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

Date of Decision: 29th August, 2022

\+ **CM (M)-IPD 2/2022 & CM APPL.5675/2022**

INSTITUTE OF CHARTERED TAX ADVISERS OF INDIA LTD. THROUGH ITS AUTHORISED SIGNATORY SH. TARUN KUMAR JAIN ..... Petitioner

Through: Mr. Hardik Vashisht, Advocate.

versus

THE CHARTERED INSTITUTE OF TAXATION ..... Respondent

Through: Mr. Himanshu Deora, Mr. Raghav Vig, Mr. Naqeeb Nawab & Mr. Yashwardhan Singh, Advocates.

(7) AND

\+ **CM (M)-IPD 3/2022 & CM APPL.6342/2022**

INSTITUTE OF CHARTERED TAX ADVISERS OF INDIA LTD. THROUGH ITS AUTHORISED SIGNATORY SH. TARUN KUMAR JAIN ..... Petitioner

Through: Mr. Hardik Vashisht, Advocate.

versus

THE CHARTERED INSTITUTE OF TAXATION ..... Respondent

Through: Mr. Himanshu Deora, Mr. Raghav Vig, Mr. Naqeeb Nawab & Mr. Yashwardhan Singh, Advocates (M-9654816781)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through hybrid mode.

<u>CM(M)-IPD 2/2022</u>

2. This petition arises out of the order dated 13th December, 2021, passed by the ld. District Judge, Commercial Court-3, Patiala House Courts, New Delhi *(hereinafter "Commercial Court")*, in ***CS(COMM) 201/2019*** titled ***The Chartered Institute of Taxation v. Institute of Chartered Tax Advisers of India Ltd.***, which rejected the application under Order VII Rule 11 CPC filed by the Petitioner/Defendant/Institute of Chartered Tax Advisers of India Ltd. *(hereinafter "Defendant").*

3. By the said application, the Defendant raised the issue of lack of territorial jurisdiction before the Commercial Court. However, the Commercial Court has held that the Defendant's own case, in a litigation bearing ***No.260 of 2016*** titled ***Institute of Chartered Tax Advisers of India Ltd. v. Mr. Bill Dodwell and Ors.***, filed by the Defendant against the Plaintiff and its officers, which is pending before the Ld. Additional District Judge, Kota is that it is promoting, publishing and advertising its services and business <u>all over India</u>, including Delhi. Additionally, the Commercial Court has followed the judgment of this Court in ***Burger King Corporation v/s Tekchand Shewakramani. and Ors, 2018 (76) PTC 90 (Del)***. The relevant extracts of the impugned order are as under:

> *"47. As regards the territorial jurisdiction of this court, the plaintiff has alleged that the plaintiff conducts its examination for 'ADIT' in Delhi through British High Commission situated at New Delhi. The defendant has claimed its association and/or affiliation and/or registration with the Institute of Companies Secretary of India located at New Delhi for imparting education and training to the students of ICSI. <u>In the oppositions and Kota suit, defendant has claimed that it promotes, publishes and advertises its services/business in the Chartered Secretary General and Students Companies</u>*

Secretary News Letters which are supplied all over India including. New Delhi and the Institute of Companies Secretary of India. It has also claimed that it promotes and publishes its business activities in various newspapers having circulation in India. The averments in the plaint show that the defendant promotes its services in publication available in Delhi. It has association with the entities based in Delhi.

48. It was held in the case of Burger King Corporation (supra) that jurisdiction of a court in a trademark action could be invoked where there is use upon or in relation to goods. The phrase 'in relation to' has been interpreted to include advertising, promotion, publicity etc. Thus, in addition to actual sales of goods and providing services, if a person advertises his business under the mark 'in a territory' or promotes his business etc, it would constitute use of a mark. Section 20 of CPC provides that a suit could be filed in ,any place where the cause of action accrues. It was held that the concept of infringement and passing off is not fixed in time. It is elastic in nature in as much as use of a mark is continuous and each and every use constitutes a fresh cause of action as held in the case of Laxmikant V. Patel v/s Chetan Bhai Shah and ors, AIR 2002 SC 275. Applying the above test to the facts of the present case, I am of the view that this court has territorial jurisdiction to entertain this suit. In the case of Pfizer Products (supra), the plaintiff had filed a suit for injunction and damages for passing off. The defendant filed the application that Delhi Courts had no territorial jurisdiction. It was held that threat of selling the offending goods in Delhi would in itself confer jurisdiction on the courts in Delhi to entertain a suit claiming an injunction.

49. In the suit filed before the Hon'ble High Court, the plaintiff had invoked the jurisdiction of the court pleading that illegal and unjustifiable and groundless threats were received by the plaintiff through its counsel having its address for service in Delhi but in the present case, the plaintiff has made specific averments about the cause of action having been accrued.at Delhi.

> *50. It is well settled law that for deciding an application under Order VII Rule 11, the averments made in the plaint are to be seen. The plaint can be rejected if it does not disclose a cause of action or when the suit appears from the statement in the plaint to be barred by any law. In the present case, the plaint discloses the cause of action. It cannot be said that it is barred by law. There are also averments as to the cause of action having been accrued at Delhi."*

4. The reasoning given by the Commercial Court has been perused by this Court. After hearing the parties and considering the above order, this Court is satisfied that at this stage, the plaint cannot be returned. However, if the Defendant wishes, it is permitted to pray for an issue to be framed before the Commercial Court, in respect of territorial jurisdiction, which shall then be adjudicated upon post- trial.

5. In addition, the Defendant raises an issue today with regard to return of the plaint on the ground that one of the partners of the law firm, of which the Plaintiff's/Respondent's (*hereinafter "Plaintiff"*) counsel is a part, is acting as a constituted attorney for the Plaintiff, which is impermissible in law. Ld. Counsel for the Plaintiff however, informs the Court that this ground has not been raised in the application filed by the Defendant under Order VII Rule 11 CPC.

6. In this view of the matter, if the Defendant so choses, it can raise this issue and seek adjudication of the said issue in accordance with law before the Commercial Court.

7. Accordingly, this petition is disposed of. All pending applications are also disposed of.

<u>CM(M)-IPD 3/2022</u>

8. The present petition arises out of the order dated 13th December, 2021

passed by the Commercial Court in ***CS(COMM) 201/2019***. Vide the said order, an application under Order VI Rule 17 CPC was allowed by the Commercial Court, permitting certain amendments to the plaint, to be carried out by the Plaintiff.

9. After some hearing, ld. Counsel for the Defendant submits that he does not wish to press this petition, subject to the costs of Rs.20,000/- being paid by the Plaintiff as per the impugned order.

10. The relevant findings in the impugned order dated 13th December, 2021, are as under:

> *"17. Looking into the facts and circumstances of the case, it cannot be said that there was intentional delay on the part of plaintiff in seeking the amendments rather, I find that this application has been filed on account of subsequent facts which have occurred during the pendency of the present suit. I am of the view that the proposed amendments are necessary for the purpose of determining the real question in controversy between the parties and in the interest of justice. I therefore allow the application.*
>
> *18. <u>Since in the instant case, the defendant had filed the written statement, so to compensate the defendant from the rigour of filing the amended written statement, I allow this application with cost of Rs. 20,000/- to be paid to the counsel for defendant on the next date. Amended plaint be taken on record</u>."*

11. In view of the statement made by the ld. Counsel for the Defendant, the present petition is rejected, subject to costs of Rs.20,000/- being paid within a period of two weeks, by the Plaintiff to the Defendant, through the ld. counsel for the Defendant.

12. The petition is disposed of in the above terms. All pending applications are also disposed of.

13. Copy of the present order be sent to the Court of the ld. District Judge,

Commercial Court-3, Patiala House Courts, New Delhi, in ***CS(COMM) 201/2019*** titled ***The Chartered Institute of Taxation v. Institute of Chartered Tax Advisers of India Ltd***.

PRATHIBA M. SINGH, J.

AUGUST 29, 2022
Rahul/MS