

THE HIGH COURT OF DELHI AT NEW DELHI

%

Judgment delivered on: 28.07.2016

+ **FAO (OS) 65/2016 & CM Nos.7679/2016, 9934/2016**

MUSIC BROADCAST LIMITED

... Appellant

versus

AXIS BANK & ANOTHER

... Respondents

Advocates who appeared in this case:-

For the Appellant : Dr A.M. Singhvi, Mr Rajiv Nayyar, Mr Abhinav Vashisht,
Sr Advocates with Ms Meghna Mishra, Ms Manmeet Kaur,
Mr Akhil Sachar, Mr Dheeraj P. Deo and Mr Manan Chadha
For the Respondent No.2 : Mr P.V. Kapur, Sr Advocate and Mr Amit Sibal, Sr Advocate
with Mr Jagdish Sagar, Mr V.K. Nagrath, Mr Tahir Ahmed
Siddique, Mr Neeraj Gupta and Ms Nidhi Manocha.

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

BADAR DURREZ AHMED, J

1. This appeal is directed against the judgment dated 09.02.2016 delivered by a learned single Judge of this court, whereby he has taken the view that this court does not have territorial jurisdiction to entertain the suit [CS(OS) 2119/2013], which had been filed by the appellant / plaintiff. Consequently, the learned single Judge has directed the return of the plaint under Order 7 Rule 10 of the Code of Civil Procedure, 1908 (hereinafter

referred to as ‘CPC’) for presentation before the High Court of Judicature at Bombay, which, according to the learned single Judge, alone has territorial jurisdiction to entertain the suit. By virtue of the impugned judgment, the learned single Judge had, however, continued the interim order passed on 18.11.2013 for a period of four weeks and also noted that the transferee court would be at liberty to consider the matter and pass an order as to whether or not to continue the interim order. This interim order was continued by this Bench and is in operation.

2. The learned counsel for the appellant submitted that the view taken by the learned single Judge is erroneous. It was, first of all, submitted that the view of the learned single Judge is premised on the assumption that clause 33 of the voluntary licence agreements between the appellant and the respondent No.2, which gave exclusive jurisdiction to the High Court of Judicature at Bombay, was applicable insofar as the present suit was concerned. This assumption, according to the learned counsel for the appellant, is without any basis because the present suit has been filed in respect of the compulsory licences granted on 03.09.2010 by the Registrar of Copyrights at New Delhi pursuant to the order of the Copyright Board dated 25.08.2010. The learned counsel for the appellant submitted that the

present suit has been filed, *inter alia*, being aggrieved by the cancellation notice dated 21.06.2013 issued by the respondent No.2, cancelling the compulsory licences. It is the infraction of the rights flowing from the compulsory licences, which is the subject matter of the present suit. The voluntary licence agreements, which contained the exclusive jurisdiction clause, are not in issue in the present suit. It is, therefore, contended on the part of the appellant that the assumption by the learned single Judge that clause 33 of the voluntary licence agreements would be operative is clearly misconceived. The learned counsel for the appellant also pointed out that another aspect on which the learned single Judge has gone wrong is that he was under the impression that the present suit is based on the same cause of action as civil suit No.565/2011, which has been filed by the appellant against, *inter alia*, the respondent No.2 in the High Court of Judicature at Bombay. The learned counsel for the appellant submitted that the present suit and the suit at Bombay were different and were not on the same cause of action. The Bombay suit pertained to adjustments under the voluntary licence agreements and related to the period prior to the compulsory licences, whereas the present suit was concerned with the compulsory licences and the alleged illegal conduct on the part of the respondent No.2

in cancelling the said compulsory licences by virtue of the impugned notice dated 21.06.2013.

3. On the other hand, the learned counsel for the respondents and, in particular, respondent No.2, supported the decision of the learned single Judge on both counts. It was contended that the compulsory licences were nothing but a continuation of the arrangement under the voluntary licence agreements and, therefore, the exclusive jurisdiction clause would apply to the compulsory licences also. It was also contended that no part of the cause of action, in any event, arose in Delhi, inasmuch as both the appellant and the respondent No.2 have their registered offices in Mumbai, the cancellation notice dated 21.06.2013 was issued by the respondent No.2 at Mumbai and the same was received by the appellant at its office in Mumbai. Therefore, according to the learned counsel for the respondent No.2, no part of the cause of action arose in Delhi. The learned counsel also reiterated the view of the learned single Judge that the civil suit No.565/2011, which has been filed by the appellant before the High Court of Judicature at Bombay, clearly indicated that the territorial jurisdiction was that of the High Court at Bombay because, according to the learned

counsel for the respondent No.2, the cause of action of the present suit and that of the suit at Bombay was the same.

4. A few facts are necessary. Under the voluntary licence agreements, the respondent No.2 granted a non-exclusive, non-transferable licence to the appellant to broadcast the sound recordings controlled by the respondent No.2 through the appellants from radio stations in different cities. The voluntary licence agreements were entered into during the pendency of the matters before the Supreme Court and the Copyright Board on issues relating to payment of licence fees, which had been raised by various private radio stations. It was in the backdrop of the pending disputes that some of the private radio stations agreed to obtain voluntary licences from the respondent No.2 on the tariff which was broadly based on the orders passed by courts / Copyright Board, subject to adjustments as per the final orders which may be passed by the Board / Courts. It is in these circumstances that the voluntary licence agreements were entered into by and between the appellant and the respondent No.2 in respect of private radio stations in different cities. It may be relevant to note that clause 33 of the said voluntary licence agreements was as under:-

“This licence shall be governed by and construed in accordance with the laws of India and the High Court of Judicature at Bombay shall have exclusive jurisdiction.”

5. On 25.08.2010, the Copyright Board at New Delhi passed an order in exercise of the powers conferred under Section 31 (1) (b) of the Copyright Act, 1957 directing the Registrar of Copyrights to grant to the complainants (which includes the appellant herein) separate licences for communicating the work recorded in sound recordings in the repertoire, present and future, of the respondent No.2 to the public by broadcast on revenue sharing basis subject to certain terms and conditions. The relevant portion of the said order is set out hereinbelow:-

“30.27 Accordingly, in exercise of powers conferred under section 31(1)(b) of the Copyright Act, 1957, the Copyright Board hereby directs the Registrar of Copyrights to grant to the complainants separate licences for communicating the work recorded in sound recordings in the repertoire, present and future, of the respondent to the public by broadcast on revenue sharing basis subject to the following terms and conditions:

- a) 2% of net advertisement earnings of each FM radio station accruing from the radio business only for that radio station shall be set apart by each complainant for pro rata distribution of compensation to all music providers including the respondent herein in proportion to the music provided by the respective music providers and broadcast by the complainant. Complainant shall be deemed to be a music provider for the music provided by it or received by it free of cost and broadcast. For arriving at “net advertisement earnings”, all Government and municipal

taxes paid, if any, and commission paid towards the procurement of such advertisements to the extent of 15% of such advertisement earnings shall be excluded;

- b) Complainants shall furnish within a week of grant of licence by the Registrar of Copyrights a bank guarantee for Rs, 10,000 in favour of the respondent for each radio station. However, the sum of such bank guarantee shall be revised within two weeks after the close of every quarter of the year to such sum for which complainant was liable for payment of compensation for that quarter. Quarter of a year means a period of three months ending on the last day of March, June, September and December of the relevant year;
- c) If the complainant fails to revise the bank guarantee in terms of clause (b), respondent shall be at liberty to cancel the licence without giving any notice and recover the remaining dues from the available bank guarantee;
- d) Payment of compensation by the complainant to the respondent for a month shall be made by 7th day of the month following the month to which payment relates. Complainant shall also furnish along with the payment the date wise details of the periods for which the music relating to the respondent and all other music providers has been used for the month. However, payment for the period beginning with the grant of licence and ending on 30th September, 2010 shall be made in lump sum by 7th October, 2010;
- e) For any delayed payment for a month beyond 7th of the following month, interest at the rate of 1% per month or a part of month shall be payable;
- f) In case payment is not made by the complainant for a radio station for consecutive two months, respondent herein shall be entitled to cancel the licence by giving notice of one month and recover the remaining dues from the bank guarantee;

- g) A complainant may for one or more radio stations, by giving notice of one month and after making payment of all sums due, cancel the licence;
- h) The validity of the licence granted by the Registrar of Copyright shall come to end on 30th September, 2020.”

6. At this juncture itself, we may refer to Section 31 of the Copyright Act, 1957, which reads as under:-

“31. Compulsory licence in works withheld from public.—(1)

If at any time during the term of copyright in any work which has been published or performed in public, a complaint is made to the Copyright Board that the owner of copyright in the work—

- (a) has refused to re-publish or allow the re-publication of the work or has refused to allow the performance in public of the work, and by reason of such refusal the work is withheld from the public; or
- (b) has refused to allow communication to the public by broadcast, of such work or in the case of a sound recording the work recorded in such sound recording, on terms which the complainant considers reasonable, the Copyright Board, after giving to the owner of the copyright in the work a reasonable opportunity of being heard and after holding such inquiry as it may deem necessary, may, if it is satisfied that the grounds for such refusal are not reasonable, direct the Registrar of Copyrights to grant to the complainant a licence to re-publish the work, perform the work in public or communicate the work to the public by broadcast, as the case may be, subject to payment to the owner of the copyright of such compensation and subject to such other terms and conditions as the Copyright Board may determine; and there upon the Registrar of Copyrights shall grant the licence to such person or persons who, in

the opinion of the Copyright Board, is or are qualified to do so in accordance with the directions of Copyright Board, on payment of such fee as may be prescribed.”

7. Subsequent to the order dated 25.08.2010 passed by the Copyright Board, the Registrar of Copyrights granted licences under Section 31(1)(b) of the Copyright Act to the appellant on 03.09.2010. The said licences were granted on the terms and conditions as stipulated in the order of the Copyright Board dated 25.08.2010. Separate licences were granted in respect of radio stations in different cities. It is pertinent to note that these compulsory licences were issued by the Registrar of Copyrights at New Delhi and they did not contain any jurisdiction clause.

8. It is also appropriate to point out that the respondent No.2 filed a writ petition being WP(C) 8144/2011 seeking cancellation of 15 out of 20 compulsory licences. This petition was, however, dismissed by a learned single Judge of this court on 09.01.2015. What is interesting to note is that the said writ petition, which was filed before this court and, which sought cancellation of the 15 compulsory licences, had invoked the jurisdiction of this court in the following manner:-

“28. **Jurisdiction:** The Respondent No.2 authority which has issued the licenses sought to be quashed herein is located in New Delhi, within the territorial jurisdiction of this Hon’ble

High Court. The Copyright Board has its office in New Delhi and all the proceedings proceeded the issuance of impugned licenses took place in New Delhi. The cause of action for this writ petition hence arises in New Delhi, within the territorial jurisdiction of this Hon'ble High Court under Article 226 of the Constitution of India. The first Petitioner is also carrying on business from its office in New Delhi.”

9. In the meanwhile, the respondent No.2 issued the impugned cancellation notice dated 21.06.2013, whereby all the 20 compulsory licences for radio broadcasting of the respondent No.2's repertoire of sound recordings, was sought to be cancelled. Paragraph 6 of the said notice is relevant and the same reads as under:-

“6. In spite of our repeated reminders and follow up, you have intentionally and repeatedly breached the material conditions of the said Compulsory Licenses as follows:

Firstly, you have failed and neglected to make payment of compensation by 7th day of each month on and from October, 2010 for all your FM Radio Stations, till date, and have thus committed a series of serious defaults under clause (d) of the said Compulsory Licenses read with Para 30.27(d) of the Copyright Board's order dated 25.08.2010.

Secondly, you have been continuously submitting monthly log reports which are incomplete and incorrect and not in accordance with the said Copyright Board Order / compulsory licenses. The reports submitted by are inconsistent and inaccurate.

Thirdly, you were obliged under the said Order / compulsory licenses to submit, every month for each of

your stations, complete and necessary declarations regarding your net advertising earnings, pro-rata Distribution: it follows that barter transactions with your sister group of companies namely 'STAR Television Group of Companies' and other companies, prior period adjustments, credit notes, details of bonus arltime were to have been declared by you, but you have suppressed the same.

Fourthly, you have not reported your net advertisement revenue for the month of January, 2012 for your FM radio Station located in the city of Ahmedabad ('the Ahmedabad Default'); and therefore for this default we are not able to calculate the compensation, payable to us and the interest accrued thereon; and accordingly committed another breach of the said copyright Board order.

Fifthly, you have been making consistent defaults in providing Bank Guarantees as per clause (b) of the compulsory licenses read with Para 30.27(b) of the CRB order. The default has been notified to you vide our above referred letter dated 17.06.2013."

10. Initially, the appellant filed a writ petition challenging the said cancellation. The same was filed in the Delhi High Court and an order granting stay of cancellation was passed on 24.07.2013. However, on 29.10.2013, the writ petition was withdrawn with liberty to file a suit. The interim order was, however, continued till 06.11.2013 to enable the appellant to file the suit. It is thereafter that the appellant filed the present suit [CS(OS) 2119/2013] in which, as we have already pointed out, the challenge is, *inter alia*, to the impugned notice dated 21.06.2013, whereby

the compulsory licences issued on 03.09.2010 have been sought to be cancelled. On 18.11.2013, a learned single Judge of this court passed an interim order staying the operation of the impugned cancellation notice dated 21.06.2013 issued by the respondent No.2 to the appellant till the next date of hearing. While in the course of arguments, prior to the passing of the said order dated 18.11.2013, a plea had been taken that this court did not have the territorial jurisdiction to entertain the present suit, on that issue, the learned single Judge observed that, admittedly, the compulsory licences were issued in Delhi by the Registrar of Copyrights. It was further noted that the respondent No.2 had a subsidiary office at Delhi and part of the cause of action had arisen in Delhi as the compulsory licences had been issued by the Registrar of Copyrights in Delhi, the breach whereof has been alleged by the respondent No.2, who claimed the right to cancel the said licences occasioned by the said breach. The learned single Judge observed that this court had no territorial jurisdiction to try the present suit and further noted that clause 33 of the voluntary licence agreements would not be relevant as the cause of action did not arise because of the voluntary licence agreements but related to the cancellation notice dated 21.06.2013 issued by the respondent No.2 citing breaches of the compulsory licences dated 03.09.2010. Of course, the learned single Judge noted at the end of

the order that anything said in the said order would not be an expression of a final opinion on the merits of the case.

11. Being aggrieved by the said order dated 18.11.2013, the respondent No.2 preferred an appeal being FAO(OS) 561/2013 which was disposed of by a Division Bench on 03.12.2013 on the first date of hearing itself. The only point raised in the appeal was with regard to the view of the learned single Judge concerning the issue of territorial jurisdiction. After noting the contentions on both sides on the said issue, the Division Bench observed that the opinion of the learned single Judge was, as indicated in the order dated 18.11.2013 itself, not a final expression on the matter. It was also submitted by the counsel that the learned single Judge had yet to conclusively decide as to whether this court had territorial jurisdiction or not. Consequently, the Division Bench, in view of the fact that the question of territorial jurisdiction was yet to be decided by the learned single Judge, refrained from making any comments thereon and directed the parties to await the final decision on the subject by the learned single Judge. It is thereafter that by virtue of the impugned judgment dated 09.02.2016, the learned single Judge has taken the view that this court does not have the

territorial jurisdiction to entertain the present suit and, therefore, has directed the return of the plaint under Order 7 Rule 10, CPC.

12. Being aggrieved by the impugned judgment dated 09.02.2016, the appellant has preferred the present appeal. It has, first of all, been contended by the learned counsel for the appellant that part of the cause of action for filing the suit arose in Delhi and, therefore, this court would definitely have territorial jurisdiction to entertain the suit. The various elements pertaining to the issue of cause of action which need to be considered, according to the learned counsel for the appellant, were:-

- 1) The suit pertained to the cancellation of the compulsory licences and had nothing to do with the voluntary licence agreements;
- 2) The compulsory licences were statutory licences granted under Section 31(1)(b) of the Copyright Act, 1957;
- 3) All the compulsory licences were granted by the Registrar of Copyrights in Delhi;
- 4) The said Compulsory licences were granted pursuant to Copyright Board's order dated 25.08.2010 which was passed in Delhi; and
- 5) Both the appellant and the respondent No.2 have offices in Delhi.

It was also pointed out by the learned counsel for the appellant that the voluntary licences had expired and the last of the voluntary licences, which

was for Delhi, expired on 10.03.2010. The reliefs sought in the plaint pertained to the cancellation notice dated 21.06.2013 and issues pertaining to validities flowing from the compulsory licences which were issued on 03.09.2010. It was, therefore, contended by the learned counsel for the appellant that clause 33 of the voluntary licences did not contain any exclusive jurisdiction clause and, therefore, since part of the cause of action in respect of the compulsory licences arose in Delhi, this court would have territorial jurisdiction to entertain the suit.

13. It was also contended by the learned counsel for the appellant that even the respondent No.2 understood Delhi as having jurisdiction in the matter. This is evident, according to the learned counsel for the appellant, from the fact that the respondent No.2 filed WP(C) 8144/2011 seeking cancellation of 15 out of the 20 compulsory licences before this court claiming jurisdiction in terms of paragraph 28 of the writ petition which we have already extracted above. One of the points raised in the said paragraph 28 is that the Registrar of Copyrights, which issued the licences, was located in New Delhi. The respondent No.2, being aggrieved, preferred an appeal being LPA No.131/2015, which was also disposed of

on 13.04.2015 by a Division Bench. The operative portion of the order reads as under:-

“3. We accordingly, dispose of these appeals in terms of our judgment dated 8th April, 2015, clarifying that it will be open to the appellants to seek redressal of the grievances raised in the writ petitions, from which these appeals arose, in the statutory appeal before the High Court of Madras or in any other proceeding before that Court or before any other forum, in accordance with law and that in the event of the appellants doing so, all objections available in law thereagainst, shall be open to the respondent No.3.
No costs.”

14. Another plea taken was that the Copyright Board had its office in New Delhi and all the proceedings, which preceded the issuance of the compulsory licences, had taken place in New Delhi. It was also pointed out that the appellant was also carrying on business from its office in New Delhi.

15. The learned counsel for the appellant also submitted that the cancellation notice dated 21.06.2013 related to 5 issues which we have already extracted above and only 1 out of 5 was relatable to the voluntary licence agreements. The other four issues pertained to the compulsory licences with which the present suit is concerned.

16. On the other hand, the learned counsel for the respondent No.2 drew out attention to paragraph 12 of the plaint which reads as under:-

“12. That this Hon'ble Court has the territorial Jurisdiction to entertain the present suit. The Defendant No. 2 carries on business within the territorial jurisdiction of this Hon'ble Court at Delhi. The Plaintiff is also operating one of its Radio Stations from 201, 3rd Floor, Okhla Industrial Area Phase-3, Delhi-110020 from where it is operating the Compulsory Licenses dated 3.9.2010. The Compulsory Licenses dated 3.9.2010 have been issued by the Registrar of Copyrights at Delhi. The Copyright Board which has passed the order dated 25.08.2010 culminating into Compulsory Licenses dated 3.9.2010 is situated at Delhi. That the proceedings before the Copyright Board towards the grant of Compulsory License were held at Delhi. Therefore, this Hon'ble Court has the requisite territorial jurisdiction to entertain the present suit.”

17. He submitted that four points have been urged in the said paragraph in support of the plea that this court has territorial jurisdiction to entertain the suit. The first is that the defendant No.2 (respondent No.2) carries on business within the territorial jurisdiction of this court. The second is that the appellant is also operating one of its radio stations in Delhi from where it is operating the compulsory licences dated 03.09.2010. The third being that the compulsory licences dated 03.09.2010 have been issued by the Registrar of Copyrights at Delhi. The last and the fourth point being that the Copyright Board, which passed the order dated 25.08.2010, is situated at Delhi. In respect of the first point, it was contended that the respondent

No.2 does not carry on business in Delhi and that it only has a subordinate office and since no cause of action has accrued in Delhi, it cannot be considered that the respondent No.2 carries on business in Delhi, particularly in view of the explanation to Section 20, CPC. As regards the second point, it was contended that the factum of the appellant operating a radio station in Delhi was of no consequence. As regards the third point, it was submitted that the issuance of a compulsory licence was not a part of the cause of action. In fact, it was the cancellation of the said compulsory licences which could be a part of the cause of action but, that happened in Mumbai. On the fourth point, the short submission of the learned counsel for the respondent was that the fact that the Copyright Board passed an order dated 25.08.2010 in Delhi was also of no consequence.

18. Various decisions were referred to on the aspect of cause of action and also the provisions of Order 7 Rule 11, CPC. The decisions relied upon by the learned counsel for the respondent were as under:-

- 1) **Union of India and Others v. Adani Exports Limited and Another: 2002 (1) SCC 567;**
- 2) **Dashrath Rupsingh Rathod v. State of Maharashtra: 2014 (9) SCC 129;**

- 3) **T. Arivandandam v. T.V. Satyapal and Another: 1977 (4) SCC 467;**
- 4) **Om Aggarwal v. Haryana Financial Corporation and Another: 2015 (4) SCC 371;**
- 5) **Razia Begum v. Delhi Development Authority & Others: 215 (2014) DLT 290 (DB).**

The observations which have been relied upon in each of these decisions are as under:-

1) ***Adani Exports Limited (supra):-***

“17. It is seen from the above that in order to confer jurisdiction on a High Court to entertain a writ petition or a special civil application as in this case, the High Court must be satisfied from the entire facts pleaded in support of the cause of action that those facts do constitute a cause so as to empower the court to decide a dispute which has, at least in part, arisen within its jurisdiction. It is clear from the above judgment that each and every fact pleaded by the respondents in their application does not ipso facto lead to the conclusion that those facts give rise to a cause of action within the court's territorial jurisdiction unless those facts pleaded are such which have a nexus or relevance with the lis that is involved in the case. Facts which have no bearing with the lis or the dispute involved in the case, do not give rise to a cause of action so as to confer territorial jurisdiction on the court concerned. If we apply this principle then we see that none of the facts pleaded in para 16 of the petition, in our opinion, falls into the category of bundle of facts which would constitute a cause of action giving rise to a dispute which could confer territorial jurisdiction on the courts at Ahmedabad.

18. As we have noticed earlier, the fact that the respondents are carrying on the business of export and import or that they are receiving the export and import orders at Ahmedabad or that their documents and payments for exports and imports are sent/made at Ahmedabad, has no connection whatsoever with the dispute that is involved in the applications. Similarly, the fact that the credit of duty claimed in respect of exports that were made from Chennai were handled by the respondents from Ahmedabad have also no connection whatsoever with the actions of the appellants impugned in the application. The non-granting and denial of credit in the passbook having an ultimate effect, if any, on the business of the respondents at Ahmedabad would not also, in our opinion, give rise to any such cause of action to a court at Ahmedabad to adjudicate on the actions complained against the appellants.”

2) ***Dashrath Rupsingh Rathod*** (*supra*):-

“12. We shall take a short digression in terms of brief discussion of the approach preferred by this Court in the context of Section 20 of the Code of Civil Procedure, 1908 (hereinafter referred to as “CPC”), which inter alia, enjoins that a suit must be instituted in a court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain, *or where the cause of action, wholly or in part, arises*. The Explanation to that section is important; it prescribes that a corporation shall be deemed to carry on business at its sole or principal office, or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place. Since this provision primarily keeps the defendant in perspective, the corporation spoken of in the Explanation obviously refers to the defendant. A plain reading of Section 20 CPC arguably allows the plaintiff a multitude of choices in regard to where it may institute its lis, suit or action. Corporations and partnership firms, and even sole proprietorship concerns, could well be transacting business simultaneously in several cities. If clauses (a) and

(b) of Section 20 are to be interpreted disjunctively from clause (c), as the use of the word “or” appears to permit the plaintiff to file the suit at any of the places where the cause of action may have arisen regardless of whether the defendant has even a subordinate office at that place. However, if the defendant's location is to form the fulcrum of jurisdiction, and it has an office also at the place where the cause of action has occurred, it has been held that the plaintiff is precluded from instituting the suit anywhere else. Obviously, this is also because every other place would constitute a *forum non conveniens*. This Court has harmonised the various hues of the conundrum of the place of suing in several cases and has gone to the extent of laying down that it should be courts' endeavour to locate the place where the cause of action has substantially arisen and reject others where it may have incidentally arisen. *Patel Roadways Ltd. v. Prasad Trading Co.* [(1991) 4 SCC 270 : AIR 1992 SC 1514] prescribes that if the defendant corporation has a subordinate office in the place where the cause of action arises, litigation must be instituted at that place alone, regardless of the amplitude of options postulated in Section 20 CPC. We need not dilate on this point beyond making a reference to *ONGC v. Utpal Kumar Basu* [(1994) 4 SCC 711] and *South East Asia Shipping Co. Ltd. v. Nav Bharat Enterprises (P) Ltd.* [(1996) 3 SCC 443].”

3) ***T. Arivandandam*** (*supra*):-

“5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentently resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving complaints. The learned Munsif must remember that if on a meaningful — not formal — reading of the complaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should

exercise his power under Order 7, Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10, CPC. An activist Judge is the answer to irresponsible law suits. The trial courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Cr. XI) and must be triggered against them. In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi:-

“It is dangerous to be too good.”

4) ***Om Aggarwal (supra):-***

“16. An application for rejection of the plaint can be filed, if the allegations made in the plaint taken to be correct as a whole on its face value show the suit to be barred by any law. The question as to whether a suit is barred by any law or not would always depend upon the facts and circumstances of each case. However, for deciding this question, only the averments made in the plaint are relevant. Since the question of jurisdiction of the civil court to entertain and try the civil suit goes to the very root of the case and hence it can be raised at any time by the defendant by taking recourse to the provisions of Order 7 Rule 11 of the Code. Indeed, this principle of law is well settled.”

5) ***Razia Begum (supra):-***

“19. The manner in which a court would scrutinise the plaint and documents filed along with for the purposes of an objection under Order VII Rule 11 of the CPC is also well settled. The Supreme Court has held that while considering

the application under Order VII Rule 11 of the CPC, a court shall not pick out submissions in isolation but has to conduct a meaningful reading of the plaint. In this regard, reference may be made to (1977) 4 SCC 467, *T. Arivandandam v. T.V. Satyapal & Anr.* wherein it was held that:

"5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentantly resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court Bangalore, is a flagrant misuse of the mercies of the law in receiving plaints. The learned Munsif must remember that if on a meaningful -- not formal --reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order VII Rule 11, C.P.C. taking care to see that the ground mentioned therein is fulfilled. And, if clear drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order X, C.P.C. An activist Judge is the answer to irresponsible law suits. The trial Courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Ch. XI) and must be triggered against them. In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi

"It is dangerous to be too good."

20. In the pronouncement of the Supreme Court reported at VI 2005 (7) SCC 510, *Popat and Kotecha Property v. State Bank of India Staff Association*, relied upon by the appellant, placing reliance on the judicial precedents on the parameters of court consideration of an application under Order VII Rule 11 of the CPC, it was noted that clause (d)

of Order VII Rule 11 speaks of the suit as appears from the statement in the plaint to be barred by law and that disputed questions cannot be decided at the time of considering an application under order VII Rule 11(d) of the CPC. This provision would apply where the statement made by the plaintiff in the plaint without any doubt or dispute shows that the suit is barred by any law in force. The Supreme court elaborated on the spectrum of Order VII Rule 11 of CPC noting in paras 14 to 18 as follows:

14. In *Saleem Bhai and Ors. v. State of Maharashtra and Ors.* [2002] SUPP 5 SCR 491 it was held with reference to Order VII Rule 11 of the Code that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial Court can exercise the power at any stage of the suit-before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under Clauses (a) and (d) of Order VII Rule 11 of the Code, the averments in the plaint are the germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage.

15. In *I.T.C. Ltd. v. Debts Recovery Appellate Tribunal and Ors.*, AIR 1998 SC 634 it was held that the basic question to be decided while dealing with an application filed under Order VII Rule 11 of the Code is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order VII Rule 11 of the Code.

16. The trial Court must remember that if on a meaningful and not formal reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise the power under Order VII Rule 11 of the Code taking

care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the party searchingly under Order X of the Code. (See *T. Arivandandam v. T.V. Satyapal and Anr.* [1978] 1 SCR 742.

17. It is trite law that not any particular plea has to be considered, and the whole plaint has to be read. As was observed by this Court in *Roop Lal Sathi v. Nachhattar Singh Gill* (1982) 3 SCC 487, only a part of the plaint cannot be rejected and if no cause of action is disclosed, the plaint as a whole must be rejected.

18. In *Raptakos Brett & Co. Ltd. v. Ganesh Property*, AIR 1998 SC 3085 it was observed that the averments in the plaint as a whole have to be seen to find out whether Clause (d) of Rule 11 of Order VII was applicable."

19. In rejoinder, the learned counsel for the appellant reiterated that the Copyright Board's order dated 25.08.2010, which was the basis for the grant of the compulsory licences, was passed in Delhi. He further submitted that this was a statutory order under Section 31(1)(b) of the Copyright Act, 1957 and it is pursuant to this that the compulsory licences were granted by the Registrar of Copyrights in Delhi on 03.09.2010. It was submitted that the voluntary licence agreements, which had the exclusive jurisdiction clause, had expired long time back, the last of which expired in March 2010. It was reiterated that the voluntary licence agreement is not

the foundation of the cause of action under the compulsory licences which is in issue. The learned counsel also referred to the decision in **Om Prakash Srivastava v. Union of India and Another: 2006 (6) SCC 207** and, in particular, to paragraphs 11, 12 and 13 thereof which read as under:-

“11. It is settled law that “cause of action” consists of a bundle of facts, which give cause to enforce the legal inquiry for redress in a court of law. 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. [See *South East Asia Shipping Co. Ltd. v. Nav Bharat Enterprises (P) Ltd.* [(1996) 3 SCC 443]

12. The expression “cause of action” has acquired a judicially settled meaning. In the restricted sense “cause of action” means the circumstances forming the infraction of the right or the immediate occasion for the reaction. In the wider sense, it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but also the infraction coupled with the right itself. Compendiously, as noted above, the expression means every fact, which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court. Every fact, which is necessary to be proved, as distinguished from every piece of evidence, which is necessary to prove each fact, comprises in “cause of action”. (See *Rajasthan High Court Advocates' Assn. v. Union of India* [(2001) 2 SCC 294] .)

13. The expression “cause of action” has sometimes been employed to convey the restricted idea of facts or circumstances which constitute either the infringement or the basis of a right and no more. In a wider and more comprehensive sense, it has been used to denote the whole bundle of material facts, which a

plaintiff must prove in order to succeed. These are all those essential facts without the proof of which the plaintiff must fail in his suit. (See *Gurdit Singh v. Munsha Singh* [(1977) 1 SCC 791] .)”

20. On going through the judgment delivered by the learned single Judge, it appears that he was of the view that the exclusive jurisdiction clause in the voluntary licence agreements, was applicable and it is for this reason that he observed that even assuming that part of the cause of action arose in Delhi (as also in Mumbai), the exclusive jurisdiction clause in the voluntary licence agreements cannot be derogated from and would operate as a jurisdictional bar on this court. We are unable to agree with this view. This is so because the suit has been filed with regard to the compulsory licences and, in particular, the cancellation of the compulsory licences by virtue of the impugned cancellation notice dated 21.06.2013. The voluntary licence agreement, in our view, does not come into play at all. Whether the appellant / plaintiff succeeds in the suit or not is another issue. But, it is clear that the suit proceeds on the basis of an alleged infraction of a right under the compulsory licence. The fact that the compulsory licences were granted / issued by the Registrar of Copyrights in Delhi is a material one for the purposes of considering the plea of territorial jurisdiction. It is material because, as pointed out in *Om Prakash Srivastava* (*supra*), the infraction of

a right, coupled with the right itself constitutes a cause of action. The compulsory licences provided the rights and the action complained of, i.e., the cancellation of the compulsory licences relates to the infraction of that right. Therefore, both the issuance of the compulsory licences and the cancellation thereof constitute the bundle of facts, which, in turn, can be referred to as the 'cause of action'. Therefore, the fact that the compulsory licences were issued in Delhi necessarily entails that a part of the cause of action arose in Delhi. Once this is recognised, this court would certainly have territorial jurisdiction to entertain the suit.

21. The exclusive jurisdiction clause in the voluntary licence agreement, does not come into play. Nor does the fact that the appellant / plaintiff has filed a suit being civil suit No.565/2011 before the High Court of Judicature at Bombay. The causes of action in the two suits are apparently different. The suit before the Bombay High Court pertains to adjustments under the voluntary licence agreements, whereas the present suit deals with the cancellation of the compulsory licences, which are independent statutory licences granted under Section 31(1)(b) of the Copyright Act, 1957. These licences do not contain any exclusive jurisdiction clause and, therefore, it has to be seen as to where the cause of action accrued. We have already

indicated that part of the cause of action arose in Delhi and, therefore, this court would have territorial jurisdiction to entertain the suit.

22. Consequently, the impugned judgment is set aside. The suit shall therefore be listed before the learned single Judge as per roster on 10.08.2016 in the first instance for further proceedings. The interim order dated 18.11.2013 passed by the learned single Judge shall continue to operate.

BADAR DURREZ AHMED, J

July 28, 2016
dutt

SANJEEV SACHDEVA, J