, 2008

CORAM:

\* HON'BLE MR. JUSTICE VIKRAMAJIT SEN  
HON'BLE MR. JUSTICE S.L. BHAYANA

1. Whether reporters of local papers may be  
allowed to see the Judgment? Yes

2. To be referred to the Reporter or not? Yes

3. Whether the Judgment should be reported  
in the Digest? Yes

VIKRAMAJIT SEN, J.

1. This Appeal has been filed against the Order of the learned Single Judge by which he has directed that the Plaint be returned to the Plaintiff for presentation before the proper Court. The Plaintiff is a Society registered under Section 33 read with Rules 13 and 14 of the Copyright Rules, 1958. It is also a company limited by guarantee registered under the Companies Act, 1950. On a perusal of the Plaint, it is evident that its Registered Office is at 208, Golden Chambers, New Andheri Link Road, Andheri (W), Mumbai; it also has an Office at B-317, Som Dutt Chamber-I, Bhikaji Cama Place, New Delhi. Learned counsel for the Defendants/Respondents has not disputed the locus standi of the Plaintiff for filing the suit for permanent injunction restraining infringement of copyright, damages etc.

2. The precise legal status of Defendant No.2, M/s. Cineline Cinemas, is not known, as pleaded in the Complaint itself. It is debatable whether Defendant No.1, the Chief General Manager, M/s. Cineline Cinemas, can at all be impleaded; but we are not called upon to decide this question. Broadly stated, the ventilated grievance against the Defendants is that "Defendant No.1 is personally liable for his acts of encouraging and actively directing the infringing acts of Defendant No.2 by virtue of him having assured the Plaintiff of obtaining a license from the Plaintiff in respect of the Plaintiff's works being communicated to the public by Defendant No.2 and at Defendant No.2's premises". So far as is relevant for the present purposes, the Defendants have underscored the fact that they own Cinema Halls only in Maharashtra and Mumbai and that the entire cause of action, as alleged in the Complaint, has arisen in Mumbai. In fairness to Mr. A.S. Chandhiok, learned Senior Counsel for the Appellant, it has been conceded before us that no part of the cause of action has arisen in Delhi. What he has vehemently contended is that Section 62 of the Copyright Act, 1957 grants absolute discretion and freedom of choice to the Plaintiff to institute a suit wherever it voluntarily resides, or carries on business or personally works for gain. Mr. Chandhiok has stressed on the uncontroverted assertion of the Plaintiff having an office in Delhi. Therefore, according to him, the requirements of Section 62(2) of the Copyright Act have been met; the provisions of Section 20 of the Code of Civil Procedure, 1908 (CPC for short) are wholly irrelevant; and the Complaint should be entertained by the Courts in Delhi, as they sufficiently possess territorial sway over the dispute. Mr. Nayyar, learned Senior Counsel for the Defendants, has supported the dialectic of the learned Single Judge, which gives eminence also to the situs where the cause of action has arisen.

3. We have carefully cogitated upon the contentions articulated before us on behalf of the litigating adversaries. *Intas Pharmaceuticals Ltd. -vs- Allergan Inc.*, 132(2006) DLT 641(DB) lays down an important principle of law in that it interprets Section 134 of the Trade Marks Act as not whittling down the provisions of Section 20 of the CPC but providing an additional forum and a place for filing a suit in case of an infringement of a trademark. The Division Bench presided over by Dr. Mukundakam Sharma, J. (as his Lordship then was) has also opined that the words "notwithstanding anything contained in the CPC" are indicative of the position that Section 134 of the Trade Marks Act has to be read conjointly with and in addition to the provisions of Section 20 of the CPC. To those observations we may add that it is only in the event of a conflict between the provisions of Section 20 of the CPC and those of Section 134 of the Trade Marks Act that the latter would prevail. The effort of the Court must be, so far as is possible, not to curtail the role that can be played by either of the provisions acting conjointly or simultaneously. This Court in *Intas* had predicated its decision on the opinion of the Supreme Court in *Dhodha House -vs- S.K. Maingi*, (2006) 9 SCC 41 in which it has been enunciated that Section 62(2) of the Copyright Act provides an additional forum to enable the holder of a copyright to file a suit at the place of his residence, thereby insulating him from the tedium or vexatiousness of taking the fight to the doorstep of the violating Defendant. The Trade and Merchandise Marks Act, 1958 did not contain a provision akin to Section 134(2) of the Trade Marks Act, 1999 enabling the Plaintiff to enjoy the convenience of filing a suit at the place where he resides or carries on business etc. The extant provisions are indeed salutary in purpose and effect, since otherwise the legal remedy available for a breach of copyright or an infringement of trademark often remains illusory. It appears to us that the Court would be acquiescing in an assault on a general principle of law prevalent at least in all common law systems if it were to allow a lis to continue at a place where neither has the cause of action arisen nor has the

Defendant have a residence or place of business. This legal principle attempts to obviate the use of litigation as a device of harassment calculated to force an adversary into succumbing into a settlement for fear of fighting a lis at an inconvenient venue. Having made this observation, we see no impediment in extrapolating this impeccable reason onto an interpretation of Section 62(2) of the Copyright Act and Section 134(2) of the Trade Marks Act, (which are verbatim to each other), by requiring the Plaintiff to file a suit at the place where it has its principal or subordinate place of business if the cause of action has arisen there. Alternatively, the Plaintiff may take recourse to the provisions of Section 20 of the CPC.

4. Let us analyse the amplitude of Section 20 of the CPC. It enjoins that a suit must be instituted in a court within the local limits of whose jurisdiction the Defendant actually and voluntarily resides, or carries on business, or personally works for gain, or where the cause of action wholly or in part arises. The Explanation to that Section is important; it prescribes that a corporation shall be deemed to carry on business at its sole or principal office, or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place. Since this provision primarily keeps the Defendant in perspective, the corporation spoken of in the Explanation, obviously refers to the Defendant.

5. A plain reading of Section 20 of the CPC apparently allows the Plaintiff a multitude of choices where it may institute its suit. Corporations and partnership firms, and even sole proprietorship concerns, could well be transacting business simultaneously in several cities. If sub-sections (a) and (b) of Section 20 are to be interpreted disjunctively from sub-section

(c), as the use of the word „or“ appears to allow, the Plaintiff could file a suit where the cause of action may have arisen, regardless of whether the Defendant has even a subordinate office at that place. However, if the Defendant's location is to form the fulcrum of jurisdiction, and it has an office also at the place where the cause of action has occurred, the Plaintiff is precluded from instituting the suit anywhere else. Obviously, this is because at every other place would constitute a forum non conveniens.

6. It is noteworthy that the Supreme Court has dwelt on the various hues of this problem of the place of suing in several cases and has gone to the extent of laying down that it should be court's endeavour to find out the place where the cause of action has substantially arisen and reject others where it may have incidentally arisen. We need not delve further on this point beyond making a reference to Oil & Natural Gas Commission

-vs- Utpal Kumar Basu, JT 1994 (5) SC1 and South East Asia Shipping Co. Ltd. -vs- Nav Bharat Enterprises Pvt. Ltd., (1996) 3 SCC 443. This is for the reason that with regard to the dispute before us the question of the place where the cause of action has incidentally or substantially arisen does not arise. The conundrum rather is whether the plaintiff is free to file a case at a place where the cause of action has not arisen despite the fact that it has its principal or subordinate place of business etc. at a place where the cause of action has arisen. Instead, the decision in M/s. Patel Roadways Limited, Bombay -vs- M/s. Prasad Trading Company, AIR 1992 SC 1514 is apposite, the ratio of which is that if a corporation has a subordinate office in the place where the cause of action

arises, litigation must be commenced at that place alone regardless of the apparently wider enabling provisions in Section 20 of the CPC. Their Lordships opined that - "it would be a great hardship if, inspite of the Corporation having a subordinate office at the place where the cause of action arises (with which in all probability the plaintiff has had dealings), such plaintiff is to be compelled to travel to the place where the Corporation has its principal place. That place should be convenient to the plaintiff; and since the Corporation has an office at such place, it will also be under no disadvantage".

7. We have perused the Parliamentary Debates relating to the amendments carried out to the law of copyright and trademark. One of the Objections that was raised was that the new jurisdictional dispensation would favour multinational corporations as they would be able to initiate litigation according to their choice and secondly that a poor holder of a trademark will be at a disadvantage. In the context of the first Objection it was clarified that the new provisions would be to the advantage of the petty trader incidentally doing his trade on the basis of a registered trademark, and that if this purpose was not achieved, an amendment would be brought in. If the interpretation of Section 62 which we intend to impart, (which would also apply to Section 134 of the Trade Marks Act) is accepted, both these apprehensions would be addressed and resolved. Plainly, if the cause of action has arisen at a particular place where the plaintiff has its principal or subordinate office, and it is restricted to filing a case in that place alone, the Defendant would not be put to any unfair disadvantage. The intendment of Section 62 of the Copyright Act and Section 134 of the Trade Marks Act is to enable the Plaintiff to initiate litigation at a forum convenient to it. It is not intended to allow the plaintiff to choose a territorial forum which is not convenient to either of the parties, as is demonstrated by the case in hand. Bill No.XV of 1955 sought to "amend and consolidate the law relating to copyright". The Parliamentary Committee was of the opinion that "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." This is a manifestation, in reverse, of what we have assessed as a general principle of law, viz., that the intendment behind prescribing the place of suing is to ensure that litigation should be as best possible not a weapon of harassment. Since experience had exposed the reality that if a plaintiff in an action for infringement of copyright or trademark may not be able to enjoy the fruits thereof if he was compelled to file at the transgression's place of business, the amendment was brought about. It could not have been the intention of Parliament to enable the Plaintiff to choose the place of suing on the basis of what would be the inconvenience to the Defendant.

8. The learned Single Judge is unassailably correct in opining that "the plaintiff would be deemed to carry on business at a branch office only if a cause of action has arisen in Delhi". In doing so he has extracted and infused the rationale of Section 62 of the CPC into the Copyright Act. As we have already recorded above, it is the uncontrovered case of the parties that the cause of action has not arisen in Delhi. The neat question is whether a court of law is proscribed from introducing the aspect of cause of action merely because it has not been prescribed in the legislation. Alternatively, in the absence of an Explanation as is to be found in Section 20 of the CPC can the pragmatic and

equitable principles not be injected into the relevant Section. It is beyond cavil that the concept of cause of action is inseparably intertwined in each and every litigation. Without it the lis would be liable for rejection under Order VII Rule 11 of the CPC. The cause of action, therefore, permeates every sinew of the suit and all procedural provisions, which are but handmaidens of justice.

9. In *S. Sundaram Pillai -vs- V.R. Pattabiraman*, AIR 1985 SC 582 their Lordships observed that - "it is manifest that the object of an Explanation to a statutory provision is (a) to explain the meaning and intendment of the Act itself, (b) where there is any obscurity or vagueness in the main enactment, to clarify the same so as to make it consistent with the dominant object which it seems to subserve, (c) to provide an additional support to the dominant objet of the Act in order to make it meaningful and purposeful, (d) an Explanation cannot in any way interfere with or change the enactment or any part thereof but where some gap is left which is relevant for the purpose of the Explanation, in order to suppress the mischief and advance the object of the Act it can help or assist the Court in interpreting the true purport and intendment of the enactment, and (e) it cannot, however, take away a statutory right with which any person under a statute has been clothed or set at naught the working of an Act by becoming an hindrance in the interpretation of the same". The following observations in *Keshavji Ravji -vs- Commissioner of Income-tax*, AIR 1991 SC 1806 are in similar vein:

14. An „Explanation , generally speaking, is intended to explain the meaning of certain phrases and expressions contained in a statutory provision. There is no general theory as to the effect and intendment of an Explanation except that the purposes and intendment of the „Explanation are determined by its own words.

An Explanation, depending on its language, might supply or take away something from the contents of a provision. It is also true that an Explanation may ....be introduced by way of abundant caution in order to clear any mental cobwebs surrounding the meaning of a statutory provision spun by interpretative errors and to place what the legislature considers to be the true meaning beyond controversy or doubt. Hypothetically, such can be the possible purpose of an „Explanation cannot be doubted.

10. So far as Section 20 is concerned, the Explanation is clarificatory in nature. The problem that is presented is that Section 62 of the Copyright Act does not have any similar Explanation. Strictly speaking, an Explanation found in one statute cannot be read into another statute. The CPC, however, constitutes a grundnorm, the ethos and essence of which percolates through all other statutes. If any doubt persists in the context of the provisions of Copyright Act or the Trade Marks Act, we would not hesitate to dispel them with the aid of this Explanation found in the CPC. In *Harshad S. Mehta -vs- State of Maharashtra*, AIR 2001 SC 3774 it has been held that if two Acts are similar an external aid of statutory interpretation contained in one and omitted in another can be read into the latter. This course has also been favoured in *Shri Narakesari Prakashan Ltd. -vs- Employees State Insurance Corporation*, AIR 1984 SC 1916.

11. The intention of the legislature is evident, inter alia, in the non-obstante clause pertaining to the CPC. The word "notwithstanding" in ordinary parlance means „inspite of or despite. (See Concise

Oxford Dictionary as well as Black's Law Dictionary). This word does not indicate that the CPC has no role to play. In the factual matrix before us the word „notwithstanding“ connotes that in addition to Section 20 of the CPC, by virtue of Section 62(2) of the Copyright Act, the plaintiff is free to choose a forum convenient to it, that is, wherever it actually and voluntarily resides or carries on business or personally works for gain, provided the cause of action arises there. This is in contradistinction to that of the defendant as prescribed by Section 20 of the CPC. It is difficult for us to conceive of a situation where the ameliorative advantage bestowed on the plaintiff by virtue of Section 62 of the Trade Marks Act or Section 134 of the Trademarks Act could be frustrated if this interpretation is given effect to. Let us assume that the cause of action has arisen in Kanyakumari. It is axiomatic that in the case of a violation of a trademark or copyright the Defendant would have some presence, that is, actual and voluntary residence, or carrying on of business or working for gain, in Kanyakumari. If the Plaintiff also carries on business etc. in Kanyakumari there would be no justifiable reason not to bring the suit only at Kanyakumari. Assuming, however, that the Plaintiff does not carry on business in Kanyakumari but in Delhi or in Bombay or Calcutta, he would face the disadvantage of having to file his suit at a hostile or inconvenient place. Section 62 would then enure to his benefit and enabling it to file the action in any of the three cities. However, if the Plaintiff were to be free to choose from any of the places where he is carrying on business etc. with no correlation to the cause of action, the consequence would be that his choice would create for the Defendant the very disadvantage which the legislation has sought to alleviate for the Plaintiff. In that event, no useful purpose would be served for the plaintiff except for additional harassment to the Defendant. This could never have been the intention or purpose of Parliament and if this pragmatic and commonsense interpretation is not imparted to the Section, the comment of Hon'ble Minister, Mr. Murosoli Maran that an amendment would be brought in would become imperative. Since the cause of action is an integral, inseparable and inevitable part of any litigation, by reading it into Section 62 of the Copyright Act and Section 134 of the Trade Marks Act, the law is made meaningful and expedient. This is the bounden duty of any Court which is called upon to interpret a provision of law.

12. We have already mentioned the landmark and oft-quoted judgment of the Supreme Court in Patel Roadways and Oil & Natural Gas Commission. We must also refer to a more comparatively recent decision in Kusum Ingots and Alloys Limited -vs- Union of India, (2004) 6 SCC 254 where it has been enunciated that if only a small part of the cause of action has arisen within the territorial jurisdiction of a particular High Court, it is not bound to entertain the petition. It would be sufficiently empowered to refer the petition to the court where substantially the cause of action has arisen as it would be more convenient to adjudicate the matter in that court. Although it was Section 20 of the CPC which was in focus in all those cases, it is the legal rationale behind it that had compelled the court to render a purposive interpretation thereto. This approach is exactly what is called for even where the Court is to interpret other statutes such as the Copyright Act and the Trade Marks Act.

13. In this analysis, we find the Appeal to be devoid of merits. So far as the facts of the present case are concerned, the cause of action, as laid out in the Plaint, has arisen in Maharashtra only, where the Plaintiff's principal office is located. Had it allegedly arisen at a place where the Plaintiff does not have its principal or subordinate office, the suit could have been filed in any Court holding territorial jurisdiction over any of its offices. Thus, it is evident that we are, in no wise, whittling

down the provisions of either the Copyright Act or the Trade Marks Act. We hold that if the cause of action has arisen at a place where the Plaintiff actually and voluntarily resides or carries on business or personally works for gain, that place is not only the appropriate but also the only place where a suit can be instituted ventilating a grievance of violation of copyright, (and since the provisions are similar) to an infringement of the trademark. In holding so we are not ignoring the provisions of either the Copyright Act or the Trade Marks Act; we are only imparting a pragmatic interpretation to them.

14. We, however, make no order as to costs.

( VIKRAMAJIT SEN )  
JUDGE

November 19, 2008  
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( S.L. BHAYANA )  
JUDGE