

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

% **Date of decision: 21st February, 2018.**

+ **CS(COMM) 619/2016 , IA No.6583/2016 (u/O XXXIX R-1&2 CPC), IA No.8693/2016 (u/O VII R-11 CPC), IA No.8696/2016 (u/O XXXIX R-2A CPC) & IA No.13379/2016 (u/O XXXIX R-2A CPC)**

**HUNTSMAN INTERNATIONAL (INDIA)
PRIVATE LIMITED**

..... Plaintiff

Through: Mr. Sudhir Chandra, Sr. Adv. Mr. Rajiv Nayar, Sr. Adv., Mr. Darpan Wadhwa, Sr. Adv. with Mr. Shravan Sahay, Mr. Nakul Gandhi, Mr. Anupam Prakash Ms. Aditi Mohan , Mr. Toyesh, Mr. V.K. Rao and Mr. Rajat Wadhwa,

Versus

**ABISS TEXTILE SOLUTIONS PRIVATE LIMITED
& ORS**

..... Defendants

Through: Mr. Dayan Krishnan, Sr. Adv. with Mr. Soumya Kumar, Mr. Sanyam Khetarpal, Mr. Sanjeevi, Mr. Kanwal Chaudhary, Mr. Armaan Grover, Advs. for D-1 to 4.
Mr. Roshan Santhalia, Adv. for D-5,6,8,9,10,11,12,13 and 15.
Mr. Siddharth Khattar, Mr. Adil Khan and Mr. Vikas Sharma, Advs. for D-13.
Mr. Sachin Gupta and Ms. Surbhi Grover, Advs. for D-14.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The plaintiff has instituted this suit against as many as fifteen defendants, namely (i) Abiss Textile Solutions Private Limited; (ii) Shree Pushkar Chemicals & Fertilisers Limited; (iii) Gautam Gopikishan Makharia; (iv) Puneet Gopikishan Makharia; (v) Ajay Kanwar; (vi) Biswaranjan Mukherjee; (vii) Syed Mohammad Ismail; (viii) Satin Raina; (ix) Manoj Mehta; (x) Tirtha Ghosh; (xi) Sunil Kondre; (xii) Sunil Patil; (xiii) Sumit Sethi; (xiv) Gaurav Ahuja; and, (xv) Viney Pandita, for the reliefs of (a) permanent injunction restraining disclosure and use of confidential and proprietary information of the plaintiff including for manufacturing, marketing and selling any product as being manufactured by the plaintiff; (b) mandatory injunction directing the defendants to reveal the particulars of the third parties to whom the defendants have parted with or revealed the confidential information of the plaintiff; (c) mandatory injunction directing the defendants to return to the plaintiff all such confidential and proprietary information; (d) mandatory injunction directing the defendants to destroy confidential and proprietary information of the plaintiff in their possession which is incapable of being returned to the plaintiff; (e) restraining the defendants from manufacturing the dyes; and (f) recovery of Rs.3,00,00,000/- for causing wrongful loss to the plaintiff.

2. This suit came up before this Court first on 24th May, 2016, when while issuing summons thereof and notice of the application for interim

relief and issuing commission to visit the premises of the defendants to seize the infringing goods, it was *inter alia* ordered as under:-

“4. The case of the plaintiff is that the plaintiff is a market leader and is engaged in the business of producing colour dies for textiles. Defendant No.2 has been a supplier of raw materials to the plaintiff, of which the defendants No.3 & 4 are the partners.

5. The further case of the plaintiff is that defendants No.2,3 & 4 entered into a collaboration agreement with the plaintiff so as to develop certain products and entered into confidentiality agreement in respect of the information derived by them under the collaboration agreement. Defendants No.5 to 15 are the ex-employees of plaintiff.

6. The case of the plaintiff is that on account of collusion between defendants No.2&3 on the one hand, and defendants No.5 to 15 on the other hand, confidential and proprietary information of the plaintiff in relation to its technology, know-how and trade secrets have been passed on unauthorisedly by defendant No.5 to 15 to defendant No.1, which has been set up as an entity to compete with the plaintiff by exploiting the said confidential information. In this regard, the plaintiff has placed on record a large number of documents, including e-mail communications exchanged inter se the defendants.

7. Learned senior counsel for the plaintiff points out that the defendants are planning to launch their products developed by stealing the confidential information of the plaintiff within this month.

8. Defendant no.1 has been promoted by defendants No.3 & 4. The e-mail communications sent, *inter alia*, by defendant No.5 and the other defendants *inter se* between themselves shows that information relating to the plaintiff has been transmitted for setting up and advancement of the business of defendant No.1.

9. Dr. Singhvi has pointed out that defendants No.5 to 15 entered into service contracts with the plaintiff, whereunder they are bound by a confidentiality clause. However, the said agreements also stipulate that disputes arising out of the service contracts shall be adjudicated at Bombay. Dr. Singhvi submits that the plaintiffs are not enforcing the said confidentiality clause in the present suit, and it is the confidential agreement entered into between the plaintiff and defendants No.2,3 &4, which the plaintiff is seeking to enforce in the present suit.

10. The plaintiffs have made out a *prima facie* case and the balance of convenience is in favour of the plaintiff. The plaintiff would suffer irreparable injury unless the defendants are restrained as prayed for. Accordingly, the defendants are restrained in terms of prayer 'A' of I.A. No.6583/2016 till the next date of hearing."

3. The prayer 'A' of IA No.6583/2016 was to restrain the defendants *inter alia* from manufacturing, marketing or selling products, utilising the confidential information subject matter of the suit.

4. On enquiry, it is informed that pleadings qua all the defendants have been completed save defendant no.7 Syed Mohammad Ismail who has been proceeded against *ex parte*.

5. The applications of the defendants no.1 to 4 being IA No.10808/2016 under Order VII Rule 10 of the Code of Civil Procedure, 1908 (CPC) and of the defendants no.5,6,8&10, being IA No.8693/2016 under Order VII Rules 10 and 11 of the CPC are for consideration.

6. The arguments on the said applications were commenced on 13th February, 2018, when after hearing the counsels it was *inter alia* ordered as under:-

“5. The applications of defendants no.1 to 4 and defendants no.5, 6, 8 & 10 under Order VII Rules 10 and 11 of the CPC are pending consideration.

6. The senior counsel for the defendants no.1 to 4 has at the outset contended that the plaintiff obtained *ex parte ad interim* order dated 24th May, 2016 from this Court by misrepresenting to this Court that the plaintiff has its office at 14/5, Main Mathura Road, Main Mathura Road, New Delhi-110008 as mentioned in the memo of parties with the plaint. It is contended that the Pin Code No.110008 pertains to Patel Nagar and property No.14/5, Main Mathura Road falls in Faridabad and does not fall in New Delhi as was wrongly represented to this Court.

7. The senior counsel for the plaintiff on enquiry confirms that the property No.14/5, Main Mathura Road is situated in Faridabad and states that the office of the plaintiff earlier was in property No.14/5,

Main Mathura Road, Faridabad but had been shifted to Jasola, New Delhi and the plaintiff mistakenly in the plaint pleaded the office to be at 14/5 Main Mathura Road, New Delhi.

8. The senior counsel for the plaintiff on instructions also agrees that the Pin Code No.110008 is also wrong.

9. On enquiry as to since when the plaintiff has its office at Jasola and on further enquiry whether any Director / officer of the plaintiff is present in Court, Mr. Avinash Kumar present in Court states that he is the Legal Counsel for the plaintiff and on further enquiry states that the office of the plaintiff at Jasola is not owned by the plaintiff but is in a Business Centre and was taken in September, 2016.

10. The plaint in the present suit was filed in or about May, 2016.

11. While this order is being dictated, Mr. Avinash Kumar, Legal Counsel states that he was mistaken in this respect also and now states that in September, 2016, the office of the plaintiff was at Noida. However, on further enquiry, since when was it at Noida, he states that he was not even in the employment of the plaintiff at that time.

12. It is quite obvious that the plaintiff and its Directors including Mr. Anuraag Kothari who has instituted this suit and has filed the affidavit accompanying the plaint have not been making a clean breast of the facts before this Court.

13. Let Mr. Anuraag Kothari, Senior Commercial Counsel of the plaintiff appear before this Court on 21st February, 2018.”

7. The senior counsels for the plaintiffs state that Mr. Anurag Kothari, Senior Commercial Counsel of the plaintiff is present in Court and has also filed in the Court his affidavit verified on 20th February, 2018 along with documents. The said affidavit has not come on record. A copy of the same is handed over in the Court.

8. Before proceeding further, the facts on which the plaintiff has approached this Court may be noticed. It is the case of the plaintiff in the plaint i) that the plaintiff is a part of Huntsman Corporation Group of Companies, a global manufacturer and marketeer of differentiated chemicals in more than thirty countries; ii) that the defendant no.2 is a supplier of dye intermediaries to the plaintiff which the plaintiff uses as raw-material for the manufacture of its products; iii) that the defendants no.3&4 are the Managing Director and Director respectively of the defendant no.2; iv) that the defendants no.5 to 15 are former employees of the plaintiff; v) that the defendants no.5 to 15, during their association with the plaintiff, have been privy to the confidential and proprietary information of the plaintiff; vi) that the defendant no.2 as a supplier of key raw-materials to the plaintiff was also privy to confidential and proprietary information of the plaintiff; vii) that a Confidential Disclosure Agreement dated 8th September, 2015 was entered into between the plaintiff and the defendant no.2 whereunder the defendant no.2 agreed not to disclose the confidential information of the plaintiff to any third party; viii) that the defendant no.1 has been got incorporated by the defendants

no.2 to 4; ix) that all the defendants are in collusion and conspiracy with each other; x) that the defendant no.1 is engaged in the business of manufacturing dyes and other chemicals as being manufactured by the plaintiff, but having no knowhow for manufacture of the same, entered into a conspiracy with the defendants no.5 to 15; xi) that the defendants are manufacturing dyes and chemicals competing with the dyes and chemicals of the plaintiff; and, xii) that the defendants no.5 to 15 parted with the confidential and proprietary information of the plaintiff to the defendants no.1 to 4 while being in the employment of the plaintiff.

9. The senior counsel for the plaintiff, qua the controversy on account of which hearing was adjourned on 13th February, 2018, states (i) that the office of one of the divisions of the plaintiff, till the year 2009, was at property no.14/5, Mathura Road and which property fell within the jurisdiction of Faridabad; (ii) that the plaintiff however, on its website also, till now was showing the said property as in New Delhi and inspite of ceasing to exist in the property since the year 2009 and steps for rectification of which have already been undertaken (another senior counsel for the plaintiff at this stage states that the address is not on the website but on Google map, as also stated in para 6 of the affidavit copy of which has been handed over today); (iii) that from the year 2011 till 31st August, 2016, the office of the plaintiff was at Jasola in New Delhi and the plaintiff along with the affidavit copy of which has been handed over in the Court today has filed copy of the lease deed of the said premises and of extension of lease of the said premises; and, (iv) that it is only in August, 2016 that the plaintiff has shifted its office to Noida.

10. It is the contention of the senior counsel for the defendants no.1 to 4:

(i) that the plaintiff itself, at page 162 of Part-III File, has filed the Agreement entered into between the plaintiff and the defendant no.2 and which Agreement shows the plaintiff to be having its office in Mumbai, Maharashtra and the defendants no.2 to 4 also to be having their office at Mumbai, Maharashtra and which Agreement (Confidential Disclosure Agreement dated 8th September, 2015 supra) contains the following clause:-

*“F. **Governing Law.** This agreement and all matters arising out of or relating to this agreement shall be governed by and interpreted exclusively in accordance with the laws of the Jurisdiction without regard to the conflicts of law principles thereof. The parties irrevocably submit to the exclusive jurisdiction of the courts located in Mumbai in respect to this agreement and all matters arising out of or relating to this agreement, except that such Jurisdiction shall be nonexclusive for injunctive relief and enforcement of judgments.”;*

(ii) that the plaintiff, during the hearing on 24th May, 2016, expressly stated and as recorded in para 9 of the order of that date, that the plaintiff, in this suit, is enforcing the confidentiality clause in the Agreement aforesaid;

(iii) that the defendants no.1 to 4 are all at Mumbai, Maharashtra and have no offices at Delhi and the plaintiff also in the plaint has furnished the Mumbai address only of the defendants no.1 to 4;

(iv) that the plaintiff, in jurisdictional paragraph of the plaint, being para 89 has pleaded as under:-

“89. Thus cause of action arose within the territorial jurisdiction of this Hon’ble Court and this Hon’ble Court has the jurisdiction to try, entertain and decide the present matter. It is submitted that the Plaintiff has its office and business operations within the territorial jurisdiction of this Hon’ble Court from where part of the Confidential and Proprietary Information in respect of which the Plaintiff has intellectual property rights including copyright has been illegally obtained by the Defendants. Further, the Defendant Nos. 8 is based in the territorial jurisdiction of this Hon’ble Court. It is further stated that Since 2014 till the end of Defendant No.5’s employment with the Plaintiff, the Defendant No.5 was based in the Delhi office of the Plaintiff. The conspiracy was hatched by the Defendants and concrete plan was made during their meeting on December 15, 2015 which was held within the territorial jurisdiction of this Hon’ble Court. The Defendant No.8 executed the conspiracy by facilitating various tests from his office based within the jurisdiction of this Hon’ble Court. The Plaintiff has disclosed Confidential and Proprietary Information to the Defendant Nos.2,3 and 4 within the territorial jurisdiction of this Hon’ble Court. The conspiracy hatched by the Defendant Nos. 5 to 15 whereby Confidential and Proprietary Information pertained to the Plaintiff being transferred to the Defendant Nos. 2 to 4 are all actions which do not have redressal within the contours of the employment agreements. Since the conspiracy with

strangers and outsiders is not capable of enforcement only through the terms of the employment agreements which has otherwise been terminated. The Plaintiff also has several major dealers who are based in the territorial jurisdiction of this Hon'ble Court, and who were approached by the Defendants while trying to solicit them into breaching their exclusivity with the Plaintiff. The action of Defendant No.2 is further in breach of the confidentiality agreement in force since August 2015 where under data exclusivity of the Plaintiff has been breached in violation of the express terms and conditions of the said agreement. It is further stated that the several meetings of the Defendants were also conducted within the territorial jurisdiction of this Hon'ble Court. Therefore, the cause of action arose within the territorial jurisdiction of this Hon'ble Court.”;

(v) that Mr. Anurag Kothari, Senior Commercial Counsel of the plaintiff has in para 10 of the affidavit, copy of which has been handed over today, referred to the meeting on 15th December, 2015 held at Taj Vivanta, Delhi within the territorial jurisdiction of this Court; however the document filed by defendants of the said meeting shows the meeting to have taken place at Taj Vivanta, Surajkund, Faridabad; the plaintiff is thus continuing to file affidavits suppressing the truth and making false deposition. Attention is also invited to the Statement of Truth affirmed by Mr. Anurag Kothari accompanying the plaint in terms of Order VI Rule 15A of the CPC as applicable to commercial suits.

11. The counsel for the defendants no.5,6,8 to 13 and 15, in support of his application (though under Order VII Rules 10 & 11 of CPC but on the aspect of territorial jurisdiction only) has drawn attention to the Agreement at page 82 of the Part-III File, filed by the plaintiff itself with one of the said defendants and states that the Agreements entered into by the plaintiff with all the defendants no.5 to 15 are identical, and which Agreements also contain the following clause:-

“15. Jurisdiction

This contract of employment shall be governed by the laws of India and the same shall be deemed to have been made in Mumbai and any dispute arising from this contract shall be subject to the exclusive jurisdiction of the competent court in Mumbai in all matters arising out of this agreement.”

and has argued that the plaintiff, as per its own Agreement with each of the defendants no.5 to 15, having agreed to the exclusive jurisdiction of the Court at Mumbai cannot sue the said defendants within the territorial jurisdiction of this Court.

12. Per contra, the senior counsel for the plaintiff has (i) argued that the principle as laid down by the Division Bench of this Court in ***Teva Pharmaceutical Industries Ltd. Vs. Natco Pharma Limited*** (2014) 210 DLT 591 would apply. (however on enquiry whether not the said judgment is with respect to *quia timet* action, the senior counsel for the plaintiff confirms but has been unable to show paragraph of the plaint where a foundation for the suit which has been filed being a *quia timet* action, has been laid); (ii) invited attention to Section 62 of the Copyright

Act, 1957 and to paras 12 and 13 of *Expfar SA Vs. Eupharma Laboratories Ltd.* (2004) 3 SCC 688 (however on enquiry, as to where Section 62 is pleaded in the jurisdictional paragraph set out hereinabove, the senior counsel for the plaintiff contends that the plaintiff has in para 89 reproduced hereinabove pleaded confidential and proprietary information in which the plaintiff has intellectual property rights including copyright); (iii) invited attention to the documents filed by the plaintiff at pages 215 and 232 of Part-III file where the defendants no.2 to 5 & 8 in their e-mails have referred to the meeting of 15th December, 2015 at Taj Vivanta, Delhi; (iv) contended that the defendant no.5 in its written statement has denied the very meeting and thus today cannot turn around and say that the meeting was not at Taj Vivanta, Delhi but at Taj Vivanta, Surajkund, Faridabad; (v) argued that the defendant no.5 was employed with the plaintiff at Delhi; (vi) contended that the claim by way of present suit is not covered by the Agreements between the plaintiff and the defendants no.5 to 15 containing the jurisdiction clause as aforesaid; (vii) argued that there is no Agreement of the plaintiff with the defendant no.1 for limiting the jurisdiction to any one Court and the cause of action accrued to the plaintiff against the defendant no.1 is same as the cause of action against the defendants no.2 to 15 and the cause of action cannot be split up; (viii) argued that the jurisdiction clause in the Confidential Disclosure Agreement dated 8th September, 2015 between the plaintiff and the defendants no.2 reproduced hereinabove is non-exclusive qua injunctive relief as has been claimed by the plaintiff in this case; and, (ix) referred to para 12 of *Mayar (H.K.) Ltd. Vs. Owners & Parties, Vessel M.V. Fortune Express* (2006) 3 SCC 100 laying down that an application

under Order VII Rule 11 of the CPC is to be decided on the averments in the plaint and so long as the plaint discloses some cause of action which requires determination by the Court, the mere fact that in the opinion of the Court the plaintiff may not succeed, cannot be a ground for rejection of the plaint and has contended that the averments in the plaint in the present case disclose this Court to be having territorial jurisdiction and the plaint cannot be returned/rejected and the question such as whether the meeting took place at Taj Vivanta, New Delhi or at Taj Vivanta, Surajkund, Faridabad have to be determined at trial.

13. The senior counsel for the defendants no.1 to 4, in rejoinder has contended (i) that though the plaintiff has not invoked Section 62 of the Copyright Act but even if were to invoke the same, the principle laid down in *ABC Laminart (P) Ltd. Vs. A.P. Agencies, Salem* (1989) 2 SCC 163 would still continue to apply to jurisdiction under Section 62 of the Copyright Act as well; (ii) that the plaintiff in para '1' of the plaint has shown its office at Delhi when in the Confidential Disclosure Agreement dated 8th September, 2015 with the defendant no.2, the office of the plaintiff has been shown to be at Mumbai, Maharashtra; and, (iii) that the plaintiff obtained order of *ex parte* injunction and issuance of commission by representing to the Court that the plaintiff is enforcing the Agreement with the defendants no.2 to 4 and cannot now turn around and say that the jurisdiction clause in the said Agreement does not apply owing to the subject matter of the suit being beyond the scope of the said Agreement.

14. The counsel for the defendant no. 5,6,8 to 13 and 15, in rejoinder states that the defendant no.5 along with his written statement has filed the

bill of Taj Vivanta of 15th December, 2015 of the meeting pleaded by the plaintiff and thus the denial in the written statement of the said defendant referred to by the senior counsel for the plaintiff has to be seen in the said context.

15. I have enquired from Mr. Anurag Kothari, Senior Commercial Counsel of the plaintiff present in Court as to how in May, 2016, when the plaintiff, since 2009 was not at 14/5, Main Mathura Road, Faridabad, the address of the plaintiff in the title of the plaint was pleaded so and as to how in para 1 of the plaint, the plaintiff has pleaded its office to be at the said address.

16. Mr. Anurag Kothari, except for stating that it was an inadvertent error, has nothing to say.

17. It cannot be lost sight of, that Mr. Anurag Kothari describing himself as Senior Commercial Counsel of the plaintiff, should have been more aware of the sanctity of the Statement of Truth sworn and the pleadings made before the Court and it is unbelievable that for seven years after the office has ceased to exist at the premises, not only the address in the title of the plaint would be given of the said premises but a categorical statement in the plaint of the office being at the said address would be made. Interestingly, in para 1 of the Statement of Truth, Mr. Anurag Kothari has pleaded his office to be at Light Hall B-Wing, Hiranandani Business Park, Saki Vihar Road, Powai, Mumbai, Maharashtra – 400 0072 and deposed only being at Delhi for the purposes of affirming the said statement on oath.

18. It is quite clear that an attempt was made to portray to the Court, which on the first date of hearing, owing to listing of large number of fresh matters is pressed for time, that the plaintiff has its office at Delhi when in fact the person affirming the statement of truth also is pleading his office to be in Mumbai. Not a whisper is made in the plaint of the plaintiff having its office at Mumbai, though the senior counsel for the plaintiff on enquiry confirms that the registered office of the plaintiff is at Mumbai.

19. When a question of territorial jurisdiction was likely to arise, as the counsel for the plaintiff also was aware on the date of admission of the suit, as is evident from a reading of para 12 of the order dated 13th February, 2018 reproduced above, such statements by the plaintiff in the plaint cannot be said to be innocuous or inadvertent and have to be necessarily held to be with an intent to not arouse the suspicion of the Judge reading the file before hearing, that the plaintiff is based out of Delhi only and is thus entitled to maintain the suit at Delhi, even against the defendants situated at Mumbai. Once the counsel for the plaintiff was conscious of the aspect of territorial jurisdiction likely to arise, it was incumbent upon the plaintiff to make a clean breast of the state of affairs concerning territorial jurisdiction and inform the Court that though the plaintiff is also based out of Mumbai as the defendants no.2 to 4 against whom the relief was directed and though as per the Agreement which was under enforcement, there was a jurisdiction clause of Mumbai but the plaintiff was otherwise entitled to invoke the territorial jurisdiction of this Court. As is evident, not only was the same not done but an attempt to not allow true facts to come before the Court was made. Merely filing

documents before the Court running in several volumes amounts to paying lip service to the requirement of full disclosure I am therefore of the view that *de hors* the applications under Order VII Rule 10 of the CPC, the plaintiff is liable to be non suited for the reason of having abused the process of the Court and having obtained interim order by non disclosure of complete facts.

20. As far as the contention of the senior counsel for the plaintiff, of the Court at the stage of Order VII Rule 10 of the CPC being required to see the contents of the plaint only and nothing beyond the plaint is concerned, when it is found that the case pleaded by the plaintiff in the plaint is contrary to the documents filed by the plaintiff itself along with the plaint and which documents have in ***Liverpool & London S.P. & I. Association Ltd. Vs. M. V. Sea Success*** (2004) 9 SCC 512, ***Vikram Chandhok Vs. Rashmi Skadegaard*** (2015) 220 DLT 597 (DB) and ***Anita Kumari Gupta Vs. Ved Bhushan*** 2014 SCC OnLine Del 2895 (DB) been held to be entitled to be read for the purpose of Order VII Rule 11 of the CPC. It is thus not open to the plaintiff to contend that even though it has pleaded contrary to its own documents but the Court should ignore the said documents and proceed to try the suit and by end of which time, the objection to territorial jurisdiction would lose its efficacy inasmuch as a defendant also would not like to have a second round of full litigation before the Court which actually has jurisdiction.

21. That brings me to the legal aspect. The questions to be considered are two-fold. Firstly, whether Section 62 of the Copyright Act entitles a plaintiff to sue thereunder in a Court inspite of having agreed with the defendants to submit to the jurisdiction of another Court which also has

territorial jurisdiction over the subject matter of the suit. The second question which arises for consideration is the interpretation of the clause aforesaid in the Agreement between the plaintiff and the defendants no.2 to 4.

22. Though the senior counsel for the plaintiff during the hearing has also suggested that *Indian Performing Rights Society Ltd. Vs. Sanjay Dalia* (2015) 10 SCC 161 and *Ultra Home Construction Pvt. Ltd. Vs. Purushottam Kumar Chaubey* (2016) 227 DLT 320 are with respect to Section 134 of the Trade Marks Act, 1999 and Section 62 of the Copyright Act, 1957 is different but I am unable to agree. In *Blueberry Books Vs. Google India Pvt. Ltd.* (2016) 230 DLT 615 (DB) (SLP(C) No.22081/2016 preferred whereagainst was dismissed on 16th August, 2016) the law as laid down in *Sanjay Dalia* supra was applied to Section 62 of the Copyright Act.

23. Section 62 of the Copyright Act merely extends the jurisdiction in which suits of the nature described in Section 62 may be filed in addition to that under Section 20 of the CPC, as also held in *Sanjay Dalia* and *Exphar* supra as also in *Wipro Ltd. Vs. Oushadha Chandrika Ayurvedic India (P) Ltd.* AIR 2008 Mad 165 (DB) entitling the plaintiff to, in addition to invoking jurisdiction of the Court under Section 20, also invoke the jurisdiction of another Court under Section 62 and which may not be the Court which the plaintiff could approach under Section 20 of the CPC. Once that is so, I am unable to fathom any reasons and none have been suggested, as to why what has been held in relation to Section 20 of the CPC i.e. that the same does not come in the way of the parties agreeing to limit the territorial jurisdiction to one of the several Courts

which may have jurisdiction to entertain the suit, would not apply to Section 62 as well. I find, this Court in *Saregama India Limited Vs. Eros Digital FZ LLC* 2017 SCC OnLine Del 10996 to have applied the clause in the agreement limiting territorial jurisdiction while returning plaint invoking jurisdiction under Section 134 of Trade Marks Act and Section 62 of Copyright Act. It is not the plea that Mumbai Courts have no jurisdiction.

24. Coming to the interpretation to the clause, as would be noticed from enumeration hereinabove of the claims made by the plaintiff in the suit, the plaintiff, in this suit, besides claiming the injunctive relief, has also claimed the relief of recovery of damages. On same being put to the senior counsel for the plaintiff, the senior counsel states that the plaintiff is willing to give up the claim for damages and to confine the reliefs claimed in this suit to injunctive reliefs only.

25. I am afraid the same cannot be permitted at this stage. The plaintiff, not only suppressed the jurisdiction clause in the Agreement with the defendants no.2 to 4 and did not draw attention of this Court on 24th May, 2016 thereto when *ex parte* injunction was obtained but has continued to pursue the suit for the said reliefs even after the defendants have taken objection to the territorial jurisdiction and even after the last order on 13th February, 2018. The plaintiff, when caught on the wrong foot, if permitted to change its stand, the same would amount to giving premium on dishonesty and will send a message that the Court can be approached and the defendant harassed, by misrepresenting facts and the stand can be changed if caught and would sound the death knell of litigation.

26. The jurisdiction of the Court has to be determined on the basis of the plaint as it stands today and the plaint as stands today is admittedly for the reliefs beyond injunctive relief.

27. Though on interpretation of the Clause F titled 'Governing Law' reproduced above, in the Confidential Disclosure Agreement between plaintiff and defendant No.2 also I am unable to interpret the same as enabling institution of a suit for injunction in the nature of enforcement of the Confidential Disclosure Agreement, as this suit is, to lie in a Court other than at Mumbai and permitting institution of a suit for injunction outside the Confidential Disclosure Agreement only to be instituted in a court other than at Mumbai, but even if it were to be held that the said clause does indeed permit so, even then, the plaintiff having in this suit also joined the cause of action against defendants No.5 to 15 with whom also plaintiff had agreed to exclusive jurisdiction of Courts at Mumbai, the plaintiff cannot be permitted to sue all the defendants joined in this suit, in this Court and applying the principle of *Forum Conveniens*, the appropriate Court to entertain the suit would be the Court at Mumbai. Cause of action as pleaded cannot be permitted to be split up. Reference may be made to *State Bank of India Vs. Gracure Pharmaceuticals Limited* (2014) 3 SCC 595, *Raptakos Brett and Company Limited Vs. Ganesh Property* (2017) 10 SCC 643 and *Staples INC Vs. Staples Paper Converters Pvt. Ltd.* 2014 SCC OnLine Del 2092. Similarly, the plaintiff having sued defendant No.1 along with other defendants, it is not open to plaintiff to contend that because of joinder of defendant No.1, the agreement entered into by plaintiff with defendants No.2 to 15, agreeing to exclusive jurisdiction of Mumbai Courts be given a go-bye.

28. Thus, both the legal issues which arose for consideration are decided against the plaintiff. Resultantly the suit has to be dismissed/the plaint returned to the plaintiff for filing in the Court of appropriate territorial jurisdiction.

29. Needless to state that with the dismissal of the suit, the interim order in the suit stands vacated.

30. For the reasons aforesaid, the plaintiff is also burdened with costs of Rs.5,00,000/- payable in the name of defendant no.1 with liberty to the defendants to split up the same amongst themselves as they may deem fit.

Dasti.

FEBRUARY 21, 2018
'pp'

RAJIV SAHAI ENDLAW, J.

न्यायमेव जयते