

1 4.7.2024

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(COMMERCIAL DIVISION)**

**F.A.T 394 of 2023
With
CAN 1 of 2023**

**Emami Limited
Vs.
Loren Beautifiers Private Limited and Anr.**

**Mr. Debnath Ghosh
Mr. Shuvasish Sengupta
Mr. Biswaroop Mukherjee
Mr. Soumyajit Mishra** ... For the Appellant/Petitioner.

**Mr. Soumya Roychowdhury
Mr. Soumabho Ghose
Mr. S. Dasgupta
Mr. S. Mukherjee** For the Respondent.

Re: CAN 1 of 2023

This is an appeal from a judgement and decree dated 13th April, 2023 dismissing a passing off action in an application under Order 7, Rule 11 of the Civil Procedure Code.

s.d. This judgement is so erroneous in its appreciation and application of the law that inspite of the fervent prayer made by Mr. Soumya Roy Chowdhury , learned advocate for the respondent that we should hear out the appeal upon filing of paper books, we could not accede to the request. We decided to hear it out today itself on the available papers. This is for the reason that this would unnecessarily delay the resolution of the main controversy between the parties whether the respondents/defendants are passing off their goods as

those belonging to the appellant/plaintiff, whether by such passing off the respondents/defendants are making illegal business gain?

The principal ground on which this impugned judgement and decree has been passed is that one of the defendants is a Russian national. The suit has been filed in the court within the jurisdiction of which one of the respondents/defendants resides, without taking leave of the court.

In our opinion, this leave was not necessary. It has been specifically pleaded in the plaint, particularly in paragraph 42 thereof that part of the cause of action if not the whole had arisen within the jurisdiction of the court where the suit had been filed. If this was the fact, irrespective of anything else a suit could straightway be filed in that court under Section 20(c) of the Code of Civil Procedure. Suppose, the cause of action did not arise within the jurisdiction of the court but only one of the defendants resided within it, then the question of leave could have arisen under Section 20 (b) of the Civil Procedure Code.

We are constrained to observe that Messrs Dalsukh Nathmal Firm Kamptee Vs. Motilal Balchand Parwar reported in AIR 1938 Nagpur 262 was wrongly decided. In that case in spite of the cause of action having arisen in the court in question and one of the defendants

residing outside the jurisdiction of the court, the court ruled that leave of the court had to be taken. The learned trial judge in that case, in our opinion had taken the correct decision.

There is another point which was argued in the Order 7, Rule 11 application but was not the basis for dismissing the suit. That point is that the appellant /plaintiff is the exporter of the product in question through a subsidiary. The cause of action in the plaint as interpreted by the respondents/defendants is as follows:

The appellant/plaintiff is an exporter of the said product through. The respondents/defendants are exporting or threatening to export the same goods to Russia. Passing off, if any, is outside the territorial waters of India. No passing off within the territorial limits of our country is pleaded. Therefore, the claim does not disclose any cause of action according to the respondents/defendants.

We have not addressed ourselves on that issue.

We keep it open to be decided by the learned court below at whatever stage of the suit the learned judge may think fit and proper.

For the above reasons we allow this appeal. We set aside the judgement and order dated 13th April, 2023. The plaint be restored to the file of the learned court

below immediately.

The appeal (FAT 394 of 2023) and the connected application (CAN 1 of 2023) are hereby disposed of.

(I.P. Mukerji, J.)

(Biswaroop Chowdhury, J.)

