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

Reserved on: 04.03.2021

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Pronounced on: 09.11.2021

+ CS(COMM) 455/2020

DR REDDYS LABORATORIES LIMITED Plaintiff
Through Mr.Ranjan Narula, Adv.

Versus

DR REDDY PATHLABS PRIVATE LIMITED Defendant
Through Ms.Shwetasree Majumder, Ms.Diva
Arora and Ms.Eva Biswal, Advs.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

I.A. 102/2021

1. This is an application under Order 7 Rule 10 read with Order 7 Rule 11(a) and (d) CPC filed by the defendant seeking rejection of the plaint/return of the plaint to be presented before a court of competent jurisdiction.
2. The plaintiff has filed the accompanying suit seeking an order of permanent injunction to restrain the defendant, its directors, etc. from offering/providing healthcare services including pathology/diagnostic services, etc. under the name/mark DR. REDDYS as part of its domain name/website/trade name, etc. which amounts to infringement of the plaintiff's trade name/mark DR.REDDY'S which is a registered mark in

class 5 and 44. Other connected reliefs are also sought.

3. It is the case of the plaintiff that the plaintiff's mark DR.REDDY'S is registered in India in class 5 since 2001. The plaintiff has also obtained various registrations of the mark DR.REDDY'S in class 5 and 44. In August 2020, the plaintiff's attention was invited by its representative to a website being operated under the name www.drreddyspathlabs.com. The plaintiff was shocked to learn about the illegal and unauthorised business activities of the defendant/use of an identical trade mark/trade name 'DR.REDDYS' as part of domain name/website/trade name. Hence, the present suit.

4. The defendant has filed the aforesaid application stating that this court does not have territorial jurisdiction to hear the present suit. The registered offices of both the parties are located at Hyderabad. The defendant is not conducting any business in Delhi and no part of cause of action has arisen within the jurisdiction of this court. It is also urged that Section 134 of the Trade Marks Act has no application to the facts of this case as though the corporate office of the plaintiff is situated in Delhi but a suit for infringement can be filed only at a place where the plaintiff's registered office is located. Additionally, it is urged that Section 134 of the Trade Marks Act is relevant only for the purposes of infringement of the trade mark. It is urged that the present suit is a composite suit for passing off and unfair competition. Hence, the present application.

5. I have heard learned counsel for the parties. I have also perused the written submissions filed by the defendant.

6. Learned counsel for the defendant has relied upon the judgment of the Supreme Court in the case of *Indian Performing Rights Society Ltd. vs. Sanjay Dalia & Anr.*, (2015)10SCC 161 to plead that a suit for infringement

of trade mark can only be filed at the place where the plaintiff's registered office is located. Reliance is also placed on Section 134 of the Trade Marks Act. Reliance is also placed on a judgment of a Division Bench of this court in the case of *Banyan Tree Holding (P) Ltd. vs. A. Murali Krishna Reddy & Anr., 2010 (42) PTC 361 (Del.)* to claim that merely because the defendant's website is accessible in Delhi, is not a ground for concluding that any part of cause of action has arisen in Delhi. Hence, Section 20(c) CPC would also have no application to the present case. Hence, it is pleaded that this court does not have territorial jurisdiction to entertain the present suit and appropriate directions be passed by this court.

7. I may first look as to when the court would exercise powers under Order 7 Rule 10 CPC to return the plaint on account of lack of territorial jurisdiction.

8. The settled legal position is that while considering an application under Order 7 Rule 10 CPC, only averments made in the plaint and the documents filed along with the plaint need to be seen. In this context reference may be made to the judgment of the Division Bench of this court in the case of *M/s. RSPL Ltd. vs. Mukesh Sharma & Anr., (2016) 232 DLT 161* where the court held as follows:-

“11. It must be stated that it is a settled proposition of law that the objection to territorial jurisdiction in an application under Order 7 Rule 10 CPC is by way of a demurrer. This means that the objection to territorial jurisdiction has to be construed after taking all the averments in the plaint to be correct. In *Exphar SA v. Eupharma Laboratories Limited : (2004) 3 SCC 688*, the Supreme Court observed that when an objection to jurisdiction is raised by way of demurrer and not at the trial, the objection must proceed on the basis that the facts, as pleaded by the initiator of the impugned procedure, are true. The Supreme

Court further observed that the objection as to jurisdiction in order to succeed must demonstrate that granted those facts, the Court does not have jurisdiction as a matter of law. It is also a settled proposition of law that while considering a plaint from the standpoint of Order 7 Rule 10 CPC, it is only the plaint and the documents filed along with it, that need to be seen. The written statement is not to be looked into at all.”

9. Reference may also be had to a judgment of a Coordinate Bench of this court in the case of ***Boston Scientific International B.V. vs. Metro Hospital, (2007)136 DLT 278*** where the court held as follows:-

“6. Having obtained unconditional leave to defend the suit, the defendant has filed the present application under Order 7 Rule 10 for return of the plaint on the ground of lack of territorial jurisdiction. Now, on the one hand we have an order of this Court granting unconditional leave to defend on the ground that a ‘triable issue’ arises qua the plea of territorial jurisdiction and, on the other, we have the present application wherein the defendant seeks return of plaint without the issue being tried. This, to me, seems a somewhat incongruous situation. A ‘triable issue’ means that the same requires to be decided after leading of evidence. Whereas, the parameters of disposing of an application under Order 7 Rule 10, CPC, at the initial stage without going into evidence, requires the Court to only look at the averments contained in the plaint.”

10. Clearly, what follows is that while considering an application under Order 7 Rule 10 CPC, this court has to look at the averments made in the plaint and the accompanying documents to adjudicate the said application.

11. I may now look at the averments made in the plaint. Paras 19 and 33 of the plaint read as follows:-

“19. The Plaintiff on close analysis of the Defendant's website www.drreddyspathlabs.com noticed that the Defendant is advertising and running its business under the trade name ‘Dr

Reddys Pathlab Private Limited' and claiming as under on its interactive website, which is accessible throughout India and also to the general public residing within the jurisdiction of this Hon'ble court.

OUR SERVICES:

..... Our diagnostic Services offers a wide range of test menu including Pathology & Radiology to assist individuals, organizations, and institutions around the world in pursuing better health and well being. We process all kinds of

Biochemistry
Microbiology
Clinical Pathology
Histopathology
Molecular Biology &
Radiology samples

flown from all locations across India. The samples processed generate results which undergo stringent review protocols before integrated online for web based result reporting. These web based result reporting allow individuals, organizations, and institutions to explore easy, quick and cost effective process of result evaluation.

Corporate Overview

Dr Reddys Path Labs Private Limited is a leading Testing Service Laboratory in India providing Pathology, Radiology and related testing services under one roof to customers around the globe.

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33. That this Hon'ble Court has jurisdiction to entertain and try the present suit under Section 134 of the Trade Marks Act, 1999 as the Plaintiff has its corporate office situated at NH-2, 2nd Floor, C Block, Community Centre, Naraina Vihar, Delhi-

110028. That this Hon'ble Court has also jurisdiction as Plaintiff is providing its services through its website www.drreddys.com which is an interactive website and accessible to the consumers at Delhi and the Plaintiff's products and services can be availed by the consumers in Delhi. It is a settled position that the possibility to conclude transactions through a website at a particular place is virtually identical to a seller having a shop in that place in the real world. Therefore, this Hon'ble Court has the territorial jurisdiction to try and entertain the present suit in view of Section 20 of CPC and Section 134(2) of the Trade Marks Act, 1999. The Plaintiff submits that the Defendant is also carrying on business of providing healthcare services, offering franchisee and know how through the impugned website www.drreddyspathlabs.com. The impugned website is an interactive one and allows for transaction to be concluded anywhere including providing a chat function on its website. The Defendant is further claiming to provide its services throughout India including within the jurisdiction of this Hon'ble court and has also appointed various franchisee in various parts of the country and thus the same would further confer jurisdiction to the this Hon'ble court to try and entertain the present suit. The Defendant has also advertised its services through various social media platforms including Just Dial, Facebook and others, which are accessible to the general public residing within the jurisdiction of this Hon'ble court. Thus, this Hon'ble court has jurisdiction under Section 20 of the Code of Civil Procedure, 1908."

12. Hence, as per the plaint, the defendant is carrying on its business throughout the country. It is also claimed that the defendant has appointed various franchisees in various parts of the country. The aforesaid portion of the website itself states that it can carry out necessary tests from samples flown from all locations across India. Based on the above, it is urged in the plaint that this court has territorial jurisdiction in view of Section 20 CPC as a part of the cause of action has arisen within the territory of this court.

13. Reference may be had to Section 20 CPC. The same reads as

follows:-

“20. Other suits to be instituted where defendants reside or cause of action arises.— Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction—

.....

(c) the cause of action, wholly or in part, arises.

Explanation ²[* * *].—A corporation shall be deemed to carry 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.”

14. In this context reference may also be had to the judgment of the Supreme Court in the case of *A.B.C. Laminart Pvt. Ltd. & Anr. Vs. A.P. Agencies, Salem, (1989) 2 SCC 163* where the Court on Section 20 CPC held as follows:-

“12. A cause of action means every fact, which if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment must be part of the cause of action. But it has no relation whatever to the defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff.

13. Under Section 20(c) of the Code of Civil Procedure subject to the limitation stated theretofore, every suit shall be instituted in a court within the local limits of whose jurisdiction the cause of action, wholly or in part arises. It may be remembered that earlier Section 7 of Act 7 of 1888 added Explanation III as under:

Explanation III.—In suits arising out of contract the cause of action arises within the meaning of this section at any of the following places, namely:

- (1) the place where the contract was made;
- (2) the place where the contract was to be performed or performance thereof completed;
- (3) the place where in performance of the contract any money to which the suit relates was expressly or impliedly payable.”

15. The question would come: Whether facts of this case, at this stage, warrant rejection of the plaint on the ground of lack of territorial jurisdiction of this court?

16. Reference in this context may be had to the judgment relied upon by the learned counsel for the defendants in the case of ***Banyan Tree Holding (P) Ltd. vs. A. Murali Krishna Reddy & Anr.(supra)***. That was a case in which the plaintiff stated that the defendants have advertised their products on their website. According to the plaintiff therein, the defendants solicit their business through use of the impugned mark “BANYAN TREE RETREAT” and the "Banyan" device mark in Delhi. It was alleged in that case that the defendants had presence in Delhi through their website which was accessible in Delhi. It was further stated that the website was not a passive website. It not only provided contact information but also sought feedback and inputs from its customers through an interactive web-page.

Further the plaintiff stated that the services of the defendants were being offered to the customers in Delhi because of the ubiquity, universality and utility of the features of the internet and the World Wide Web and hence, the cause of action had arisen within the jurisdiction of this court. Hence, in the referral order, the learned Single Judge referred the following questions to the Division Bench:-

“1. Whether this court can entertain the present suit, having regard to the averments and documents, in the context of special provisions in to the Trademark and Copyrights Act, which do not provide for exercise of jurisdiction based on internet or web-presence of such alleged infringers, even while making explicit departure from the general law as to territorial jurisdiction;

2. Whether the court can entertain the present suit, in the absence of a long arm statute, having regard to the existing state of law, particularly Section 20, CPC, and the impact, if, any of the Information Technology Act, 2009 on it;

3. Applicable standards for entertaining a suit, based on use of a trademark by a Defendant, on its website, or infringement or passing off of the plaintiff’s trademark, in such website and the relevant criteria to entertain such suits;

4. Applicable standards and criteria where the plaintiff relies exclusively on “trap orders” or transactions, in relation to passing off, or trademark infringement cases, as constituting “use” or cause of action, as the case may be.”

17. The Division Bench held as follows:-

“38. Having surveyed the law as it has developed in different jurisdictions, this Court is of the view that the essential principles developed as part of the common law can be adopted without difficulty by our courts in determining whether the forum court has jurisdiction where the alleged breach is related to an activity

on the internet. At the outset, this court does not subscribe to the view that the mere accessibility of the Defendants' website in Delhi would enable this Court to exercise jurisdiction. A passive website, with no intention to specifically target audiences outside the State where the host of the website is located, cannot vest the forum court with jurisdiction. This court is therefore unable to agree with the proposition laid down in *Casio*. The said decision cannot be held to be good law and to that extent is overruled.

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Question (iii) Is it permissible for the Plaintiff to establish such prima facie case through “trap orders” or “trap transactions”?

46. It may be recalled that the Plaintiff has to show that a part of the cause of action in a suit for passing off or infringement has arisen within the jurisdiction of the forum court. Relevant to this, it would have to be shown by the Plaintiff that the Defendant “availed” of the jurisdiction of the forum court by commercially transacting with a viewer located in the forum state through the internet. The question is whether this transaction can be a trap transaction“ that is engineered by the Plaintiff itself, particularly when it is not otherwise shown that the Defendant intended to specifically target customers in the forum state.

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57. Reverting to the present case, the position that emerges from the above judicial decisions is that while in trade mark and infringement cases, trap orders or trap transactions may be used as evidence, the fairness of such transactions is a relevant factor to be considered. Other relevant factors would be the nature of goods or services offered for purchase on the internet. If they require the customer to further physically verify their quality then the mere purchase of such goods through a trap transaction may not be treated as being sufficient evidence of infringement. The facts of each case will determine whether the trap transaction is a fair one and has resulted in a purchase on the internet of goods or

services. A lone trap transaction will not be sufficient evidence of infringement or passing off. For the purposes of establishing that a part of the cause of action arose within the jurisdiction of the court, the Plaintiff would have to show that the Defendant has purposefully availed of the jurisdiction of the forum court by entering into a commercial transaction with an internet user located within the jurisdiction of the forum court. This cannot possibly be a solitary trap transaction since that would not be an instance of “purposeful” availment by the Defendant. It would have to be a real commercial transaction that the Defendant has with someone not set up by the Plaintiff itself. If the only evidence is in the form of a series of trap transactions, they have to be shown to be obtained using fair means. The Plaintiff seeking to establish jurisdiction on the basis of such trap transactions would have to aver unambiguously in the pleadings, and also place along with it supporting material, to prima facie show that the trap transactions relied upon satisfy the above test. Question (iii) is answered accordingly.

Summary

58. We summarise our findings on the questions referred for our opinion as under:

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Question (iii): Is it permissible for the Plaintiff to establish such prima facie case through “trap orders” or “trap transactions”?

Answer: The commercial transaction entered into by the Defendant with an internet user located within the jurisdiction of the forum court cannot possibly be a solitary trap transaction since that would not be an instance of “purposeful” availment by the Defendant. It would have to be a real commercial transaction that the Defendant has with someone not set up by the Plaintiff itself. If the only evidence is in the form of a series of trap transactions, they have to be shown as having been obtained using fair means. The Plaintiff seeking to establish jurisdiction

on the basis of such trap transactions would have to aver unambiguously in the plaint, and also place along with it supporting material, to prima facie show that the trap transactions relied upon satisfy the above test.”

18. The reliance of the learned counsel for the defendant on the above judgment of the Division Bench of this court in case of *Banyan Tree Holding (P) Ltd. vs. A. Murali Krishna Reddy & Anr.,(supra)* is misplaced. In this case, there are no trap transactions. As per the plaint and the website of the defendant, the defendant is offering its services throughout the country including in Delhi. What the defendant, as per the plaint, is offering is physical services in Delhi, namely, collection of samples which will then be flown over to the location of the laboratory of the defendant. It is not an internet based transaction that is being sought to be made. The plaint and the accompanying documents are the only documents which have to be seen at this stage. It is apparent that as per the plaint the services are being physically offered in Delhi. A part of cause of action as per the plaint has arisen within the territory of Delhi.

19. It is not possible to reach at a conclusion that no cause of action has arisen within the territorial jurisdiction of this court at this stage. After the parties have led their evidence that any final conclusion can be made.

20. There is clearly no merit in the present application and the same is dismissed.

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List before the Joint Registrar on 22.11.2021 for further proceedings.

JAYANT NATH, J.

NOVEMBER 09, 2021/rb