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

RESERVED ON: 30.03.2016
PRONOUNCED ON: 25.05.2016

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+ **FAO (OS) 69/2014**

BLUEBERRY BOOKS & ORS. Appellants
Through: Mrs. Pratibha M. Singh, Sr. Advocate with
Ms. Suhasini Raura and Mr. Ashwin Kumar,
Advocates.

Versus

GOOGLE INDIA PVT. LTD & ORS. Respondents
Through: Mr. Rajiv Nayyar, Sr. Advocate with Mr.
Abhishek Malhotra and Mr. Rajul Taneja, Advocates
for Resp-1.
Mr. Sumit Attri, Advocate for Resp-2.
Mr. Manav Kumar, Advocate for Resp-3&4.
Ms. Gayatri Roy with Mr. Subhash Bhutoria and Mr.
Satarupa Guja, Advocates for Resp-5&6.
Ms. Sneha Jain, Advocate for Resp-10.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

S.RAVINDRA BHAT, J.

1. A plaintiff prefers this interlocutory appeal aggrieved by the order of a learned single judge, whereby he accepted the application of some defendants (Defendant No. 1 filed IA No. 7706 of 2012, hereafter called "Google India", IA 7707 of 2012 filed by third Defendant, Research in Motion India Pvt. Ltd. ('RIMPL') and IA No. 13852 of 2012- by the tenth defendant, hereafter "Amazon") and directed that they should be deleted from the array of parties, in a copyright infringement suit. The plaintiff is hereby referred to as "Blueberry".

2. The suit alleged that in 2003, Blueberry published books series titled '*Moral Stories*' Parts-I, II and III each containing four stories. Part-I contained the stories (i) Careless Tanu; (ii) The Merchant Learns A Lesson; (iii) Sejal's Gift for Soni and (iv) Selfish Monu. Part-II contained the stories (i) The Greedy Fisherman; (ii) A Flower Went for a Walk; (iii) How The Rainbow Was Formed and (iv) Two Good Friends and Part-III contained the stories (i) The Cunning Jackal; (ii) The Lazy Penguin; (iii) The Wicked Cub and (iv) Harry and Bob. Blueberry said that the stories contained in the books were its original literary and artistic works protected under the Copyright Act ('the Act'). The books were released in 2003, and supplied to several schools and retailed in several book fairs. They were reprinted in 2005 and widely circulated. In 2010, they were published afresh in a more contemporary version; some characters in the stories were changed and the caricature designs modified with modern background, clothing etc. The above four stories were included in Moral Stories Part-II and were widely circulated through book exhibitions, book fairs and even sold in the international market, including South East Asia, Africa and Middle East.

3. The suit alleged that in February 2012, Blueberry discovered that the above four stories were made available by the Defendants for their users through internet applications across several platforms and websites. Those applications could be easily downloaded on almost all handy devices such as mobile phones, tablets, etc. that run on various Android, BlackBerry, Apple and Windows based platforms. They included devices manufactured by Apple, Samsung, Sony Ericsson, LG, Blackberry, Nokia, HTC, etc. Those applications operate and are available on different platforms i.e. Android

Market now known as Google Play, Blackberry Applications, APPLE iTunes and Microsoft on Windows Phone. The applications appear to have been designed by the eleventh Defendant titled 'Story Time for Kids'. It was alleged that all the stories were copied word to word with the caricatures, images, designing and the text inserted in the form of voice-over. The stories were translated into English, French, Italian, Chinese etc.

4. Blueberry alleged that on a comparison, the stories available on Android, BlackBerry, Windows and iTunes, reveal that the stories' wording were copied from its books. It was never approached by any defendant for approval, license or permission- to use the stories on those applications. It was alleged that the Defendants earned huge sums of money and did not acknowledge the plaintiff's copyrights. On the strength of these allegations, Blueberry filed its claim for permanent injunction and damages, alleging copyright infringement.

5. On 19th March 2012 when notice was issued in the suit, the Court required the defendants to file affidavits

" within ten days, disclosing the number of downloads of each of the stories, namely, THE FLOWER GOES FOR A WALK; THE LAZY PENGUINE; THE GREEDY FISHERMAN; HOW THE RAINBOW WAS FORMED, along with the number of downloads of the application 'Story time for Kids' for each of their platforms, namely, Android, iTunes, Windows and Black Berry application on which the said stories are made available as also containing the advertising revenue by advertisements booked on the said application as a whole or on the individual stories. The written statement and reply to the interim application be also filed by the defendants by the next date of hearing."

The defendants filed affidavits and written statements. In addition, three applications were also filed by Google India, RMPL and Amazon urging that they should be deleted from the array of parties as the plaint did not disclose any infringement on their part. In the case of Google India and RMPL similar pleas were urged, i.e. that they were marketing arms of Google Inc and Research in Motion ('RIM') and were not engaged in any activity that amounted to infringement. Amazon urged that the plaint did not disclose a single instance where the infringing activities occurred in India; it also stated that the acts complained of took place outside India and outside the jurisdiction of the court. Moreover, urged Amazon, in its affidavit, the applications through which the products were marketed could not be accessed in India. Thus, there was no "targeting" of any user in India, to clothe this Court with jurisdiction.

6. On 27th April 2012, a learned single judge made an order in I.A.5055/2102 with respect to eleventh Defendant in the following terms:

"12. As far as defendant No.11 is concerned, counsel says that his client has no objection if interim orders are passed till the disposal of the suit. Hence, the plaintiffs' application for injunction against defendant No.11 is allowed. The defendant No.11 is restrained from making available the copyrighted works of the plaintiffs including the four titles: THE FLOWER GOES FOR A WALK; THE LAZY PENGUIN; THE GREEDY FISHERMAN; HOW THE RAINBOW WAS FORMED, in any form Electronic, Physical or otherwise through various platforms/websites either as per the application of "Story Time for Kids" or individually. The defendant No.11 is further restrained from in any manner, infringing the copyright of the plaintiffs in any of the works and stories contained in the books titled Moral Stories Part-1, Moral Stories Part-2 and Moral Stories Part-3."

7. The plaintiff resisted the three applications urging, firstly that the question of jurisdiction in the present case could not be considered separately; that the claims of Google India and RMPIL of not being responsible in any manner for the alleged infringement, could not be taken into consideration without appraisal of all the facts and that they were a necessary party. It was highlighted that Google Inc and RIM were located outside India; their bare statement that in the event of an adverse order, they would assume responsibility was insufficient. Google India and RMPIL therefore had to be treated as necessary parties.

8. The three applications were allowed by the learned single judge. As far as Google India and RMPIL were concerned, it was held that

"15. At this stage, it is necessary to refer to the affidavits filed pursuant to the order dated 19th March 2012. Affidavits have been filed by Defendant No. 6 on 27th April 2012, by Defendants 7 and 8 on 26th April 2012 and by Defendant No.2 on 15th May 2012. Interestingly, there is no affidavit of Defendant No.1 in this regard. There is also no affidavit by Defendant No.3, although written statements have been filed by them.

16. Turning to the plaint itself, the specific allegation as regards Defendant No.1 is in para 13, where it is stated that as per the information available to the Plaintiffs, "the Defendant Nos. 1 and 2 provide the applications on the Android platform" There is a general allegation thereafter that the Defendants are making available the four stories on their website and the snapshots available on <https://play.google.com> have been placed on record. In reply to the specific averment by Defendant No.1 that it does not control the above website and is not responsible in any way for hosting those websites, the only response of the Plaintiffs is that Defendant No.1 be put to strict proof of such averment. There is nothing placed on record to show that Defendant No.1 is controlling the platform hosting the above application. The categorical assertion by Defendant

No.1 that it does not own or operate www.google.com or Google Inc. and has no control over the application, i.e., 'storytime for kids' on Android play has not been able to be denied by the Plaintiffs. It has been reiterated by learned counsel for Defendant No.1 that apart from the fact that Defendant No.1 has no control over www.google.com or Google Play, even the website google.co.in is not controlled by Defendant No.1. It has no say in what is hosted by Google Inc. on its website, whether available in India or elsewhere.

17. The mere fact that Defendant No.1 happens to be the subsidiary of Defendant No.2, having its offices in Bangalore, Hyderabad, Mumbai and Gurgaon, does not automatically make it a necessary or proper party to the present suit. Google, Inc is a separate legal entity and has been impleaded separately as such. Interestingly, in its written statement, Defendant No.2 has not questioned the jurisdiction of this Court. It has submitted to the jurisdiction by filing its written statement. Consequently, the apprehension that Defendant No.2 would avoid the jurisdiction of this Court and, therefore, it is necessary to make its subsidiary Defendant No.1 a party to the present suit, is misplaced.

18. Likewise, even as regards Defendant No.3, there is nothing to show that it is involved, directly or indirectly, in the BlackBerry App World or its activities. Defendant No.3 is not shown to have any contractual relationship with Defendant No.11. There is no specific allegation against Defendant No.3 about its role in the alleged infringing activities complained of in the suit. Even in reply to the application, there is only a broad allegation that the Defendants are infringing the copyright of the Plaintiffs. There is no specific allegation as regards Defendant No.3 having been responsible in any manner for controlling what is available on the BlackBerry App platform. Defendant No.4 has also not refused to submit to the jurisdiction of this court. The only relationship between Defendants 3 and 4 is that Defendant No.3 is the Indian subsidiary of Defendant No.4. Defendant No.4 has filed its written statement and has not questioned the jurisdiction of this Court. Consequently, there appears to be no justification for impleading Defendant No.3 only because it happens to be the subsidiary of Defendant No.4."

With respect to Amazon, the single judge considered its affidavit which alleged that only 33 instances of sale of the stories were known, for a total sum of US \$ 24.5 and held that:

"32. In the present case, however, the website Amazon.com makes it clear that the facility is only available to the viewers in US and not elsewhere. The agreement with Defendant No.11 also specifies this. The affidavit of Mr. Bakshi also makes it clear that there were 33 downloads for a revenue of approximately USD 24.75 and that the downloads took place in the US and not in India. In other words, there is nothing to show that using the website of Amazon.com any transaction constituting infringement of the copyright of the Plaintiffs was concluded in India. The decisions in Dodha House v S.K. Maingi and Exphar SA v Eupharma Laboratories Ltd, do not support the case of the Plaintiffs that Section 62(2) CA would enable the Plaintiffs to bring a suit against a foreign Defendant notwithstanding the fact that no part of the cause of action arose within the territory of the forum Court.

33. In SmithKline Beecham Plc v Sunil Sanghi 2001 PTC 321(Del), the Court, in the context of Section 62(2) CA, accepted a similar plea that the Defendant ought to be shown to be carrying on its local business activities within India. The decision in Consim Info Ptd Ltd. v Google India Pvt Ltd does not assist the Plaintiffs. In the said judgment, the High Court of Madras found it necessary to allow the application of the Plaintiff seeking the impleadment of Google Inc. as the fifth Defendant in the suit. The stand taken by Google India Pvt. Ltd. in its counter affidavit in the said case was that "it is a wholly owned subsidiary of Google Inc., USA and that Google Inc. is the owner of the search engine." The Court accepted the plea and observed that "Perhaps, the policies are trimmed by the subsidiaries in different jurisdictions, depending upon the local laws. But, ultimately, it is the holding company which owns the search engine."

34. The mere fact that the image of one of the stories is able to be viewed on Amazon.com cannot by itself furnish a cause of action. That is not even the case pleaded by the Plaintiffs in the first place.

The Plaintiffs case is one of infringement of their copyright as a result of the downloading of their stories from various websites of the Defendants and not because the image of the stories is able to be viewed on the websites including Amazon.com.

9. Blueberry states in its appeal and its learned senior counsel, Ms. Pratibha Singh argues that the single judge fell into error in distinguishing *Consim Info Pvt. Ltd.* and states that in that decision, Google Inc. was in addition to Google India Pvt. Ltd. was impleaded as a party to the proceedings. It is submitted that reliance was placed by Blueberry, on that decision to stress on the point that both Google Inc. as well as Google India Pvt. Ltd. were proper and necessary parties to the suit and as such Google Inc. was in addition to Google India Pvt. Ltd. Counsel submitted that the finding regarding Google Inc's exclusive control of the website www.play.google.com and Google India Pvt. Ltd. having no role to play with it could not have been given without a trial. It was highlighted that in Google Inc's website itself, Google India Pvt. Ltd was shown as the "India office". Similarly, counsel submitted that the assertions of RIMPL - that only RIM was in exclusive control the website www.aipworld.blackberrv.com and RIMPL had no role in it, is a pre mature finding. It could have been rendered only after a trial. Except the bare assertion of RIMPL that it had no role in making or marketing the application and the infringing works available online, there was no material to support the impugned order.

10. It was argued that the single judge failed to consider - that Amazon.com carries on active business in India and is, therefore, subject to the jurisdiction of this Court- even if the downloads were in the USA. Blueberry, being a copyright owner are carrying on business in Delhi. The

suit against Amazon.com Inc could not have been dismissed by deleting it as a party because it never denied offering of the infringing stories on its website and the removal of the same post the filing of the suit ought to have resulted in a decree against it rather than a dismissal. It was stressed that even Amazon admitted that on Amazon.com more than 33 downloads had occurred and if it wished to discontinue infringement - it ought to have given an undertaking and suffer a permanent injunction not to violate the copyrights in Blueberry's stories rather than seeking deletion. Learned counsel argued that the reliance placed on *Banyan Tree v. A. Murali Krishna Reddy*, 2010 (42) PTC 361 was misplaced and the facts in that case were entirely different.

11. Ms. Sneha Jain, learned counsel, argued that the single judge correctly held that the court did not possess territorial or subject-matter jurisdiction over the alleged infringing acts of Amazon. She urged that the territorial and subject matter scope of the Act apply to only those infringing activities that occur within India. The "long-arm" provision in Section 62 does not apply to activities outside India. Reference has also been made to Clause 4 of the *"Amazon Appstore for Android Terms of Use"* which stipulates that the Apps would be made available only to customers located in the United States. It is accordingly submitted that no cause of action has arisen within the scope of the Act in India.

12. Ms Jain also argues that plaint averments do not disclose any material fact relating to infringement in India of Blueberry's copyright. It is stated that no averments were made in the suit alleging that the App *"Story Time For Kids"* or the App for all the stories is available in India for download

through Amazon. The suit contains general allegations of infringement against all the Defendants without showing specific act of infringement attributable to Amazon. Amazon, said Ms. Jain uses various technological filters to enforce compliance with the above prohibition concerning availability of Amazon Appstore only to customers located in the US. It is stressed that none of the Apps have been *"reproduced, downloaded, or communicated through Amazon's Appstore for Android to the public, within the territorial limits of India."* In the absence of particular and specific disclosures regarding a cause of action in India in respect of Amazon i.e., infringement of copyright through its Appstore for Android in India, the Court cannot apply Section 62 (2) to assert jurisdiction over it.

13. Mr. Abhishek Malhotra and Mr. Manav Kumar - appearing for Google India and RIMPL respectively, urge that the single judge correctly deduced that the said parties were neither necessary nor proper parties. Merely because they were subsidiaries or connected to Google Inc or RML could not result in fastening any liability. Both counsel submitted that the presence of Google Inc and RML, who could in the event of adverse judgment, assume responsibility for likely liability, was sufficient to allay the plaintiff's concerns with regard to satisfaction of a decree for damages.

Analysis and Conclusions

Section 62(2) in the Copyright Act, 1957 reads as follows:

" (1) Every suit or other civil proceeding arising under this Chapter in respect of the infringement of copyright in any work or the infringement of any other right conferred by this Act shall be instituted in the district court having jurisdiction.

(2) For the purpose of sub-section (1), a “district court having jurisdiction” shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, include a district court within the local limits of whose jurisdiction, at the time of the institution of the suit or other proceeding, the person instituting the suit or other proceeding or, where there are more than one such persons, any of them actually and voluntarily resides or carries on business or personally works for gain.”

Section 20 of Code of Civil Procedure is as follows:

" Section 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 -

(a)the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b)any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

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

Explanation: - 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.

The averment in Blueberry's suit, concerning this Court's jurisdiction, reads as follows:

"27. This Hon'ble Court has the jurisdiction to try and entertain the present suit. The Plaintiffs are publishers located in Delhi. All the Defendants are making available the infringing stories through various websites and the same are available for purchase 'to all customers and users situated in Delhi. All the Defendants also provide their own services within the jurisdiction of this Hon'ble Court. All the websites are interactive and make available the applications that are copies of the work made by Plaintiffs. The cause of action is a subsisting one and a continuing one as provided under Section 62(2) of the Copyright Act 1957 and Section. 20(c) of the Code of Civil Procedure 1908."

14. As far as the application of Section 20 CPC and its interplay with Section 62 (2) of the Copyright Act, goes, the latest decision of the Supreme Court in *Indian Performing Rights Society v Sanjay Dalia* 2015 (10) SCC 161 on the subject is referred to, where it was observed that:

"18. On a due and anxious consideration of the provisions contained in section 20 of the CPC Section 62 of the Copyright Act and Section 134 of the Trade Marks Act, and the object with which the latter provisions have been enacted, it is clear that if a cause of action has arisen wholly or in part, where the plaintiff is residing or having its principal office/carries on business or personally works for gain, the suit can be filed at such place/s. Plaintiff(s) can also institute a suit at a place where he is residing, carrying on business or personally works for gain de hors the fact that the cause of action has not arisen at a place where he/they are residing or any one of them is residing, carries on business or personally works for gain. However, this right to institute suit at such a place has to be read subject to certain restrictions, such as in case plaintiff is residing or carrying on business at a particular place/having its head office and at such place cause of action has also arisen wholly or in part, plaintiff cannot ignore such a place under the guise that he is carrying on business at other far flung places also. The very intendment of the insertion of provision in the Copyright Act and Trade Marks Act is the convenience of the plaintiff. The rule of convenience of the parties has

been given a statutory expression in section 20 of the CPC as well. The interpretation of provisions has to be such which prevents the mischief of causing inconvenience to parties.

19. The intendment of the aforesaid provisions inserted in the Copyright Act and the Trade Marks Act is to provide a forum to the plaintiff where he is residing, carrying on business or personally works for gain. The object is to ensure that the plaintiff is not deterred from instituting infringement proceedings “because the court in which proceedings are to be instituted is at a considerable distance from the place of their ordinary residence”. The impediment created to the plaintiff by section 20 C.P.C. of going to a place where it was not having ordinary residence or principal place of business was sought to be removed by virtue of the aforesaid provisions of the Copyright Act and the Trade Marks Act. Where the Corporation is having ordinary residence/principal place of business and cause of action has also arisen at that place, it has to institute a suit at the said place and not at other places. The provisions of Section 62 of the Copyright Act and Section 134 of the Trade Marks Act never intended to operate in the field where the plaintiff is having its principal place of business at a particular place and the cause of action has also arisen at that place so as to enable it to file a suit at a distant place where its subordinate office is situated though at such place no cause of action has arisen. Such interpretation would cause great harm and would be juxtaposed to the very legislative intendment of the provisions so enacted.

20. In our opinion, in a case where the cause of action has arisen at a place where the plaintiff is residing or where there are more than one such persons, any of them actually or voluntarily resides or carries on business or personally works for gain would oust the jurisdiction of other place where the cause of action has not arisen though at such a place, by virtue of having subordinate office, the plaintiff instituting a suit or other proceedings might be carrying on business or personally works for gain.

21. At the same time, the provisions of Section 62 of the Copyright Act and Section 134 of the Trade Marks Act have removed the embargo of suing at place of accrual of cause of action wholly or in part, with regard to a place where the plaintiff or any of them ordinarily resides,

carries on business or personally works for gain. We agree to the aforesaid extent that the impediment imposed under Section 20 CPC to a plaintiff to institute a suit in a court where the defendant resides or carries on business or where the cause of action wholly or in part arises, has been removed. But the right is subject to the rider in case the plaintiff resides or has its principal place of business/carries on business or personally works for gain at a place where cause of action has also arisen, suit should be filed at that place not at other places where the plaintiff is having branch offices, etc.

22. There is no doubt about it that the words used in Section 62 of the Copyright Act and Section 134 of the Trade Marks Act, "notwithstanding anything contained in CPC or any other law for the time being in force", emphasise that the requirement of Section 20 CPC would not have to be complied with by the plaintiff if he resides or carries on business in the local limits of the court where he has filed the suit but, in our view, at the same time, as the provision providing for an additional forum, cannot be interpreted in the manner that it has authorised the plaintiff to institute a suit at a different place other than the place where he is ordinarily residing or having principal office and incidentally where the cause of action wholly or in part has also arisen. The impugned judgments, in our considered view, do not take away the additional forum and fundamental basis of conferring the right and advantage to the authors..."

Sanjay Dalia (supra) considered all the previous rulings- *Dabur*, *Exphar*, etc. In the present case, the first paragraph of the plaint in the suit and the jurisdiction paragraph categorically showed that the plaintiff is a Delhi based firm, with its partners- arrayed as plaintiffs, carrying on "*business of publishing books since the year 2000*". Therefore, the jurisdiction of this Court, at least on the basis of Section 62 (2) of the Copyright Act, cannot be doubted.

15. What Google India and RIMPL urge is that they have no connection with the infringing works and that the parties responsible, if at all, would be

Google Inc. and RIM. Now, though this argument is attractive, the court has to reject it. The plaint averments are to be seen as a whole; at this stage, to invite the Court's attention into the effect of the documents on the record, or go beyond them, to see if *the defendants* have any connection with each other, would be hazardous. The court is not drawn into a mini-trial to determine whether there is any interrelationship between Google Inc and Google India, for instance, as alleged by the latter. Significantly, the documents relied on by the plaintiff Blueberry include Google Inc's description of Google India as its India office, in its website. Therefore, it would not be appropriate for the court, at this stage to consider the merits of the averments, without a trial. The acceptance of Google India's - and RIMPL's argument would mean a decision on the merits of that contention that they were not responsible for infringement, or that they had no connection with their overseas principals/holding companies, i.e. Google Inc and RIM. Furthermore, neither of these companies has any office other than that of its subsidiaries, who are within jurisdiction of this court. For this reason, we hold that allowing the application of Google Inc and RIMPL and deleting them from the array of parties was erroneous.

16. That brings the court to a discussion on the merits of Blueberry's argument that deleting Amazon from the list of parties was erroneous. Amazon, highlights Blueberry, offers the copyrighted works unabashedly and even acknowledges that in the application. The argument further-by Blueberry, is that the explanation offered by Amazon is that the copyrighted works were not downloaded in India and that it has placed geographical restrictions on the downloading of such infringing works. In this context, Amazon also argues that the Copyright Act does not have extraterritorial

effect. Thus sales through web based downloading applications abroad do not constitute cause of action over which this court can validly take cognizance, having regard to the restrictions of territoriality of the Indian Copyright Act.

17. That the Copyright Act applies territorially is undeniable. The question is thus does this *per se* bar the jurisdiction of the court? Now Blueberry's case in the suit is not only that Amazon's applications restricted to the copyrighted works are available; it is rather that Amazon carries on business in India. On this aspect there cannot be any doubt -neither does Amazon dispute this proposition. What Amazon urges on the other hand is that the particular action complained of by Blueberry occurred- rather occurs- *exclusively* in the United States. In its written statement, Amazon asserts that:

"It is settled law that for an action to subsist under the Copyright Act, the alleged infringing activity must occur in India. In order to assert jurisdiction under the Copyright Act, the primary question would be whether any infringing activity was carried out in India. It is only: after the Plaintiff has discharged the burden of showing, that the cause of action i.e., the infringement of copyright; has occurred within India, will the Courts apply Section 62 of the Copyright Act to decide the issue of jurisdiction."

Further, it is alleged that:

"the Apps are available for download only to customers within the United States of America. It unequivocally provides that:

4. Limited to U.S. We are currently only able to make Apps available to customers located in the United States. We regret that you may not purchase or download Apps if you are outside the United States. If you are inside the United States, you may not transfer Apps outside the United States. "United States" refers to the 48 contiguous states, the District of Columbia,

Alaska, Hawaii, Puerto Rico, American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands.

5. The answering Defendant also uses various technological filters to enforce compliance with the prohibition contained in clause 4 of the Terms of Use. Consequently, none of the Apps have been reproduced, downloaded, or communicated through the answering Defendant's Website to the public, within the territorial limits of India."

18. Amazon does not deny that it *has business and commercial activity in India*. It cannot deny that it "carries on business". What it states is that the alleged infringing activity did not occur within jurisdiction of this court:

"It is stated that, mere provision of services within the jurisdiction of this Court does not confer jurisdiction on this Court qua the answering Defendant since answering Defendant has not committed any infringement in India within the meaning of the Copyright Act."

19. As this Court reads *Dalia* and Section 20, CPC, the additional choice given to the plaintiffs under Section 62 (2) of the Copyright Act is to sue a defendant from some place, if (the plaintiff) is carrying on business. In this case, the plaintiff does carry on business in Delhi; the defendant Amazon does not deny carrying on business ("*provision of services*") in Delhi. *Arguendo* it is right in contending that the infringing activity did not occur in India, nevertheless, that submission is based on its insistence that the particular infringing activity should also occur within jurisdiction of this court. The submission is unwarranted. The stipulations in Section 20 enable the plaintiff to sue a defendant either where it resides or *carries on business* or works for gain. Amazon's argument imposes an additional condition that the defendant should also carry on the particular activity that constitutes the cause of action. That is not the requirement under Section 20. Section 20 (a)

and (b) talk of *residence or carrying on of business by the defendant*; Section 20 (c) talks of cause of action or part of it arising in a court's jurisdiction. They are alternative requirements, in the disjunctive, not conjunctive and compulsive. Amazon may have valid defenses, such as its being an intermediary under the Information Technology Act, 2000 or other plausible contentions on the merits. However, once it is shown that it carries on business within the jurisdiction of this Court, and the plaintiff, which is the copyright owner, also "resides" here, jurisdiction cannot be denied.

20. As far as inapplicability of the provisions of the Act to infringements within the USA are concerned, we note that the submission is based on Amazon's arguments to that effect. Its unilateral assertion that there are downloading restrictions, based on a bare reading of the documents - or that only 33 downloads took place, for a small amount, are not relevant; they are contentious and accepting them would be giving disproportionate weight to the pleadings of one party and precluding the rights of the plaintiff, finally.

21. In view of the above discussion, this Court holds that the impugned judgment has to be set aside and the appeal is to succeed. The appeal is therefore allowed; the first, third and tenth defendant shall continue to be arrayed as parties in the suit. There shall be no order as to costs.

S. RAVINDRA BHAT
(JUDGE)

DEEPA SHARMA
(JUDGE)

MAY 25, 2016