

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

% **Judgment reserved on: 07.08.2009**
Judgment delivered on: 17.09.2009

+ **CM(M) NO.843/2005**

AMITY BUSINES SCHOOL Petitioner
Through: Mr. Rajesh Yadav with Mr. Rajan
Chawla and Mr. A.P. Singh,
Advocates.

versus

P.K. GUPTA Respondent
Through: Mr. M.L. Mahajan with Mr.
Gaurav Mahajan, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. | To be referred to Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

J U D G M E N T

VIPIN SANGHI, J.

1. The petitioner has filed the present petition under Article 227 of the Constitution of India to challenge the order dated 28.04.2005 passed by Sh. S.K. Sarvaria, Additional District Judge, Delhi in Suit No. 46/04/1999 wherein the petitioner is the defendant. By the impugned order the learned District Judge has disposed off two applications, one filed by the petitioner defendant under Section 21 read with Section 20 CPC, which has been treated as an application under Order 7 Rule 10 CPC and the second filed by the plaintiff

respondent under Order 6 Rule 17 CPC to seek amendment of the plaint. The learned Additional District Judge has dismissed the petitioners aforesaid application, while allowing the application preferred by the respondent plaintiff by the impugned order.

2. The respondent plaintiff has filed the suit to seek a declaration with regard to the termination of his services as illegal and to seek damages from the defendant petitioner herein. Instead of filing its written statement, the petitioner filed the aforesaid application under Section 21 read with Section 20 CPC to seek the return of the plaint to the respondent plaintiff on the ground that the court did not have the territorial jurisdiction to entertain the suit.

3. Initially the suit had been preferred on the original side of this court. The application under Order 6 Rule 17 moved by the respondent was dismissed by Order dated 14.02.2003. The respondent preferred an appeal before the Division Bench which was registered as FAO(OS) 121/03. The appeal was disposed off on 20.04.2004 by consent. The order dated 14.02.2003 was set aside and it was directed that both the applications be taken up for consideration and decided simultaneously.

4. In the meantime, on account of the rise in pecuniary jurisdiction of the District Court and the High Court, the suit came to be transferred before the court of the District Judge. It is in this background that the impugned order has been passed which considers both the applications as aforesaid.

5. Learned counsel for the petitioner firstly submits that the trial court has no territorial jurisdiction to entertain the suit. He submits that if the court did not have territorial jurisdiction to try the suit as originally filed, it had no jurisdiction to consider the application for amendment filed by the respondent. He submits that the court could not have invested itself with jurisdiction by allowing the amendment application moved by the respondent/plaintiff.

6. In support of his submission that the Court did not have territorial jurisdiction to try the suit as originally filed, he refers to the appointment letter dated 13.09.1998 issued to the respondent whereby he was appointed as the Advisor to the President. The appointment letter was issued by Amity Business School which is situated in Noida, by the President of the said school. He also refers to the joining report dated 16.09.1998 given by the respondent where he has stated that he has reported for duty at Amity Business School, Noida. Even the communication dated 03.01.1999 whereby the services of the respondent were discontinued was issued from Noida. He submits that merely because Amity Business School is one of the institutions run by Ritnand Balved Education Foundation, a society which has its office in Delhi, the Courts in Delhi would not get invested with jurisdiction to try the present suit. He submits that the said society runs various institutions situated in different parts of the country. Disputes arising in relation to any of these institutions cannot be raised in Courts at Delhi merely because the society is a body registered at Delhi. In support of his submissions,

learned counsel for the petitioner placed reliance on the decision of the Supreme Court in ***Patel Roadways Limited, Bombay Vs. Prasad Trading Company*** (1991) 4 SCC 270.

7. While interpreting Section 20 CPC, the Supreme Court in ***Patel Roadways*** (supra) held that where a corporation does not have a sole office but has a principal office at one place and also has a subordinate office at another place, it is not the court within whose jurisdiction the principal office of the defendant corporation is situated, but the court within whose jurisdiction it has its subordinate office which alone shall have jurisdiction in respect of a cause of action arising at the place where the subordinate office is situated. In support of this submission, he also places reliance on the decision of the Supreme Court in ***South East Asia Shipping Co. Ltd. Vs. Nav Bharat Enterprises Pvt. Ltd. and Ors.*** (1996) 3 SCC 443 and a decision of the learned Single Judge of this court in ***Indo Gulf Industries Ltd. Vs. U.P. State Industries Development Corpn. and Ors.*** 104 (2003) DLT 529. He submits that to create jurisdiction in the Courts at Delhi, the respondent plaintiff has relied upon the fact that the deduction of tax at source from his salary was being done at Delhi. He submits that this fact would not form part of the cause of action and, in any event assuming that the same does form part of the cause of action for filing the suit, it is a miniscule part of the cause of action, not sufficient to invest the courts in Delhi with jurisdiction. He submits that the learned ADJ while passing the impugned order had failed to

apply the decision in **Patel Roadways Limited** (supra) only on the ground that the petitioner is a society and not a company. He submits that even a society is a corporation as it is a body constituted under the law and it is a juristic entity. He submits that the expression used in Section 20 is 'corporation', which is a general expression as opposed to either a 'company' or a 'society'.

8. Learned counsel for the petitioner further submits that if the court inherently lacked jurisdiction at the time when the suit was filed, an application under Order 6 Rule 17 CPC would not be maintainable before it. In support of this submission he places reliance on a decision of learned Single Judge of this court in **Archie Comic Publications, Inc. v. PurpleCreations Pvt. Ltd. and Ors.** 2008 (37) PTC 279 (DEL).

9. On the other hand learned counsel for the respondent has supported the impugned order. He submits that even in the suit as originally filed by the respondent, the address of the petitioner defendant as disclosed in the plaint is the address of Ritnand Balved Education Foundation, situated at E-27, Defence Colony, New Delhi. He submits that the deduction of tax at source in respect of the salary paid to the respondent was being made at Delhi and the name of the employer is evident from form no. 16 as Ritnand Balved Education Foundation. He, therefore, submits that the employer of the respondent is the society and not the Amity Business School. He further submits that the application under Order 6 Rule 17 filed by the respondent was maintainable even

after the aforesaid application had been filed by the petitioner. In support of this submission he relies on ***The Singer Company Limited and Anr. v. Chetan Machine Tools and Ors.*** 159 (2009) DLT 135. He further relies on ***Wasudhir Foundation v. C. Lal & Sons*** 45 (1991) DLT 556 and ***Suraj Bhan Anil Kumar & Anr Vs. M/s. Molu Ram Kapoor Chand*** 82 (1999) DLT 277 in support of the same proposition.

10. A few other decisions have also been relied upon by the respondent which deal with the aspect of amendment of pleadings in different situations. However, I need not specifically deal with them since they do not appear to be of any relevance to the issue raised before me.

11. Having considered the rival submissions and after examining the decisions cited before me, I am of the view that the impugned order passed by the learned ADJ cannot be sustained and is liable to be set aside. First and foremost, in my view, the learned ADJ has erred in not applying the ratio of ***Patel Roadways*** (supra) merely on the ground that the petitioner is a registered society and is not a company or a corporation. The expression 'corporation' as used in the explanation to Section 20 CPC, in my view, cannot be limited to mean only a statutory corporation i.e. a corporation incorporated by law. It is a general term used by the legislature to take within its scope all incorporated bodies, such as a society, a company, or a body created by a law i.e. a statutory corporation. It would include all juristic entities which may be constituted under a law. Merely

because **Patel Roadways** (supra) was a case dealing with a company registered under the Companies Act, it does not follow that a corporation can only mean a company, apart from a corporation incorporated by a law. In Black's Law Dictionary "**Cooperative corporation**" is defined as *"An entity that has a corporate existence, but is primarily organized for the purpose of providing services and profits to its members and not for corporate profit"*. A "**Domestic corporation**" is defined as *"A corporation that is organized and chartered under the laws of a state. The corporation is considered domestic by the chartering state. CF. foreign corporation."*

In Oxford English Dictionary, the expression '**corporation**' is, inter alia, defined as *"A body of people that has been given a legal existence distinct from the individuals who compose it; a single person with a separate legal existence;"*

12. In **Hakam Singh v. Gammon (India) Ltd.** (1971) 1 SCC 286, while considering the meaning of '*corporation*' the Supreme Court held:

"The Code of Civil Procedure uses the expression "corporation" as meaning a legal person and includes a company registered under the Indian Companies Act. Order 29 of the Code of Civil Procedure deals with suits by or against a corporation and there is nothing in the Code of Civil Procedure that a corporation referred to under S. 20 means only a statutory corporation and not a company registered under the Companies Act."

13. In ***S.S. Dhanova v. Municipal Corporation*** (1981) 3 SCC 431, the Supreme Court has elaborated upon the meaning of '*corporation*' as under:

"A corporation is an artificial being created by law having a legal entity entirely separate and distinct from the individuals who compose it with the capacity of continuous existence and succession, notwithstanding changes in its membership. In addition, it possesses the capacity as such legal entity of taking, holding and conveying property, entering into contracts, suing and being sued, and exercising such other powers and privileges as may be conferred on it by the law of its creation just as a natural person may."

14. In ***Daman Singh v. State of Punjab*** (1985) 2 SCC 670, the Supreme Court has reproduced the definition of '*corporation*' as elaborated upon in Halsbury's Laws of England Fourth Edition, Volume 9, Paragraph 1201. The same reads as under:

"A corporation may be defined as a body of persons (in the case of a corporation aggregate) or an office (in the case of a corporation sole) which is recognized by the law as having a personality which is distinct from the separate personalities of the members of the body or the personality of the individual holder for the time being of the offices in question."

A corporation aggregate has been defined in paragraph 1204 as,

"[A] collection of individuals united into one body under a special denomination, having perpetual succession under an artificial form, and vested by the policy of the law with the capacity of acting in several respects as an individual, particularly of taking and granting property, of contracting obligations and of suing and being sued, of enjoying privileges and immunities in common and of exercising a variety of

political rights, more or less extensive, according to the design of its institution, or the powers conferred upon it, either at the time of its creation or at any subsequent period of its existence.”

15. The petitioner is a society registered under the Societies Registration Act having its own juristic identity distinct from that of the individual members forming part of the society. It has the capacity of continuous existence and succession, notwithstanding changes in its membership. It possesses the capacity to contract, hold and convey property, sue and be sued in its name. Therefore, I am of the view that the decision in **Patel Roadways** (supra) could not have been brushed aside by the trial court on the specious ground that a society is not a ‘corporation’ for the purpose of Section 20 CPC. It is very much a ‘corporation’ within the meaning of that expression as used in Section 20 CPC.

16. No doubt, the Amity Business School is an institution set up and run by the society aforesaid. However, it is not in dispute that Amity Business School has its setup in, and operates from Noida. It is clear from the facts narrated hereinabove that the respondent was appointed as the Advisor to the President of Amity Business School. The letter of appointment of the respondent was issued from the Amity Business School through its President. The respondent had given his joining report at Noida. The respondent was discharging his functions as the Advisor to the President at Noida. Even the communications in relation to the termination of his services had been issued at Noida. Therefore, the respondent,

though an employee of the society was only concerned with the institution set up by it viz. Amity Business School at Noida. He had no concern with the parent society or any other institution run by it.

17. Cause of action consists of the bundle of facts which give cause to enforce a legal right for redressal in a Court of law. The cause of action means every fact, which if traversed, it would be necessary for the plaintiff to prove in order to establish his right to a judgment of a Court. Therefore, it is clear that the Courts having jurisdiction over Noida has the jurisdiction to entertain the suit as a substantial part of the cause of action has arisen in Noida.

18. Now, I come to the facts on which the respondent relies, to claim that they constitute a bundle of facts which would vest jurisdiction in the Courts in Delhi. It is claimed that the TDS in respect of the salary paid to the Respondent has been deducted at Delhi. But is it a fact which would form part of the cause of action in relation to which this suit is filed by the respondent? In my view the answer is a plain 'No'.

19. Since the Ritnand Balved Education Foundation is the juristic entity/corporation, of which Amity Business School is one of the institutions, the salary has been paid by the Ritnand Balved Education Foundation. It is for this reason that form 16 describes the name of the employer as "*Ritnand Balved Education Foundation, A/c Amity Business School, E-27, Defence Colony, Delhi – 110048*". The suit has been filed to seek a declaration that the plaintiff continues to be in the service of the defendant as Advisor to

the President i.e. the head of the institution and to seek a declaration that he is entitled to the claimed amount of salary till he attains the age of superannuation. He also claims a sum of Rs. 5.20 lacs on the basis of the aforesaid declaration. The real issue in the suit is, therefore, with regard to the validity of the termination of the respondent/plaintiff's services. Cause of action for filing this suit, therefore, is the bundle of facts related to the appointment of the plaintiff; the terms of his appointment; the reasons for his termination and the manner of his termination. The cause of action as pleaded by the respondent in his plaint reads as follows:

"That the cause of action to file the suit accrues to the plaintiff against the defendant on 13.9.1998 when the plaintiff was appointed with the defendant and thereafter on such dates when the plaintiff called upon the defendant to pay dues to which he was entitled. It lastly arose on 8.1.1999 when the legal notice was sent by the plaintiff to the defendant. The cause of action is continuing one till such time the defendant pays monthly salary to the plaintiff."

20. The respondent/plaintiff was appointed at Noida as is evident from his letter of appointment and joining report. It is claimed that the fact of the plaintiff calling upon the defendant to pay his dues constitutes a part of cause of action for filing the suit. It is not the case of the respondent plaintiff that he called upon the defendant to pay his dues at Delhi, even if it were to be assumed that the said act by itself constitutes a part of the cause of action. In fact, it is not the mere demand made by the respondent/plaintiff either through a legal notice or otherwise which forms a part of the action

but it is the act of termination of the respondent's service, and the act of denial or failure on the part of the petitioner to pay to the respondent the amounts claimed by him which would constitute a part of the cause of action. These acts have taken place at Noida. Consequently, I am of the view that the entire cause of action arose at Noida where the respondent was engaged, he was discharging his duties, and from where he was relieved.

21. The fact that the deduction of tax from the respondent's salary has been effected at Delhi does not, even remotely, have any relevance to the claim of the plaintiff. It is a wholly irrelevant fact. It is not a fact which would be necessary for the respondent to prove in order to establish his right to the judgment of the court in respect of his claim in the suit. The factum of the said deduction of tax at source does not form part of the cause of action for the relief claimed in the suit.

22. It is contended by the respondent that Amity Business School has giving, as one of its addresses, the address of Ritnand Balved Education Foundation in Delhi. In my view, it makes no difference even if Amity Business School in its various advertisements issued from time to time has given, as one of its address, the address of Ritnand Balved Education Foundation at E-27, Defence Colony, Delhi- 110048. For correspondence purpose, if the address of the society has also been given, apart from the address of the Amity Business School, that does not constitute a fact which could be

considered as relevant to constitute a part of cause of action in favour of the petitioner.

23. The decision of the Supreme Court in ***Patel Roadways*** (supra) was squarely applicable in the facts of this case. Ritnand Balved Education Foundation, being a society which is running various institutions in different parts of the country including the Amity Business School at Noida, could only have been sued by the respondent in a court having territorial jurisdiction over Noida vis-à-vis the relief claimed in the suit. The Supreme Court in *Patel Roadways* (supra) while dealing with Section 20 CPC held as follows:

“The Explanation applies to a defendant which is a corporation which term, as seen above, would include even a company such as the appellant in the instant case. The first part of the Explanation applies only to such a corporation which has its sole or principal office at a particular place. In that event the courts within whose jurisdiction the sole or principal office of the defendant is situate will also have jurisdiction inasmuch as even if the defendant may not be actually carrying on business at that place, it will "be deemed to carry on business" at that place because of the fiction created by the Explanation. The latter part of the Explanation takes care of a case where the defendant does not have a sole office but has a principal office at one place and has also a subordinate office at another place. The words "at such place" occurring at the end of the Explanation and the word "or" referred to above which is disjunctive clearly suggest that if the case falls within the latter part of the Explanation it is not the Court within whose jurisdiction the principal office of the defendant is situate but the court within whose jurisdiction it has a subordinate office which alone shall have jurisdiction "in respect of any cause of

action arising at any place where it has also a subordinate office".

24. In para 12, the Supreme Court further held as follows:

"If the intention of the legislature was, as is said on their behalf, that a suit against a corporation could be instituted either at the place of its sole or principal office (whether or not the corporation carries on business at that place) or at any other place where the cause of action arises, the provisions of Clauses (a), (b) and (c) together with the first part of the explanation would have completely achieved the purpose. Indeed the effect would have been wider. The suit could have been instituted at the place of the principal office because of the situation of such office (whether or not any actual business was carried on there). Alternatively, a suit could have been instituted at the place where the cause of action arose under Clause (c) (irrespective of whether the corporation had a subordinate office in such place or not). This was, therefore, not the purpose of the explanation. The explanation is really an explanation to Clause (a). It is in the nature of a clarification on the scope of Clause (a) viz. as to where the corporation can be said to carry on business. This, it is clarified, will be the place where the principal office is situated (whether or not any business actually is carried on there) or the place where a business is carried on giving rise to a cause of action (even though the principal office of the corporation is not located there) so long as there is a subordinate office of the corporation situated at such place. The linking together of the place where the cause of action arises with the place where a subordinate office is located clearly shows that the intention of the legislature was that, in the case of a corporation, for the purposes of Clause (a), the location of the subordinate office, within the local limits of which a cause of action arises, is to be the relevant place for the filing of a suit and not the principal place of

business. If the intention was that the location of the sole or principal office as well as the location of the subordinate office (within the limits of which a cause of action arises) are to be deemed to be places where the corporation is deemed to be carrying on business, the disjunctive "or" will not be there. Instead, the second part of the explanation, would have read ' and, in respect of any cause of action arising at any place where it has a subordinate office, also at such place".

25. Even if, for the sake of argument, it were to be accepted that the fact that TDS from the respondent's salary was being deducted at Delhi, and that the petitioner was giving the Delhi address of the Society in the advertisements issued by Amity Business School do constitute a part of the cause of action vis-a-vis the claim of the respondent, the same in my view constitutes a miniscule part of the cause of action, not sufficient to vest the Courts in Delhi with jurisdiction. Where only a trivial or insignificant part of the cause of action arises at a particular place, that would not be enough to confer jurisdiction on the court to entertain the lis. No doubt, the decision of a Division Bench of this Court in **Sector Twenty-one Owners Welfare Association (STOWA) v. Air Force Naval Housing Board** 65 (1997) DLT 81 was a case dealing with writ jurisdiction, but the same principle would apply even in relation to the original civil jurisdiction, as Article 226 of the Constitution of India now contains provision with regard to the territorial jurisdiction of the writ court which is *para materia* with the provisions of the CPC dealing with territorial jurisdiction of the civil court. Moreover, in **Indo Gulf Industries Limited** (supra), while dealing with a suit

on the original side, this court has already applied the principle enunciated in **Sector 21 Owners Welfare Association** (supra). Therefore, the above said facts cannot be used by the respondent to somehow create jurisdiction with the courts in Delhi. In **South East Asia Shipping Co. Ltd.** (supra) the Supreme Court held:

“3. It is settled law that cause of action consists of bundle of facts which give cause to enforce the legal injury for redress in a court of law. The cause of action means, therefore, every fact, which if transversed, 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 claim 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 would possibly accrue or would arise. In view of the admitted position that contract was executed in Bombay, i.e., within the jurisdiction of the High Court of Bombay, performance of the contract was also to be done within the jurisdiction of the Bombay High Court; merely because bank guarantee was executed at Delhi and transmitted for performance to Bombay, it does not constitute a cause of action to give rise to the respondent to lay the suit on the original side of the Delhi High Court. The contention that the Division Bench was right in its finding and that since the bank guarantee was executed and liability was enforced from the bank at Delhi, the Court got jurisdiction, cannot be sustained.”

26. Reliance placed by the respondent on the decisions of this court in **Singer Company Limited** (supra) is of no avail. That was a case instituted by the plaintiff claiming to be the registered owner of a trademark. The suit had been instituted by resort to Section

134 of the Trademarks Act which entitles the plaintiff to institute the suit within the local limits of the jurisdiction of a court where at the time of institution of the suit, the person instituting the suit actually and voluntarily carried on business or personal works for gain. The court held that it did not lack inherent jurisdiction to entertain the suit. In this light of the matter it was held that merely because an application under Order 7 Rule 11 CPC had been instituted, the application under Order 6 Rule 17 could not be said to be non maintainable.

27. Similarly, the decision in **Wasudhir Foundation** (supra), in my view, has no application in the facts of this case. That was a case where the application under Order 7 Rule 11 CPC for rejection of plaint was filed by the defendant on the ground that plaint discloses no cause of action. The Court held that an application under Order 6 Rule 17 could be entertained, though filed later, as the courts are constituted to do substantial justice between the parties. The plaintiff was permitted to disclose facts which would constitute a cause of action. It is not that the court did not have the territorial jurisdiction to begin with. However, the same principle cannot apply where the plaint discloses lack of territorial jurisdiction in the court where it is instituted. Similarly, the decision in **M/s. Suraj Bhan Anil Kumar** (supra) has no application in the facts of the present case as that was a case of mis-description of a party. The mis-description was that the plaintiff was mistakenly described as a partnership firm, when in fact it was a proprietary firm, on the

date when the suit was instituted. Consequently the objection that the plaint was instituted by an unregistered partnership firm to seek the dismissal of the suit was not allowed to succeed and the plaintiff was permitted to amend the suit to serve the ends of justice. This was not a case of inherent lack of territorial jurisdiction in the Court, as is the position in the case in hand.

28. I agree with the submission of learned counsel for the petitioner that the decision of this court in **Archie Comic Publications Inc.** (supra) would squarely apply in the facts of the present case. The learned Single Judge of this court in this decision after examining various earlier decisions observed:

“These decisions unmistakably lead to the conclusion that if this Court does not have jurisdiction to entertain the suit on the basis of the averments made in the plaint as originally filed, then the plaintiff's application under Order 6 Rule 17 would not be maintainable and cannot be entertained. The result would be that the defendants' application under Order 7 Rule 10 would have to be allowed and the plaint would have to be directed to be returned to the plaintiff for filing before the competent Court.

9. This discussion, therefore, clearly indicates that the question of jurisdiction has to be determined on the basis of the averments made in the plaint as originally filed. It must also be kept in mind that at the stage of consideration of the return of the plaint under Order 7 Rule 10 CPC what has to be looked into is the plaint and the averments made therein though the plaint must be read in a meaningful manner to find the real intention behind the suit. This is what has been held in Begum Sabiha

Sultan v. Nawab Mohd. Mansur Ali Khan :
(2007) 4 SCC 343.”

29. The Court further held:

“14. The result of this discussion is that, considering the averments made in the plaint as originally filed, this Court does not have territorial jurisdiction to entertain the present suit. The effect of such a conclusion, as noted earlier, is that the plaintiff's application under Order 6 Rule 17 cannot be heard by this Court and the same would not be maintainable before this Court inasmuch as this Court does not have jurisdiction in the matter. As a result, the plaint is liable to be returned to the plaintiff for the purposes of filing before the competent court.”

30. The upshot of the above discussion is that the respondent could not have filed the suit in a court having territorial jurisdiction over Delhi where the registered office of the Ritnand Balved Education Foundation is situated merely because it is this foundation which runs the Amity Business School. The decision in **Patel Roadways** (supra) would clearly bar the jurisdiction of the courts at Delhi since the entire cause of action in respect of the relief prayed for in the suit had arisen at Noida where Amity Business School is located. The respondent could not have moved the application under Order 6 Rule 17 CPC to somehow invest jurisdiction in the courts in Delhi and the said application was not maintainable in view of the decision of this court in **Archie Comic Publications** (supra). The whole approach of the trial court has

been misdirected and the impugned order calls for interference in these proceedings.

31. For the aforesaid reasons, I set aside the impugned order passed by the learned ADJ. The application preferred by the petitioner under Section 20-21 CPC, which is treated as an application under Order 7 Rule 10 CPC is allowed and the application preferred by the respondent under Order 6 Rule 17 is dismissed. The learned ADJ shall pass consequential orders to return the plaint to the respondent for being presented in the Court of a competent jurisdiction.

Petition stands disposed off.

(VIPIN SANGHI)
JUDGE

September 17, 2009
dp/as