

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 22.01.2008

+ **TRP (C) No. 2/2008**

HONDA GIKEN KOGYO KABUSHIKI KAISHA ... Petitioner

- versus -

RIAZ AHMED KHAN & ANOTHER ... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Manmohan Singh

For the Respondents : None

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

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| 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 Digest ? | Yes |

BADAR DURREZ AHMED, J

1. This is a petition under Section 24 of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC') seeking transfer of Suit No.336/2003 (Honda Giken Kogyo Kabushiki Kaisha vs. Riaz Ahmed Khan & Others) which is allegedly pending before the Additional District Judge, Delhi. As would be apparent from the facts of this case narrated below, the key question is whether there is any suit pending before the Additional

District Judge, Delhi ? It is obvious that if there is no pending suit, the question of transfer / withdrawal of the same to this court cannot arise.

2. The facts are that the petitioner herein had instituted a suit for permanent injunction, infringement of trade mark / trade name, copyrights, passing off, etc. before this court. The suit was numbered as CS(OS) 1934/2001 and was valued at Rs 5,00,600/-. The suit came up before the court for the first time on 17.09.2001 when this court granted an *ex parte ad interim* injunction against the defendants restraining them from using the trade mark HONDA on vests, briefs, panties, pyjamas, etc. or any other allied and cognate goods.

3. Subsequently, the pecuniary jurisdiction of the district court was enhanced to more than Rs 5 lakhs and, therefore, the suit became triable by the District Court. On 17.09.2003, the suit was transferred to the District Court and was renumbered as Suit No.336/2003. By an order dated 14.05.2004, the defendants were directed to be proceeded against *ex parte*. On 01.10.2004, the petitioner's amendment application under Order 6 Rule 17 was allowed. The amendment was with regard to enhancement of value of the suit by approximately Rs 25 lakhs. The result being that the suit was now valued at Rs 30,00,600/-. On 27.10.2004, the amended plaint was filed before the Additional District Judge, Delhi and so too the additional court fee. When the matter came up before the Additional District Judge on

25.11.2004, a request was made by the petitioner / plaintiff that the case be transferred from the District Court to the High Court through the learned District Judge. The matter was heard by the learned Additional District Judge on 25.11.2004 itself. The question for consideration, as noted in the order-sheet of 25.11.2004, was whether the plaint should be returned on account of amendment to the plaint which took the suit beyond the pecuniary jurisdiction of the District Court or should it go to the High Court through the learned District Judge by way of transfer as requested on behalf of the plaintiff ? After considering the submissions made by the learned counsel for the petitioner and considering the decisions cited at the bar, the learned Additional District Judge was of the view that the powers of transfer exercised by the District Judge under Section 24 of the CPC were confined to transfer of cases from one court to another court within the jurisdiction of the district concerned and did not extend to the transfer of cases from the District Court to the High Court, which power was within the exclusive domain of the High Court. Consequently, the learned Additional District Judge passed the following order:-

“In view of the above, the plaintiff to move appropriate application under Order 7 Rule 10A CPC, if it so desires and in case the application is not made by the next date, the plaint shall be returned without any further order from the court under Rule 10 of Order 7 CPC against Receipt then the plaint to be presented before the competent Court / Hon'ble High Court by virtue of amendment in the plaint dated 1.10.2004 as the suit has become beyond pecuniary jurisdiction of this court.

Put up on 6.12.2004 for further proceedings.”

4. On 06.12.2004, when the matter came up again before the Additional District Judge, Delhi, a request for adjournment was made on behalf of the plaintiff for filing an application under Order 7 Rule 10A CPC. The learned Additional District Judge granted a last opportunity for the said purpose and directed that the matter be put up on 14.12.2004. On that date, i.e., 14.12.2004, the plaintiff had filed an application under Section 151 read with Order 7 Rule 10A CPC. The request for transfer of the case to the High Court through the learned District Judge had already been declined by virtue of the order dated 25.11.2004. The learned counsel for the plaintiff had made submissions with regard to the continuance of the interim order till the plaint is refiled before the High Court. In these circumstances, the learned Additional District Judge disposed of the matter in the following manner:-

“Heard. Since the interim order was passed by Hon'ble High Court, which has jurisdiction to entertain the amended plaint also the interim order shall be deemed to continue till the refiling of plaint before Hon'ble High Court. The plaint and original documents be returned to plaintiff against receipt and on filing copy of the same. As the defendants are ex-parte in the suit, so there is no need for compliance of Order 7 Rule 10A CPC. But the plaintiff to refile plaint before Hon'ble High Court promptly.

File be consigned to Record Room.”

5. Despite the direction that the plaintiff should refile the plaint before the High Court promptly, the plaint has not been taken back by the plaintiff even till date. The question of refiling the plaint before the High Court, therefore, did not arise. The order returning the plaint was passed on

14.12.2004. The present transfer petition has been filed on 05.12.2007 seeking transfer of the Suit No.336/2003 allegedly pending before the learned Additional District Judge, Delhi. It has been contended by the learned counsel for the petitioner that till the plaint is taken back by the plaintiff, the suit continues to be pending before the court which had directed the return of the plaint. He also submitted that the present petition was maintainable under Section 24 CPC and in support thereof he placed reliance on the following decisions:-

- 1) **Pushpa Kapil v. Shiv Kumar: 1988 (35) DLT 187 ;**
- 2) **M.K. Modi v. K.K. Modi: 2004 (115) DLT 616 ;**
- 3) **Ziff-Davis Inc v. Dr. J.K. Jain & Others: 2006 (32) PTC 86 (Del.) ;**
- (4) **Hawkins Cookers Limited v. Citizen Metal Industries (India): 2006 (33) PTC 387 (Del);**
- (5) **Aviat Chemicals Pvt. Ltd. and Another v. Magna Laboratories (Gujarat) : 2006 (127) DLT 300.**

6. I have examined each of these cases and am of the view that the same are distinguishable from the case at hand and would, therefore, not be of any assistance to the petitioner. In **Ramesh Chand Bhardwaja v. Ram Prakash Sharma: 44 (1991) DLT 528**, a learned single Judge of this court had observed that the power of transfer and withdrawal of a suit under Section 24 of CPC has been conferred upon the High Court and the District Judge only in respect of the proceedings *pending* in any court subordinate to it. In **Ramesh Chand Bhardwaja (supra)**, the trial court had already returned the

plaint for presentation before the court of competent jurisdiction and, therefore, it was held that there were no proceedings pending in any court subordinate to the High Court. The learned single Judge observed that as the plaint had been returned under the orders of the trial court and there was no plaint or suit pending in the court subordinate to the High Court, the case could not be transferred under Section 24 of CPC. This decision squarely covers the case at hand.

7. The argument raised by the learned counsel for the petitioner that the suit continues to be pending before the learned Additional District Judge because the plaint has not been taken back by the petitioner / plaintiff is untenable. In **Smt. Latadevi v. Ramnath and Others**: AIR 1987 Bombay 364, it has been observed, and in my view rightly so, that the proceedings terminate effectively only when the plaint is ready for handing over to the plaintiff for presentation to the proper court. In that case, the question arose as to whether the proceedings terminated on the date of passing of the order of return of the plaint or on the date on which the plaint was ready for handing over to the plaintiff. It was decided that the date on which the plaint was ready for handing over to the plaintiff for presentation to the proper court would be the date on which the proceedings could be held to have terminated effectively. In the present case, I find that not only had the order returning the plaint been made on 25.11.2004 as well as on 14.12.2004, but the plaintiff himself had moved an application under Order

7 Rule 10A of CPC. Even the interim order passed earlier was directed to be continued till refiling before the High Court. The order dated 14.12.2004 had specifically directed the plaintiff / petitioner to refile the plaint before the High Court promptly. This order was passed over three years back and the petitioner / plaintiff has not yet bothered to take back the plaint. It is not when the plaintiff takes back the plaint that is material, but when the plaint is ready for handing over to the plaintiff. It cannot be assumed by any stretch of imagination that for over three years the plaint was not ready for handing over to the plaintiff. In fact, no such complaint has been made by the petitioner. On the other hand, it is the petitioner who is guilty of laxity. This laxity is perhaps explained by the fact that the petitioner was given the benefit of continuing the interim order till the date of refiling before the High Court. The petitioner / plaintiff was under a total misconception that it could delay the taking back and refiling of the plaint at its whim and fancy and could continue to enjoy the interim order at its pleasure.

8. In ***Ram Ujarey v. Union of India: AIR 1999 SC 309***, the Supreme Court was concerned about the period of limitation in a case where a plaint was directed to be returned to be filed before the appropriate forum. The Supreme Court was of the view that the limitation would not run from the date of the order, but would run from the date on which the plaint was returned and made available to the appellant, if the appellant was not at fault. The decisions of the Bombay High Court as well as that of the

Supreme Court make it abundantly clear that the material date is when the plaint is made available to the plaintiff after the order of return of the plaint. This is subject to the condition that the plaintiff is not at fault. In the present case, I find that the plaintiff has been grossly negligent, to say the least, in not taking back the plaint and in not refiling the same before this court as directed by the learned Additional District Judge on 14.12.2004.

9. Consequently, I am of the view that there are no proceedings pending before the learned Additional District Judge as of today the same having terminated long back. The present transfer petition would, therefore, not be maintainable and the same is dismissed.

(BADAR DURREZ AHMED)
JUDGE

January 22, 2008
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