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

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Date of decision : 29th August, 2017

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FAO(OS) 11/2017 and CM No.1427/2017

ADVERTISING STANDARDS

COUNCIL OF INDIA

..... Appellant

Through : Mr. Raj Shekhar Rao, Ms. Avni
Singh and Ms. Gauri Puri,
Advs.

versus

RECKITT BENCKISER INDIA PVT LTD Respondent

Through : Mr. Chander M.Lall, Sr. Adv.
with Ms. Nancy Roy, Mr.
Rupin Bahl, Mr. Dhruv Nayar
and Mr. Anirudh Bhatia, Advs.

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FAO(OS) 38/2017 and CM No.4678/2017

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CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

GITA MITTAL, ACTING CHIEF JUSTICE

1. By way of these two appeals, the appellant assails two orders passed on 7th October, 2016 and 23rd January, 2017 on the same application bearing I.A.No.12660/2016 in CS(OS)No.458/2016. Inasmuch as the challenge rests on identical question of law and the second order is in continuation of the first, we have taken both of these appeals together for consideration and are deciding the same by this common order.

2. The respondent herein, on or about 8th of September 2016, filed a suit being CS(OS)No.458/2016 on the Original Side of this court seeking permanent injunction and declaration making the following prayers :

- “A. The defendant be restrained by a permanent injunction from creating impediments I the broadcast of the advertisement of the plaintiff which is the subject matter of the present suit and filed at page.... of the documents filed with the present plaint;*
- B. This Hon’ble Court declare that the advertisement of the plaintiff as filed at page of the documents filed with the present plaint is fair and truthful and does not constitute a violation of any advertising laws or code and the plaintiff is entitled to broadcast the advertisement throughout the country;*
- C. Pass an order of permanent injunction against the defendant thereby restraining the defendant from entertaining or adjudicating upon any complaint(s) against the advertisement of the plaintiff filed at page of the documents filed with the present plaint;*
- D. A decree of mandatory injunction directing the defendant to remove the impugned order dated 24th*

- August, 2016 from its website;*
- E. Costs of the suit be awarded to the plaintiff; and*
- F. Any other relief which the Hon'ble Court thinks fit and proper in the circumstances of the case be allowed in favour of the plaintiffs and against the defendants."*

3. It is an admitted position that the appellant before us was the sole defendant in the suit. The appellant describes itself as a company registered with the Registrar of Companies under Section 25 of the Companies Act, 1956 having its permanent office in Mumbai. It is further stated by the appellant that it is a not-for-profit company founded in the year 1985 as a "*voluntary self-regulating body for the advertising industry*". Amongst its other functions, the appellant submits that it "*looks into complaints received by consumers and offers its recommendations to bring the advertisement in conformity with law.*"

4. It appears that the appellant has framed what is couched as the "*Advertising Standards Council of India Code*" ("*ASCI Code*"). It has also framed "*Consumer Complaints Council Rules*" ("*CCC Rules*") which are concerned with examination of the complaints against its members.

5. The suit of the plaintiff was *inter alia* premised on the following averments :

- "3. It is most humbly submitted that directions issued by the Defendant have been passed without following the due process of law. The defendant is company registered under the Company Act, 1956 and claims to be a self-regulatory voluntary organization of the advertising industry. Even though the plaintiff is a member of the*

defendant organization, such arbitrary orders passed by the defendant in complete disregard to the law of the land and principles of natural justice have left the plaintiff with no option but to file the present suit. The defendant has however directed the plaintiff to “ensure compliance” with its decision “across media including TV, Print, Digital Media etc. as applicable prior to the due date” i.e. 9th September, 2016. There is an implicit threat that the Defendant shall be submitting its compliance report to the Department of Consumer Affairs (DCA) and other government/regulatory bodies including the Ministry of Information and Broadcasting.

4. *It is submitted that the defendant has passed a cryptic and non-speaking order dated 24th August, 2016 without application of mind and the same cannot have sanction of law. By way of the said order a complaint against Plaintiff was upheld and plaintiff’s duly substantiated claim of its products under the brand Dettol Gold providing 100% better protection versus leading germ protection soap was considered to be misleading by exaggeration and the plaintiff has been asked to modify/withdraw its T.V. Commercial as well as any other advertisement making similar claims.*

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7. *It is pertinent to mention here that the orders passed and the procedure adopted by the defendant has been challenged before various courts on many occasions and various Courts have found the same to be completely arbitrary and violative of the principles of natural justice. In the case of **Teleshop Teleshopping v. The Advertising Standards Council of India** (SUIT (L) No.492 of 2015) vide a judgment dated 8th May, 2015, the Hon’ble Bombay High Court has not only criticized the defendant herein but has also, while setting aside the order passed by the Defendant against the plaintiff therein, held that :*

“the general principles reiterated here apply to

the ASCI in all its conduct in all matters, and not just to the present plaintiff or this particular case. The ASCI is not at liberty to issue any orders or any decisions on any complaint brought to it without affording the other party a fair opportunity of being heard. That includes serving the other party with a copy of the complaint. Without statutory backing, its decisions are not binding unless the party in question submits to them. The ASCI is at liberty to entertain any complaint brought to it, but subject to its procedures and methods complying with the requirements of law, including those set out in Mr. Justice Kathawalla's order referred to above, and in the foregoing paragraphs."

For the case of reference the relevant extracts from the decision of Hon'ble Mr. Justice Kathawalla referred to in the aforementioned decision in the case of M/s Teleshop Teleshopping vs the Advertising Standards Council of India & Anr. (Notice of Motion (L) No. 1153 of 2014 in Suit No.497 of 2014) are extracted below :

"11. I have considered the submissions advanced on behalf of the plaintiff. The defendant no.1 is a private body and is not a statutory body or 'State' or an instrumentality or an agency of the State within the meaning of Article 12 of the Constitution of India. The Defendant no.1 in the garb of acting as a voluntary self regulatory council cannot act as a statutory regulator and cannot arrogate to itself the powers of restricting/restraining or causing the restriction/restraint of any commercial advertisements belonging to the plaintiff who is not a member of the defendant no.1. The decisions made and directions issued by the defendant no.1 to its members in respect of the infomercials of the plaintiff have the effect of adversely affecting and restricting the rights of the plaintiff to carry out its trade, business and occupation and to that extent the directions are against law and beyond the realm of the defendant

no.1's powers.

12. *The defendant no.1 has not even provided the plaintiff with a hearing, and in an unauthorized and illegal manner has discontinued the infomercial No.1 and infomercial of the plaintiff, who is not a member of the defendant no.1. By doing so, the defendant no.1 has caused and is continuing to cause immense and irreparable harm and loss to the plaintiff.*

13. *Similar conduct of defendant no.1 had come up for consideration before this Court in the case of Century Plyboards (India) Ltd. v. The Advertising Standards Council of India wherein it was inter alia held that a voluntary association of persons, even a Company such as the defendant, cannot usurp the jurisdiction of the Courts, Tribunals and Fora, duly constituted by the Parliament.*

14. *The said decision was followed by the Hon'ble Delhi High Court in the case of M/s Qyick Telemall Marketing Pvt. Ltd.vs. The Advertising Standards council of India (defendant no.1 herein) dated 27th September, 2013 in CS(OS) No. 1877 of 2013. This court is disturbed to note that despite repeated orders passed by this Court as well as the other Courts against the defendant no.1, pointing out that such orders passed by the defendant no.1 are without jurisdiction and against the principles of natural justice, the defendant no.1 has continued to pass such orders.*

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78. ***The defendant has threatened to block to the advertisement of the plaintiff through the Cable TV Networks (Regulation) Act, 1995 by notifying the Ministry of Information and Broadcasting, which is the appropriate government body/regulatory authority as well as the Department of Consumer Affairs in case the advertisement in issue if not modified/withdrawn by 9th September, 2016. It is in the interest of justice that the defendant be restrained from making any representation to the Ministry on the basis of the impugned order.***

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80. *As per “post CCC meeting procedure” of defendant, an advertiser/agency who fails to comply with the decision of defendant on complaint upheld against a TV commercial, the defendant shall inform the defendant and also Indian Broadcasting Foundation that the TV commercial is contravening the said code. Similarly, if the advertisement relates to a Press/Print advertisement, the defendant will inform the Press Council of India and INS in case an advertiser/agency fails to comply with the decision of defendant.*

81. *Section 6 of the Act read with said Rule 7 (9) of Cable Television Network Rules, 1994 mandates that no person shall transmit or retransmit through a cable service any advertisement unless that advertisement is in conformity with the code for self-regulation in advertising as adopted by the defendant. However, the said Rules are silent as to the decision making authority who shall adjudicate upon issues pertaining to an advertisement being in contravention to the said Self-Regulation Code. **It is submitted that after an order is passed by the Defendant, the Defendant sends a copy of the same to the Defendant as well as the advertising agency while seeking compliance by the advertiser.** Such communications may be considered being violative of the code for self-regulation in advertising and in effect transmission or retransmission of advertisement on television through cable may be prejudiced. Thus, in the respectful submission of the plaintiff, **the order passed by the Defendant can be given effect to by the Ministry of Information and Broadcasting without any judicial process.** It is, therefore, submitted that even though the Defendant is a voluntary organization, the order passed by it is **enforced by the Ministry of Information and Broadcasting.***

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83. *It is submitted that the Plaintiff have bonafide and genuine apprehension that the Government authorities and/or its officials will act upon the order passed by the Defendant. Consequently, the advertisement in relation to which the Defendant has passed the order, will be discontinued in the television and print media.*

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94. *The cause of action accrued in favour of the Plaintiff on 24th August 2016 when the Plaintiff received the decision of the Defendant whereby the Defendant has asked the Plaintiff to withdraw or to modify appropriately the television commercial which is in issue in the present suit. The cause of action is a continuing one and arises on each occasion till the time the order dated 24th August 2016 passed by the Defendant is not set aside.
The suit is within time.*

JURISDICTION

95. *This Hon'ble Court has the territorial jurisdiction to try and entertain the present proceedings in as much as a **part of cause of action has arisen in Delhi as the advertisement which has been directed to be modified/withdrawn by the Defendant was being telecast throughout the country including Delhi and has been viewed by various persons in Delhi, within the jurisdiction of this Hon'ble Court.***

96. *Additionally, the **Defendant has its presence throughout India through its website www.ascionline.org** which is an interactive website and people throughout the country can file their complaints through this website. The Defendant entertains complaints filed by parties against advertisements through this website. Furthermore, **a part of the cause of action arises in Delhi, within the jurisdiction of this Hon'ble Court for the reason that the Plaintiff's advertisement which has been restrained by the Defendant is shown on national television including Delhi.** Hence, orders of the Defendant have a pan-*

Indian effect.

97. *Additionally, the orders passed by the Defendant are given effect to by the Ministry of Information and Broadcasting which is also situated in Delhi. Thus, by virtue thereof and by virtue of provisions of Civil Procedure Code, 1908, this Hon'ble Court has territorial jurisdiction to entertain and adjudicate upon the present suit."*

(Emphasis by us)

6. The appellant entered appearance on the 9th of September 2016 when the suit came up first and accepted summons in the suit. In the hearing on the application for interim relief being I.A.No.11230/2016 (under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure), as noted in the order sheet dated 9th September, 2016, the appellant/defendant contended *inter alia* that the suit is misconceived; that the appellant is merely a recommendatory body; that the appellant was not interfering with the broadcasting of the advertisement by the respondent/plaintiff; that the appellant will merely send recommendations to the government in case the respondent/plaintiff does not comply; that the government was likely to give a show cause to the respondent/plaintiff where they would have full opportunity to present their case; that the appellant was an expert body, in which capacity it had found the advertisement exaggerated.

7. The present appeal has been necessitated inasmuch as the appellant herein filed I.A.No.12660/2017 under the provisions of Order VII Rules 10 and 11 of the C.P.C. seeking return/rejection of the plaint on two grounds. It was firstly contended that as per

averments in paras 95 and 97 of the plaint, the courts all over the country would have territorial jurisdiction to entertain the suit and if the court agreed with the plaintiff, it would enable the plaintiff to choose any court in India to institute the suit, thereby permitting “*forum shopping*” which would be an abuse of the process of the court. The second ground asserted by the appellant/defendant was that the plaintiff had not made out a case that cause of action had accrued within the jurisdiction of the Delhi High Court and consequently the plaint deserved to be rejected.

8. So far as the first objection that the drafting of the plaint would have enabled forum shopping is concerned, by an order passed on 7th October, 2016, the Id. Single Judge was of the view that the plaint could not be returned/rejected on this plea unless the defendant was able to establish, *de hors* the evidence, that no part of the cause of action had accrued within the jurisdiction of this court so as to vest it with territorial jurisdiction over the subject matter of the suit.

9. The Id. Single Judge was also of the view that merely because, from the averments laid in the plaint, it could be said that cause of action may arise within the territorial jurisdiction of several courts, would not mean that, in accordance with the provisions of the Code of Civil Procedure, 1908, each of the said courts would not be competent to entertain the suit. There is no reason to fault this finding of the Id. Single Judge inasmuch as the Code of Civil Procedure itself anticipates the fact that in a given situation, several courts may have jurisdiction and enables the plaintiff to opt for a court of its choice. The objection of the appellant in I.A.No.12660/2016 that the

averments in the plaint would enable forum shopping and that the plaint deserves to be rejected for this reason has therefore, been rightly rejected as it is not sustainable in law.

10. We may note that the order dated 7th October, 2016 has been assailed by way of FAO(OS)No.11/2017. So far as the objection that the defendant/applicant had not made out a case that the cause of action had accrued within the jurisdiction of the court is concerned, though a *prima facie* finding appears to have been recorded on the 7th October, 2016, however, the full consideration thereof appears to have been postponed. This question has actually been considered by the order dated 23rd January, 2017 whereby I.A.No.12660/2016 was finally dismissed which has been assailed by way of FAO(OS)No.38/2017. In view of the aforesaid decision returned by the Id. Single Judge, this appeal therefore, has to be held to be devoid of legal merit and is rejected.

11. Let us examine the objection of the appellant/defendant that no part of the cause of action has arisen within the jurisdiction of this court. It is well settled that an objection with regard to maintainability of the suit resting on want of territorial jurisdiction has to be tested on demurrer. It has been held in a catena of judgments that it is open to the court while examining such objection, only to examine the plaint and the documents filed by the plaintiff in support thereof.

12. We have extracted above the relevant portions of the plaint which have been placed by Mr. Raj Shekhar Rao, Id. counsel for the appellant/defendant as well as by Mr. Chander M. Lall, Id. Senior Counsel for the respondent/plaintiff before us.

13. We have also noted that the plaintiff has made a prayer for permanent prohibitory injunction in the plaint. It needs no elaboration that a prayer for prohibitory injunction has to rest on reasonable apprehensions and perceived threats by a party. In the present case, as per the submissions made by Mr. Raj Shekhar Rao, Id. counsel for the appellant, as per the regulatory mechanism contained in the ASCI Code, the defendant (which in the present case is the appellant before us) is to examine the complaints received by it and issue advisory recommendations to the party against whom the action is being contemplated. Upon such party failing to abide by the recommendations, the appellant makes recommendations to the Ministry of Information and Broadcasting which issues prohibitory orders based thereon.

14. Mr. Raj Shekhar Rao, Id. counsel for the appellant would submit that the Ministry of Information and Broadcasting in fact takes a considered view in the matter and that it does not necessarily issue prohibitory orders on every recommendation made by the plaintiff. This is completely irrelevant for the purposes of the present consideration inasmuch as the respondent/plaintiff has approached this court upon receipt of recommendations made by the appellant/defendant.

15. So far as the averments in the plaint are concerned, a bare perusal thereof shows the pleading of the plaintiff that the recommendations would apply on a pan-India basis. In fact, this was the ground premised on which, the first objection was made by the appellant itself in I.A.No.12660/2016 regarding “*forum shopping*”.

The appellant itself has contended before us that this enabled the respondent to invoke the jurisdiction of any court in India.

16. The plaintiff had clearly stated in para 95 of the plaint that the Delhi High Court has territorial jurisdiction to try and entertain the proceedings inasmuch as "*a part of cause of action has arisen in Delhi as the advertisement which has been directed to be modified/withdrawn by the defendant was being telecast throughout the country including Delhi and has been viewed by various persons in Delhi, within the jurisdiction of this court*". This is followed by the averment in para 96 wherein the plaintiff had disclosed that the appellant has a pan-India presence through its website (www.ascionline.org) which is an interactive website and that people located anywhere in India can file their complaints utilizing this website. The respondent has reiterated that part of the cause of action has arisen in Delhi for the reason that its advertisement which has been exhibited on national television including Delhi would be prohibited.

17. In these circumstances, the observations of the Id. Single Judge that though the appellant was the only advisor and not the broadcaster, yet the order dated 24th August, 2016 (the advisory of the appellant to the respondent) has also been sent to the broadcaster resulting in reasonable apprehension of the plaintiff, that the broadcaster may refuse to carry the advertisement of the plaintiff, was *prima facie* well founded.

18. In the above circumstances, we are unable to agree with Mr. Raj Shekhar Rao, Id. counsel for the appellant that the plaintiff/respondent

has not made out a case that part of a cause of action has arisen within the jurisdiction of this court. The findings of the Id. Single Judge that the suit of the respondent at Delhi is maintainable, therefore, cannot be faulted on any legally tenable grounds.

We therefore, find no merit in these appeals which are hereby dismissed.

19. In view of the orders passed in the appeals, the pending applications do not survive for adjudication which are accordingly dismissed.

20. Needless to say that we have not expressed any opinion on the merits of the case of either of the parties.

ACTING CHIEF JUSTICE

C.HARI SHANKAR, J

AUGUST 29, 2017

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