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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
LEAVE PETITION NO. 179 OF 2018
IN
COMMERCIAL SUIT (L) NO. 701 OF 2018**

ESCO Audio Visuals (India) Private Limited & ...Petitioners
Ors

Versus

ESCO United Solutions Pvt Ltd & Ors ...Respondents

Mr Subir Kumar, *for the Petitioner.*

Mr Amit Jamsandekar, *with Ms Pranali Adangale, i/b M/s K Ahar & Company, for the Respondents*

CORAM: G.S. PATEL, J

DATED: 21st June 2018

PC:-

1. This is a Petition for leave under Clause XII of the Letters Patent in a passing off action. This is important: the only cause of action is in passing off. This is not a suit that seeks to combine a cause of action in passing off with the cause of action in infringement.

2. On the averments made in paragraph 3 it appears that all the Defendants are outside Mumbai. The alleged passing off is being done by the 2nd Defendant in Kerala.

3. In paragraph 6 of the Plaint, one that is on a lodging number, the Plaintiff says this:

6. The Plaintiff No.1 has its registered office in Mumbai. Plaintiff No.1 and 2 is entitled to **file the present suit in this Hon'ble Court under section 27(2) read with Section 134 of the Trademarks Act, 1999**. This Hon'ble Court has jurisdiction to try and entertain the present suit. **The part of cause of action in respect of passing off appears to have been arisen outside the jurisdiction of this Hon'ble Court.** By way of abundant caution, the Plaintiffs are seeking leave under clause XII of Letters Patent and upon grant of the leave thereof. This Hon'ble Court will have jurisdiction to try and entertain cause of action with respect to passing off.

(Emphasis added)

4. From a reading of the Plaint, it appears that the entire cause of action is in fact only in passing off and not in infringement. The reference to Section 134 of the Trademarks Act is therefore entirely misconceived. That confers a special jurisdiction in cases of infringement but not in cases of passing off.¹ This is clear *inter alia* from a reading of Section 134(1)(c) with Section 134(2) — a subsection that, for some odd reason, Mr Kumar for the Petitioner seems to want me to wholly ignore. Suits that plead a cause of action in passing off will be governed by either Section 20 of the Code of Civil Procedure 1908 (“CPC”) or Clause XII of the Letters Patent in the case of a chartered High Court such as this Court.

¹ *Manugraph India Ltd and Ors v Simarq Technologies Pvt Ltd and Ors*, 2016 (67) PTC 254 (Bom).

5. Clause XII of the Letters Patent reads thus:

12. Original jurisdiction as to Suits.—And we do further ordain that the said High Court of Judicature at Madras, [Fort William in Bengal], [Bombay], in the exercise of its ordinary original civil jurisdiction, shall be empowered to receive, try and determine suits of every description if, in the case of suits for land or other immovable property, such land or property shall be situated **or in all other cases if the cause of action shall have arisen either wholly, or, in case the leave of the Court shall have been first obtained, in part**, within the local limits of the ordinary original jurisdiction of the said High Court, **or if the Defendant at the time of the commencement of the suit shall dwell or carry on business, or personally work for gain, within such limits**; except that the said High Court shall not have such original jurisdiction in cases falling within the jurisdiction of the Small Cause Court at Madras, [Bombay], [Calcutta], in which the debt or damage, or value of the property sued for, does not exceed one hundred rupees.

(Emphasis added)

6. From this it is at once apparent that where the cause of action has arisen outside the jurisdiction of this Court (as paragraph 6 of the Suit itself clearly states), *and* the defendants reside or work outside the jurisdiction of this Court, no leave can be granted because this Court has no jurisdiction to begin with. In such a Suit, the fact that the Plaintiffs are themselves in Mumbai furnishes no cause of action. Any other reading would be a complete misinterpretation of Clause XII, for it would result in this Court assuming jurisdiction in every single conceivable case even where

the entire cause of action is outside the jurisdiction of this Court *and* the defendants are also outside the jurisdiction of this Court.

7. Clause XII itself speaks of two scenarios. The first is where the entire cause of action arises within the jurisdiction of the Court. The second, which requires prior leave, speaks of at least a part of the cause of action arising within the local limits of Ordinary Original Civil Jurisdiction of this Court. In the present case, I cannot see how either of these conditions are met. On the Petitioners' own showing no part of the cause of action has arisen within the jurisdiction of this Court, nor are any of the Defendants within the jurisdiction of this Court.

8. I also have the greatest reservations about the leave that can be sought 'by way of abundant caution'. As far as I can tell, there is no such thing. Either leave is necessary or it is not.

9. The additional problem is of course whether such leave can be obtained *post facto*.² It is argued that the Plaint is merely on a lodging number and has not been registered and therefore leave can always be obtained. In the present case, it is not necessary to go into that question at all. That would have been necessary had it been possible in the first place to consider granting leave. Since, in my judgment, no leave can possibly be granted, there is no question of addressing this issue at all.

10. The Petition is dismissed.

² See: *Hindustan Organic Chemicals Ltd v ICI India Ltd*, 2018 (5) Bom CR 119, where the law relating to this issue is discussed.

11. No costs.

(G. S. PATEL, J)