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

+ **TR.P.(C.) 67/2019 & CM Nos. 22704/2019 & 22705/2019**

SAREGAMA INDIA LTD

..... Petitioner

Through: Mr C. M. Lall, Sr. Advocate with Mr
Ankur Sangal and Ms Richa
Bhargava, Advocates.

versus

SUPER CASSETTES INDUSTRIES LTD

..... Respondent

Through: Ms Prachi Agarwal and Ms Ridhie
Bajaj, Advocates.

AND

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+ **TR.P.(C.) 69/2019 & CM Nos. 22866/2019 & 22867/2019**

SAREGAMA INDIA LTD

..... Petitioner

Through: Mr C. M. Lall, Sr. Advocate with Mr
Ankur Sangal and Ms Richa
Bhargava, Advocates.

versus

THE BIG AVTAR

..... Respondent

Through: Ms Prachi Agarwal and Ms Ridhie
Bajaj, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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28.05.2019

1. The petitioner has filed the present petitions, *inter alia*, praying that Suit No.933/2016 captioned 'The Gramophone Company of India v. Super Cassettes Industries Private Limited' and Suit No.969/2016 captioned 'The

Gramophone Company of India v. The Big Avatar’, which are currently pending before the District Court, Tis Hazari (West), New Delhi be withdrawn to this Court. The petitioner claims that the principal issues involved in the said two suits are similar to the issues involved in CS(COMM.) 553/2018 captioned ‘The Gramophone Company of India v. Super Cassettes Industries Private Limited’, which is pending before this Court.

2. Ms Agarwal, the learned counsel appearing for the respondents states that both the aforementioned suits, the transfer of which are sought in these petitions involve a different subject matter, and all the issues in those suits are not common. However, the counsel does not dispute that the principal issues involved in CS(COMM.) 553/2016 involve the same question of law and would have a bearing on the controversy in the aforementioned suits.

3. Ms Agarwal further states that the said suits are also at different stages and, therefore, it would not be apposite to consolidate the same. She states that the evidence has been recorded in Suit No.969/2016 and the said case is at the stage of final arguments. In contrast to this, the suit pending before this Court is only at the stage of preliminary issues.

4. Ms Agarwal also contends that this Court lacks the pecuniary jurisdiction to try Suit No. 933/2016 and Suit No. 969/2016 and, therefore, the said suits cannot be withdrawn to this Court. It is earnestly contended that this Court would not have the jurisdiction to try those suits. She has also referred to the decision of this Court in the case of ***Sadhna Sharma and Ors. v. Premlata Gautam and Ors: C.S.(O.S.) 2103/1998*** in support of her

contention.

5. The aforesaid contention is unmerited. Section 24 of the CPC is set out below:-

“24. General power of transfer and withdrawal.- (1) On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion without such notice, the High Court or the District Court may at any stage-

(a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, or

(b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and

(i) try or dispose of the same; or

(ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or

(iii) retransfer the same for trial or disposal to the Court from which it was withdrawn.

(2) Where any suit or proceeding has been transferred or withdrawn under sub-section (1), the Court which [is thereafter to try or dispose of such suit or proceeding may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.

(3) For the purposes of this section,

(a) Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court.

(b) “proceeding” includes a proceeding for the execution of a decree or order.]

(4) The Court trying any suit transferred or withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

(5) A suit or proceeding may be transferred under this section from a Court which has no jurisdiction to try it.]”

6. A plain reading of Section 24(1)(b)(i) of the CPC indicates that this Court would have the power to withdraw any suit or appeal pending before any Court subordinate to it and try or dispose of the same. The question whether this Court is competent to try the proceedings sought to be transferred arises in the case where a suit, appeal or proceedings are transferred to by this Court to another court subordinate to it.

7. The decision in ***Sadhna Sharma*** (*supra*) is not applicable to the facts of the present case. In the said case, this court had considered the merits of an application moved for retaining the suit already pending before this Court despite enhancement in the pecuniary jurisdiction. In this context, reference was made to Section 24 of the CPC. In the present case, the petition for transfer of the said case have been filed on the ground that another suit involving the same issues is pending before this Court. This is not the question considered by the Coordinate Bench of this Court in ***Sadhna Sharma*** (*supra*).

8. The contention that this Court does not have the pecuniary jurisdiction to try the Suit Nos. 933/2016 and 969/2016, is unmerited as there is no maximum value to the pecuniary jurisdiction of this Court. In ***Subhashini***

Malik v. S.K. Gandhi and Ors.: (2016) 233 DLT 83, this Court had noticed the difference between the minimum pecuniary jurisdiction of a Court and the maximum pecuniary jurisdiction of a Court. The relevant extract of the said decision is set out below:-

“(J) Notice may next be taken of the difference between minimum pecuniary jurisdiction of a Court and maximum pecuniary jurisdiction of the Court. While a Court is said to be not having jurisdiction to try a suit above its maximum pecuniary jurisdiction, the converse is not true. A Court cannot be said to be not having jurisdiction over suits below its minimum pecuniary jurisdiction. Reference in this regard can be made to *V. Ramamirtham Vs. Rama Film Service* AIR 1951 Madras 93 (FB) where it was held in the lead judgment that while Section 15 of the CPC enjoins the institution of a suit in the Court of the lowest grade competent to try it, it does not oust the jurisdiction of the Court of a higher grade; even if the Court of a higher grade tries and disposes of a suit which could have been instituted in a Court of a lower grade, the decision rendered is not without jurisdiction and is not a nullity. Viswanatha Sastri, J. in his concurring opinion observed that the object of Section 15 CPC is only to prevent superior Courts being flooded or overcrowded with suits triable by Courts of inferior grade and it merely regulates procedure and not jurisdiction. It was further held that a Court of superior grade does not act without jurisdiction in trying a suit which under Section 15 might and ought, by reason of its valuation, to have been tried by an inferior Court. A Full Bench of the High Court of Andhra Pradesh also in *Kesavarapu Venkateswarlu Vs. Sardharala Satyanarayana* AIR 1957 Andhra Pradesh 49 held that Section 15 CPC lays down a rule of procedure and not of jurisdiction of the superior Court. This Court also in *Taran Jeet Kaur Vs. G.S. Bhatia* 2009 (108) DRJ 89 has taken the same view.”

9. It is stated that one of the principal issues involved in the suit pending

before this Court is whether the consent of the copyright owner of a literary, dramatic or musical work is required for making a version of the same. This is also the controversy involved in Suit Nos. 933/2016 and 969/2016. It is submitted by the counsel that the said issue involves an important question of law. In view of the above, this Court considers it apposite to transfer the said suits to this Court.

10. It is clarified that this Court has not examined the question whether all the three suits are required to be consolidated and tried together and has confined the examination only to the question whether the two suits pending before the District Court (Suit Nos. 933/2016 and 969/2016) are required to be transferred to this Court.

11. In view of the above, the petitions are allowed. Suit no.933/2016 and 969/2016 are withdrawn from the District Court, Tis Hazari (West), New Delhi to this court.

12. All pending applications are disposed of.

13. The parties are directed to appear before the Joint Registrar (Judicial) on 04.07.2019.

VIBHU BAKHRU, J

MAY 28, 2019
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