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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 25.01.2024

+ FAO (COMM) 250/2023, CM Nos. 62663/2023, 62664/2023 & 62666/2023

KAMDHENU DREAMZ & ANR.

..... Appellants

Through: Mr. Sudarshan Kumar Bansal & Mr.
Arpit Dudeja, Advs.

Versus

M/S DINA IRON AND STEEL LIMITED

..... Respondent

Through: Mr. Anant Bhushan & Ms. V. Singh,
Advs.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MS. JUSTICE TARA VITASTA GANJU

VIBHU BAKHRU, J.

1. The appellants have filed the present appeal impugning an order dated 21.11.2023 (hereafter '**the impugned order**') passed by the learned Commercial Court in CS(COMM) No.413/2023 captioned ***Kamdhenu Dreamz & Anr. v. M/s Dina Iron & Steel Ltd.*** In terms of the impugned order, the appellants' plaint was returned under Order VII Rule 10 of the Code of Civil Procedure, 1908 (hereafter '**the CPC**') on the ground that the learned Commercial Court lacked the jurisdiction to entertain the same.

2. It is material to note that the impugned order was passed on an application filed by the respondent under Order XXXIX Rule 4 of the CPC praying for vacation of the *ex parte* interim order dated 24.07.2023. The learned Commercial Court, on examination of the pleadings of the parties, found that the cause of action had not arisen within its territorial



jurisdiction.

3. The learned counsel appearing for the appellants submits that the learned Commercial Court erred in rejecting the plaint on the basis of the pleadings of the parties. He submits that the question whether the plaint was required to be returned under Order VII Rule 10 of the CPC was required to be determined on a demurrer; that is, assuming the averments made in the plaint as correct and disregarding the pleadings as stated in the defence of the defendant.

4. A plain reading of the impugned order indicates that the learned Commercial Court had noted the aforesaid principle and also referred to the decision of the Supreme Court in *Exphar Sa & Anr. v. Eupharma Laboratories Ltd. & Anr.*¹. However, the penultimate paragraph of the impugned order indicates that the learned Commercial Court had returned the plaint after examining “*totality of the facts and the pleadings of the parties*”. Clearly, the averments made by the respondent in its written statement, were not required to be considered for determining whether the plaint was liable to be returned under Order VII Rule 10 of the CPC.

5. It is relevant to refer to paragraph nos. 31 and 32 of the plaint. The same are set out below:

“CAUSE OF ACTION

31. The cause of action has arisen as per the paragraphs mentioned herein above. The cause of action first arose in the third week of June 2023, when the Plaintiffs through its distribution/dealers’ network in New Delhi area came to know that the Defendant is promoting the impugned goods/business via impugned labels/ brochures and selling the impugned goods

¹ (2004) 3 SCC 688



bearing the impugned packaging. The cause of action further arose when one of the Plaintiffs' distributors namely Mukul Enterprises having address at 4363/58, Padam Singh Road, Regharpura, Karol Bagh, New Delhi- 110005 gave the impugned labels/brochures and impugned packaging to the Plaintiffs and when the Plaintiffs' enquiry into the markets revealed that the Defendant is using the impugned labels/ brochures and impugned packaging to solicit and seek market networks and trade in various markets of Gole market, Vasant Kunj, Bengali market, Naraina, Mandir Marg, Connaught Place, etc. Cause of action further arose when the Plaintiffs' investigations revealed that the Defendant is also advertising/ promoting its impugned goods/ business under the impugned packaging via its own interactive website <https://vijaytmt.com/> and via various interactive third-party websites such as www.indiamart.com and www.justdial.com that are accessible within the jurisdiction of this Hon'ble Court. The cause of action is a continuous one and is accruing day by day and shall continue to so accrue till the Defendant ceases with its violative/ infringing use of the impugned labels/ brochures and impugned packaging.

JURISDICTION

32. It is submitted that this Hon'ble Court has the territorial jurisdiction to try and adjudicate the present suit. This Hon'ble Court has territorial jurisdiction to entertain and try the present suit under provisions of Section 20 of Code of Civil Procedure, 1908 since the Defendant is advertising and marketing its impugned goods/business under the impugned packaging and inviting trade enquiries via its own website <https://vijaytmt.com/> that is accessible and has been accessed within the jurisdiction of this Hon'ble Court. Defendant is also advertising and marketing its impugned goods/business and inviting trade enquiries for the same through the interactive e-commerce portals www.indiamart.com and www.justdial.com that are accessible and have been accessed within the territorial jurisdiction of this Hon'ble Court. In order to further solicit trade, the Defendant shares the impugned labels/brochures to its prospective customers within the jurisdiction of this Hon'ble Court after the enquiries received through the said e-commerce portals. The Plaintiffs' distributors namely Mukul Enterprises having address at 4363/58, Padam Singh Road, Regharpura, Karol Bagh, New Delhi- 110005 gave the impugned labels/ brochures and impugned packaging to the Plaintiffs that is within the jurisdiction of this Hon'ble Court. It is submitted that



travelling salesman are promoting the impugned goods/business via impugned label/ brochure within the jurisdiction of this Hon'ble Court and supplying the same to various dealers and distributors within the jurisdiction of this Hon'ble Court including Plaintiffs' distributors and dealers operating within the jurisdiction of this Hon'ble Court. The Defendant is also using the impugned labels/ brochures to solicit and seek market networks and trade in various markets of Gole market, Vasant Kunj, Bengali market, Naraina, Mandir Marg, Connaught Place, etc that are within the jurisdiction of this Hon'ble Court. The Defendant is thus using, publishing, reproducing, communicating, circulating copies of the impugned label/ brochure within the territorial jurisdiction of this Hon'ble Court. Defendant's impugned acts of infringement and/or passing off are being carried on within the jurisdiction of this Hon'ble Court. Thus, whole or part of cause of action for filing the suit has also arisen within the territorial jurisdiction of this Hon'ble Court within the meaning of Section 20 of Code of Civil Procedure, 1908. Furthermore, the Plaintiffs are also carrying on its said goods/ business and promoting its said goods/business under the **KAY2 XENOX** packaging and **KA Y2 XENOX labels/ brochures** through various dealers, distributors and through its website www.kay2steel.com that is within the jurisdiction of this Hon'ble Court. Therefore, this court also has territorial jurisdiction to entertain the present suit under Section 62(2) of the Copyright Act, 1957."

6. It is clear from the above that the appellants had made a specific averment in the plaint to the effect that enquiries had revealed that the respondent was using the impugned labels, brochures, and impugned packaging to solicit and seek market networks and trade in various markets of Gole Market, Vasant Kunj, Bengali Market, Naraina, Mandir Marg, Connaught Place, etc. It was also averred that the respondent was advertising / promoting the impugned goods and business under the impugned packaging through interactive websites.

7. It is material to note that the appellants had filed the suit claiming passing off. Concededly, the marks in question are not registered



trademarks. Undisputedly, if the averments made in paragraphs 31 and 32 of the plaint are accepted as correct, the learned Commercial Court would have the jurisdiction to entertain the suit.

8. In *M/s Allied Blenders & Distillers Pvt. Ltd. v. R.K. Distilleries Pvt. Ltd.*², a Coordinate Bench of this Court had reiterated the principle that an order under Order VII Rule 10 of the CPC for return of plaint can be passed only if the averments made in the plaint indicates that the Court did not have the jurisdiction to entertain the same.

9. The learned counsel appearing for the respondent earnestly contended that there was no material on record to substantiate the averments made in the plaint regarding the respondent carrying on its business within the territorial jurisdiction of the learned Commercial Court. He submitted that although the respondent had not filed any application under Order VII Rule 10 of the CPC seeking return of the plaint, the respondent had filed an application under Order XXXIX Rule 4 of the CPC, *inter alia*, praying that the Court did not have jurisdiction to entertain the suit and no cause of action has arisen within the territorial jurisdiction of the learned Commercial Court. He submitted that the Court had rightly examined the averments made by the respondent for determining whether it had the territorial jurisdiction to entertain the suit. He also relied on the decision of the learned Single Judge of this Court in *New Life Laboratories Pvt. Ltd. v. Dr. Ilyas New Life Homoeo & Herbals Pvt. Ltd.*³ in support of his contention.

² 2017 SCC OnLine Del 7224

³ CS(COMM) 323/2023 decided on 21.07.2023



10. The aforesaid contentions are unmerited as the same conflate the principles for return of plaint under Order VII Rule 10 of the CPC and grant of interim relief under Order XXXIX Rules 1&2 of the CPC. In *M/s Allied Blenders & Distillers Pvt. Ltd. v. R.K. Distilleries Pvt. Ltd.*², a Division Bench of this Court had clarified that considerations regarding territorial jurisdiction in the context of Order VII Rule 10 of the CPC are entirely different from those under Order XXXIX Rules 1&2 of the CPC. Paragraph 23 of the said decision is relevant and is set out below:

“23. We must make it clear that the considerations with regard to territorial jurisdiction in the context of Order VII Rule 10, CPC are entirely different from those in the context of an application under Order XXXIX Rules 1 & 2, CPC or in the context of an issue framed in the suit with regard to territorial jurisdiction. While in the backdrop of Order VII Rule 10, it is only the averments contained in the plaint that have to be seen in the case of an application for the grant of interim relief under Order XXXIX Rules 1&2, the contentions of the defendant in the reply to this application as also those contained in the written statement are required to be examined to arrive at a prima facie view. So, while in the case of an Order VII Rule 10 CPC application, the issue of jurisdiction is decided on the basis of what is stated in the plaint and, that too, after assuming the statements to be correct, an application under Order XXXIX Rules 1&2, CPC requires the examination of the contentions of the defendants that may be contained in the written statement and/or the reply to the application as also the other material which may be placed by the defendant before the court. Here, there is no question of considering the pleas of the plaintiff by way of a demurrer. Furthermore, the standards would be higher when an issue with regard to territorial jurisdiction is to be finally decided in the course of trial of the suit. Thus, while for the purposes of an examination under Order VII Rule 10, CPC, the court may come to the conclusion that it has territorial jurisdiction, this would not come in the way of the defendant in raising a question as to territorial jurisdiction, both when the issue of temporary injunction under Order XXXIX Rules 1 & 2, CPC is being considered and when an issue as to territorial jurisdiction is being decided in the course of trial of the suit. To put it differently, while a plaintiff may succeed in demonstrating, for the



purposes of Order VII Rule 10 CPC that this court has territorial jurisdiction and that the plaint ought not to be returned, he may fail in obtaining an order of interim injunction on the ground that the plaintiff's entitlement is itself shaky because the issue of territorial jurisdiction is highly debatable and prima facie not tenable. Therefore, the decision of the court in putting down an objection of the defendant and in rejecting the defendant's prayer for return of the plaint under Order VII Rule 10, CPC, would not come in the way of the defendant raising the question of territorial jurisdiction, both as an objection to the grant of an interim injunction as also at the time of decision of the issue of territorial jurisdiction, if framed, at the time of trial of the suit.

[emphasis supplied]”

11. The reliance placed by the learned counsel for the respondent on the decision in *New Life Laboratories Pvt. Ltd. v. Dr. Ilyas New Life Homoeo & Herbals Pvt. Ltd.*³ is also misplaced. A plain reading of the said decision indicates that the learned Single Judge had accepted that in view of the averments made in the plaint, which fell for consideration in that case, it would not be possible to return the plaint at the threshold stage under Order VII Rule 10 of the CPC. This was because the pleadings were treated to be correct and the suit was maintainable. Notwithstanding the same, the learned Single Judge considered the question of grant of interim relief by *prima facie* examining the respondent's objections to the jurisdiction of the Court. It is important to note that whilst the Court rejected the prayer for interim relief, it did not return the plaint for want of territorial jurisdiction.

12. In the present case, the learned Commercial Court had returned the plaint under Order VII Rule 10 of the CPC. Given the unambiguous averments made in the plaint the said decision is clearly erroneous.

13. The appeal is, accordingly, allowed. The impugned order is set



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aside. The respondent's application under Order XXXIX Rule 4 of the CPC is restored before the learned Commercial Court to the same position as obtaining on the date of the impugned order.

14. The parties shall appear before the learned Commercial Court on 07.02.2024 for further proceedings.

15. The parties to bear their own costs. All pending applications are also disposed of.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

JANUARY 25, 2024

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Click here to check corrigendum, if any