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

+ **CM(M)-IPD 10/2023 & CM APPL. 27785/2023**

YASHODA THAKORE

..... Petitioner

Through: Mr. Prasanna S. and Ms. Swati
Arya, Advs.

versus

KUCHIPUDI DANCE CENTRE AND ORS Respondents

Through: None

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (O R A L)

12.07.2023

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1. Swapnasundari, a dancer of renown and repute, instituted CS (Comm) 671/2021, before the learned District Judge (Commercial Court) ("the learned Commercial Court", hereinafter) against Yashoda Thakore, one of her students, who had performed a dance item in St. Petersburg, Russia, during the months of January 2012 and 2013. It was Swapnasundari's contention that the said dance item was her creation, over which she held copyright and that, therefore, in performing the dance item, for commercial purpose, without her leave and license, Ms. Thakore had infringed the copyright held by her.

2. The Kuchipudi Dance Centre, founded and run by Swapnasundari from her residence in New Moti Bagh, New Delhi-110023, and Swapnasundari herself, were Plaintiffs 1 and 2 in the suit, with Yashoda Thakore and YouTube LLC being impleaded as Defendants 1 and 2. The



address provided for the Kuchipudi Dance Centre and for Swapnasundari was the same, i.e. Bungalow No. 33, New Moti Bagh, New Delhi-110023. Yashoda Thakore, admittedly, resides in Hyderabad.

3. Yashoda Thakore and Swapnasundari shall be referred to, hereinafter, by their respective status before this Court, as the petitioner and Respondent 2 respectively.

4. The petitioner moved an application before the learned Trial Court under Order VII Rule 10 of the Code of Civil Procedure, 1908 (CPC), submitting that the suit was bad for want of territorial jurisdiction and, therefore, praying for return of the suit to the respondents for presentation before a court having jurisdiction to deal with the matter.

5. The said application stands rejected by the learned District Judge (Commercial Court) (“the learned Commercial Court”) *vide* order dated 28 April 2023, which has been challenged by the petitioner by means of the present petition, instituted under Article 227 of the Constitution of the India.

6. Para 30 in the suit, whereby the institution of the suit before the learned Commercial Court in Delhi was sought to be justified, read thus:

“30. The Hon’ble Court has the territorial jurisdiction to try and entertain the present suit as the Plaintiff resides in and/or carries on her business from New Delhi. Further, the cause of action has arisen in New Delhi as infringing videos are accessible from New Delhi. By virtue, thereof, Section 62(2)¹ of the Copyright Act, 1957, this Hon’ble

¹ 62. Jurisdiction of court over matters arising under this Chapter. –



Court has the territorial jurisdiction to try and entertain the present suit.”

7. The petitioner’s contention, *per contra* – which has been espoused by Mr. Prasanna, learned Counsel, before me, as well – was that Section 62 of the Copyright Act could not apply in view of Section 6² of the Commercial Courts Act, 2015 (whereunder the suit was instituted) read with Section 20³ of the Code of Civil Procedure, 1908 (“the CPC”).

8. A reading of the impugned order dated 28 April 2023, of the learned Commercial Court, reveals that the learned Commercial Court has essentially proceeded on the basis of the principles enunciated by the Division Bench of this Court in *Ultra Home Construction Pvt. Ltd. v. Purushottam Kumar Choubey*⁴.

(1) Every suit or other civil proceeding arising under this Chapter in respect of the infringement of copyright in any work or the infringement of any other right conferred by this Act shall be instituted in the district court having jurisdiction.

(2) For the purpose of sub-section (1), a “district court having jurisdiction” shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, include a district court within the local limits of whose jurisdiction, at the time of the institution of the suit or other proceeding, the person instituting the suit or other proceeding or, where there are more than one such persons, any of them actually and voluntarily resides or carries on business or personally works for gain.

² 6. **Jurisdiction of Commercial Court.** – The Commercial Court shall have jurisdiction to try all suits and applications relating to a commercial dispute of a Specified Value arising out of the entire territory of the State over which it has been vested territorial jurisdiction.

Explanation. – For the purposes of this section, a commercial dispute shall be considered to arise out of the entire territory of the State over which a Commercial Court has been vested jurisdiction, if the suit or application relating to such commercial dispute has been instituted as per the provisions of Sections 16 to 20 of the Code of Civil Procedure, 1908 (5 of 1908).

³ 20. **Other suits to be instituted where defendants reside or cause of action arises.** – Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction –

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.

⁴ 227 (2016) DLT 320 (DB)



9. Mr. Prasanna, learned Counsel for the petitioner does not dispute the applicability, to the present case, of the decision in *Ultra Home Construction*⁴. His contention is, however, that the decision in *Ultra Home Construction*⁴ is *per incuriam*, as it is contrary to the explanation to Section 6 of the Commercial Courts Act, 2015, which it does not notice, and which, he submits, has necessarily to be accorded strict interpretation, as per a catena of authorities on the point. He has also placed reliance on the judgment of the Supreme Court in *Solidaire India Ltd. v. Fairgrowth Financial Services Ltd.*⁵

10. Having heard Mr. Prasanna, I regret my inability to agree with his contention.

11. The Division Bench of this Court has, in *Ultra Home Construction*⁴, clearly held, following the judgment of the Supreme Court in *Indian Performing Rights Society Ltd. v. Sanjay Dalia*⁶, that Section 62 of the Copyright Act provides *an additional forum* for institution of a suit alleging infringement of copyright, over and above the forum which, by operation of Section 20 of the CPC, would have jurisdiction in the matter. The relevant passages from *Ultra Home Construction*⁴ may be reproduced thus:

“13. By virtue of the Supreme Court decision in *Sanjay Dalia*⁶ (*supra*) this deeming provision contained in the explanation in section 20 of the Code has been read into section 134(2) of the Trade Marks Act, 1999 and section 62(2) of the Copyright Act, 1957 for the purposes of isolating the place where the plaintiff can be said to carry on business. It will be noted that though the expression “carries on business” is used in all the three provisions (i.e., section 20 of the Code,

⁵ 2001 3 SCC 71

⁶ (2015) 10 SCC 161



section 134(2) of the Trade marks Act, 1999 and section 62(2) of the Copyright Act, 1957), the deeming provision contained in the Explanation in section 20 of the Code has not been expressly incorporated in the other two provisions. But, the Supreme Court has, in the said decision, given the expression “carries on business” used in relation to a corporation in the context of a defendant in section 20 of the Code the same meaning when it is used in relation to a plaintiff under the said sections 134(2) and 62(2). It would be instructive to note the following observations of the Supreme Court in the said decision:

“14. *Considering the very language of Section 62 of the Copyright Act and Section 134 of the Trade Marks Act, an additional forum has been provided by including a District Court within whose limits the plaintiff actually and voluntarily resides or carries on business or personally works for gain. The object of the provisions was to enable the plaintiff to institute a suit at a place where he or they resided or carried on business, not to enable them to drag the defendant further away from such a place also as is being done in the instant cases. In our opinion, the expression “notwithstanding anything contained in the Code of Civil Procedure” does not oust the applicability of the provisions of Section 20 of the Code of Civil Procedure and it is clear that additional remedy has been provided to the plaintiff so as to file a suit where he is residing or carrying on business, etc. as the case may be.* Section 20 of the Code of Civil Procedure enables a plaintiff to file a suit where the defendant resides or where cause of action arose. Section 20(a) and Section 20(b) usually provides the venue where the defendant or any of them resides, carries on business or personally works for gain. Section 20(c) of the Code of Civil Procedure enables a plaintiff to institute a suit where the cause of action wholly or in part, arises. The Explanation to Section 20 CPC has been added to the effect that corporation shall be deemed to carry on business at its sole or principal office in India or in respect of any cause of action arising at any place where it has subordinate office at such place. Thus, “corporation” can be sued at a place having its sole or principal office and where cause of action wholly or in part, arises at a place where it has also a subordinate office at such place.

15. The learned author Mulla in Code of Civil Procedure, 18th Edn., has observed that under clauses (a) to (c) of Section 20, the plaintiff has a choice of forum to institute a suit. The intendment of the Explanation to Section 20 of the Code of Civil Procedure is that once the corporation has a subordinate office in the place where the cause of action arises wholly or in part, it cannot be heard to say that it cannot be sued there



because it did not carry on business at that place. The linking of the place with the cause of action in the Explanation where subordinate office of the corporation is situated is reflective of the intention of the legislature and such a place has to be the place of the filing of the suit and not the principal place of business. Ordinarily the suit has to be filed at the place where there is principal place of business of the corporation.”

“18. On a due and anxious consideration of the provisions contained in Section 20 CPC, Section 62 of the Copyright Act and Section 134 of the Trade Marks Act, and the object with which the latter provisions have been enacted, it is clear that if a cause of action has arisen wholly or in part, where the plaintiff is residing or having its principal office/carries on business or personally works for gain, the suit can be filed at such place(s). *The plaintiff(s) can also institute a suit at a place where he is residing, carrying on business or personally works for gain de hors the fact that the cause of action has not arisen at a place where he/they are residing or any one of them is residing, carries on business or personally works for gain.* However, this right to institute suit at such a place has to be read subject to certain restrictions, such as in case the plaintiff is residing or carrying on business at a particular place/having its head office and at such place cause of action has also arisen wholly or in part, the plaintiff cannot ignore such a place under the guise that he is carrying on business at other far-flung places also. *The very intendment of the insertion of provision in the Copyright Act and the Trade Marks Act is the convenience of the plaintiff.* The rule of convenience of the parties has been given a statutory expression in Section 20 CPC as well. The interpretation of provisions has to be such which prevents the mischief of causing inconvenience to the parties.

19. *The intendment of the aforesaid provisions inserted in the Copyright Act and the Trade Marks Act is to provide a forum to the plaintiff where he is residing, carrying on business or personally works for gain.* The object is to ensure that the plaintiff is not deterred from instituting infringement proceedings “because the court in which proceedings are to be instituted is at a considerable distance from the place of their ordinary residence”. The impediment created to the plaintiff by Section 20 CPC of going to a place where it was not having ordinary residence or principal place of business was sought to be removed by virtue of the aforesaid provisions of the Copyright Act and the Trade Marks Act. Where the corporation



is having ordinary residence/principal place of business and cause of action has also arisen at that place, it has to institute a suit at the said place and not at other places. The provisions of Section 62 of the Copyright Act and Section 134 of the Trade Marks Act never intended to operate in the field where the plaintiff is having its principal place of business at a particular place and the cause of action has also arisen at that place so as to enable it to file a suit at a distant place where its subordinate office is situated though at such place no cause of action has arisen. Such interpretation would cause great harm and would be juxtaposed to the very legislative intendment of the provisions so enacted.

20. In our opinion, in a case where the cause of action has arisen at a place where the plaintiff is residing or where there are more than one such persons, any of them actually or voluntarily resides or carries on business or personally works for gain would oust the jurisdiction of other place where the cause of action has not arisen though at such a place, by virtue of having subordinate office, the plaintiff instituting a suit or other proceedings might be carrying on business or personally works for gain.

21. At the same time, *the provisions of Section 62 of the Copyright Act and Section 134 of the Trade Marks Act have removed the embargo of suing at place of accrual of cause of action wholly or in part, with regard to a place where the plaintiff or any of them ordinarily resides, carries on business or personally works for gain. We agree to the aforesaid extent that the impediment imposed under Section 20 CPC to a plaintiff to institute a suit in a court where the defendant resides or carries on business or where the cause of action wholly or in part arises, has been removed.* But the right is subject to the rider in case the plaintiff resides or has its principal place of business/carries on business or personally works for gain at a place where cause of action has also arisen, suit should be filed at that place not at other places where the plaintiff is having branch offices, etc.

22. *There is no doubt about it that the words used in Section 62 of the Copyright Act and Section 134 of the Trade Marks Act, "notwithstanding anything contained in CPC or any other law for the time being in force", emphasise that the requirement of Section 20 CPC would not have to be complied with by the plaintiff if he resides or carries on business in the local limits of the court where he has filed the suit* but, in our view, at the same time, as the provision providing for an additional forum,



cannot be interpreted in the manner that it has authorised the plaintiff to institute a suit at a different place other than the place where he is ordinarily residing or having principal office and incidentally where the cause of action wholly or in part has also arisen. The impugned judgments, in our considered view, do not take away the additional forum and fundamental basis of conferring the right and advantage to the authors of the Copyright Act and the Trade Marks Act provided under the aforesaid provisions.”

52. In our opinion, the provisions of Section 62 of the Copyright Act and Section 134 of the Trade Marks Act have to be interpreted in the purposive manner. No doubt about it that a suit can be filed by the plaintiff at a place where he is residing or carrying on business or personally works for gain. He need not travel to file a suit to a place where the defendant is residing or cause of action wholly or in part arises. However, if the plaintiff is residing or carrying on business, etc. at a place where the cause of action, wholly or in part, has also arisen, he has to file a suit at that place, as discussed above.”

12. It is perfectly clear, therefore, both from *Indian Performing Rights Society*⁶ as well as from *Ultra Home Construction*⁴, that the *non obstante* clause, with which Section 62 of the Copyright Act commences, enables a plaintiff to institute a suit where she, or he, resides or works for gain, and is in addition to the venue for institution of the suit as envisaged by Section 20 of the CPC. The only caveat, to this right, is that, if the plaintiff has his principle place of work at one place, where the cause of action has also arisen, the suit would have to be instituted there, and not at some other distant place where the plaintiff may also have a subordinate office. This caveat has no application in the present case, on facts.

13. The decision in *Indian Performing Rights Society*⁶, as followed in *Ultra Home Construction*⁴, therefore, defeats, in its entirety, the argument of Mr Prasanna. Mr Prasanna’s contention that these decisions have been



rendered without considering Section 6 of the Commercial Courts Act is plainly unacceptable, as the Explanation to Section 6 incorporates, by reference, Sections 16 to 20 of the CPC, which have been considered in both these decisions.

14. Besides, the interpretation placed by Mr. Prasanna on the explanation to Section 6 of the Commercial Courts Act ignores the fact that the Explanation is precisely that, i.e. an explanation to the main provision. Section 6 is an *enabling* provision, and not one which *ousts* jurisdiction vested, by any other provision, in any Court. It contains no *obstante* clause, unlike Section 62 of the Copyright Act, which does. In fact, the submission of Mr. Prasanna that Section 6 of the Commercial Courts Act would prevail over Section 62 of the Copyright Act is, besides being contrary to the law enunciated in *Indian Performing Rights Society*⁶ and *Ultra Home Construction*⁴, in the teeth of Section 62(2) of the Copyright Act, which accords pre-eminence, via the *non obstante* clause, to Section 62 over the CPC.

15. By no stretch of imagination can Section 6 of the Commercial Courts Act be treated, therefore, as a provision which excludes the applicability of Section 62 of the Copyright Act. Section 6 of the Commercial Courts Act, read with Section 16 to 20 of the CPC, operate in their own distinct sphere. That sphere, has held by the Supreme Court in *Indian Performing Rights Society*⁶ and by the Division Bench of this Court in *Ultra Home Construction*⁴, is distinct and different from the sphere in which 62 of the Copyright Act operates. Both the decisions clarify that a plaintiff seeking to institute a suit for infringement of



copyright can institute a suit within the Court having jurisdiction either under Section 62 of the Copyright Act or under Section 16 to 20 of the CPC.

16. The plea, of Mr Prasanna, that *Ultra Home Construction*⁴ is *per incuriam* is, therefore, completely bereft of merit.

17. Adverting, now, the judgment of the Supreme Court in *Solidaire*⁵, it is seen that the dispute in that case is completely distinct, in contour and complexion, to the dispute which arises in the present case. In that case, the Court was concerned with a situation in which there were two statutes conferring jurisdiction over the same cause of action or two different Courts, in which each was found to be a special statute. Significantly, there is a significant finding, in the said decision, that the two statutes, namely the Special Court (Trial of Offences Relating to Transactions and Securities) Act, 1992 and the Sick Industrial Companies (Special Provisions) Act, 1985 *were in conflict with each other* on the aspect of territorial jurisdiction. It was in these circumstances that the Supreme Court held that the later statute would prevail.

18. In view of the ruling of the Division Bench of this Court in *Ultra Home Construction*⁴, there is, clearly, no conflict between Section 62 of the Copyright Act and Sections 16 to 20 of the CPC. They are supplementary to each other, and neither provision ousts the other. The decision in *Solidaire*⁵ cannot, therefore, assist Mr Prasanna.

19. Mr. Prasanna has candidly acknowledged that, but for his



contention that the decision in *Ultra Home Construction*⁴ is violative of Section 6 of the Commercial Courts Act, the case is otherwise covered by the decision in *Ultra Home Construction*⁴.

20. In view of the aforesaid, the learned Commercial Court cannot be said to have erred in fact or in law or on the aspect of jurisdiction in holding as it did.

21. The impugned order, therefore, does not make out a case for interference within the limited jurisdiction vested in this Court by Article 227 of the Constitution of India.

22. The petition is accordingly dismissed *in limine*.

23. As prayed by Mr. Prasanna, the petitioner is granted a further period of 2 weeks to deposit the costs as directed by the learned Commercial Court.

C.HARI SHANKAR, J

JULY 12, 2023

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