

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

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INTERIM APPLICATION (L) NO. 4738 OF 2025
IN
COMMERCIAL IP SUIT (L) NO. 32107 OF 2024

Jingwei Textile Machinery Co., Ltd ... Applicant
(Org Defendant)

IN THE MATTER BETWEEN

Saurer Technologies GmbH & Co. KG. ... Plaintiff.

Versus

Jingwei Textile Machinery Co., Ltd ... Defendant

WITH
INTERIM APPLICATION NO. 1092 OF 2025
IN
COMMERCIAL IP SUIT (L) NO. 32107 OF 2024

Saurer Technologies GmbH & Co. KG. ... Applicant

IN THE MATTER BETWEEN

Saurer Technologies GmbH & Co. KG. ... Plaintiff.

Versus

Jingwei Textile Machinery ... Defendant

Ms. Anju Agrawal (Thr VC), Ms. Manisha Singh, Mr. Abhai Pandey, Mr. Nishant Rai, Mr. Manish Aryan, Ms. Shivani Singh, Ms. Akhya Anand, Ms. Paulome Mehta, Ms. Kamini Choubey and Ms. Shweta Nisar i/by Sonal Doshi & Co., for Plaintiff/Applicant in IA No. 1092 of 2025.

Mr. Hiren Kamod, Mr. Annes Patel, Ms. Ruchita Sidhwani & Mr. Kunal Parekh i/by Dua Associates for the Defendant/Applicant in I.A. (L) No. 4738 of 2025.

Coram : Sharmila U. Deshmukh, J.

Date : July 4, 2025.

P. C.:

1. Interim Application (L) No. 4738 of 2025 has been preferred by the Defendant under Order VII Rule 10 of the Code of Civil Procedure, 1908 (CPC) seeking return of the plaint on the ground of lack of jurisdiction whereas Interim Application No. 1092 of 2025 has been preferred by the Plaintiff under Order VI Rule 17 of CPC for amendment of the plaint.

2. Commercial IP Suit (L) No. 32107 Of 2024, has been preferred seeking relief of injunction restraining the Defendant from infringing the Plaintiff's Patent. The plaint proceeds on the basis that the Defendant, which is based in China, is marketing/selling infringing product in India. Paragraph 25 of the Plaint states that the Defendant participated in an exhibition which was an International Textile Machinery Exhibition on the stand of China Texmatech Company Limited., (CTMTC) which specializes in import and export of textile machinery and Technology which shows connection between the Defendant and the CTMTC. Paragraph 26 of the plaint pleads that the Plaintiff recently discovered that one Century Enka Limited in Maharashtra has bought two machines which was supplied by the Defendant through CTMTC. In order to demonstrate the same, the webpage of Volza portal is appended to the plaint. It is further

submitted that the said Century Enka Limited was the Plaintiff's customer in the past and had bought machines from the Plaintiff. Based on this connection between the Plaintiff and the said Century Enka Limited the Suit came to be filed alleging infringement by the Defendant.

3. The cause title of the plaint shows that the Plaintiff as well as the Defendant are based outside India. The relevant paragraph as regards the cause of action and the jurisdiction are paragraph 49 and 50 which reads as under :

"CAUSE OF ACTION

49. *The Plaintiff submits that the cause of action for filing this Suit arose for the first time in August 2023, when the suit patent was granted and the Plaintiff came to know about the Infringing Products K3501F at the office of one of its client Century Enka Ltd. at Plot No.72 & 72-A, MIDC Bhosari Pune – 411026 (Maharashtra). The cause of action also arose when it was confirmed on comparison of the Infringing Products and its photographs being Exhibit- M and N hereto with claim 1 of the suit patent that those products entirely fall within the scope of claim 1 of the suit patent. Since the Defendant continues to infringe the suit patent, the cause of action is a continuous one and is not barred by the Law of Limitation.*

JURISDICTION

50. *The Plaintiff submits that this Hon'ble Court has the jurisdiction to entertain and try the present Suit under the provisions of Section 20 of the Code of Civil Procedure 1908 read with Section 104 of the Patents Act, since the cause of action has arisen within the territorial jurisdiction of this Hon'ble Court on account of infringing products of the Defendant, being imported and used in Pune (Maharashtra). The Plaintiff apprehends that the Defendant would also continue to*

carry out their infringing activities in India in the future and immediate intervention is required of this Hon'ble Court to injunct the Defendant from their infringing activities."

4. Upon service, the Defendant objected to the territorial jurisdiction of the Court as neither the Defendant was residing within the jurisdiction of this Court nor cause of action as pleaded in the plaint had taken place within the jurisdiction of this Court. By order of 15th January 2025, this Court permitted the parties to file appropriate Applications which has been done by way of present Application.

5. Learned Counsel appearing for the Defendant would point out the cause of title of the plaint to show that the Plaintiff and the Defendant are not residing within the jurisdiction of this Court. Drawing attention to paragraph 25, 49 and 50, would submit that upon conjoint reading of the said pleadings it is clear that Century Enka Limited being situated at Plot No.72 & 72-A, MIDC Bhosari Pune-411026 (Maharashtra) it would be Pune District Court which will have jurisdiction. He submits that even, if it is accepted that the goods were imported at JNPT Navi Mumbai, it is Thane District Court which would have jurisdiction. He points out to Section 104 of the Patents Act, 1970 which governs the issue of jurisdiction and provides that the suit for infringement of the Patent shall be instituted in the District Court. He would submit that the Plaint even if taken as it is, does not show any

connection between the Defendant and Century Enka Limited and reliance has been placed only on the webpage of Volza portal which shows that the one Century Enka Limited had bought the machine and the shipper is CTMTC. He submits that the connection between the Defendant and CTMTC is pleaded in paragraph 25 which merely states that the Defendant was on the stand of CTMTC in International Textile Machinery Exhibition. He submits that there is no clarity in the pleadings and CTMTC or Century Enka Limited has not been impleaded as parties. He submits that faced with this difficulty of jurisdiction in view of the objection raised by the Defendant, the Plaintiff has filed an Application seeking amendment of the plaint. Pointing out to the proposed amendments he submits that by way of said amendment the Plaintiff now seeks to add Defendant No. 2 based on the same document of Volza web portal which shows that the proposed Defendant No. 2-one M/s. Madura Industrial Textile Ltd., which is situated at Andheri had imported machinery through CTMTC. He submits that it is not only case of an addition of party but also association of new cause of action which was not pleaded in the plaint. He submits that the proposed amendment, even if looked into, does not establish any connection between the present Defendant and the said proposed Defendant No. 2 and is sought to be impleaded only for the purpose of conferring jurisdiction of this Court as the address of

the proposed Defendant No. 2 is that of Andheri. He submits that it is not the case in the amendment application that there is any defect in the pleading which is sought to be cured by way of amendment. He would submit that the issue to be decided is whether in absence of jurisdiction, this Court can consider an Application for amendment by drawing support from the decision of the Delhi High Court in the case of ***Archie Comic Publications, Inc. vs. Purple Creations Pvt. Ltd.***,¹ which was upheld by the Division Bench of the Delhi High Court and of Co-ordinate Bench of this Court at Goa in ***M/s. Vivienda Luxury Homes LLP vs. M/s. Gregory & Nicholas (Writ Petition No. 237 of 2025(F) Judgment dated 27th June, 2025).***

6. *Per contra*, learned Counsel appearing for the Plaintiff would submit that the fact that the Defendant has filed an Application prior to that of the Plaintiff is immaterial as by order of 15th January, 2025 liberty was given to the parties to file their applications and therefore it is application for amendment which will have to be considered first. She has taken this Court to paragraph 26 of the plaint to contend that the cause of action arose when the Plaintiff discovered that Century Enka Limited Maharashtra have got the infringing machines which was supplied by the Defendant through CTMTC. She would further submit that the document at Exhibit-J was already on

1 (2008) ILR 9 Delhi20

record which shows that the infringing machines have been imported by the said Century Enka Limited from CTMTC and therefore it is not a case of new cause of action or new fact which has been pleaded. She submits that from the said document at Exhibit-J the Plaintiff discovered that M/s. Madura Industrial Textile Ltd., had also imported machinery from CTMTC who was shipper of Defendant and as the registered office of M/s. Madura Industrial Textile Ltd is located at Andheri, this Court would have jurisdiction. She submits that there is no fresh cause of action and what is only sought to be pleaded is additional fact which will support the case of infringement of the Plaintiff's patent which is serious matter. She has taken this Court through paragraph 49 and 50 of the Plaint dealing with cause of action and jurisdiction and would submit that in view of the amendment this Court will have jurisdiction and no prejudice will be caused to the Defendant.

7. She would further submit that in the decision of ***Life Insurance Corporation of India vs. Sanjeev Builders Private Ltd***² the Hon'ble Apex Court has held that the Court should adopt a liberal approach in the matter of amendment and only when the other side has acquired legal right by lapse of time the amendment should be declined. She submits that no purpose will be achieved, if the plaint is

² (2022) 16 SCC 1

returned and thereafter the Plaintiff would have to amend the plaint and file the same again before this Court by incorporating necessary pleadings as regards Defendant No. 2. She submits that the issue as regards the right of the Patentee when the Patent has been infringed which is found in Section 48 of the Patents Act provides that the Patentee has an exclusive right to prevent third parties from using, offering, selling or even importing the products in India. She submits that the cause of action arises by reason of import of the product in which the Plaintiff holds patent. She submits that in order to avoid the multiplicity of proceedings it would be appropriate if the application for amendment is allowed which will confer jurisdiction of this Court as the proposed Defendant No. 2 is based in Mumbai.

8. I have considered the submissions and perused the record.

9. The Plaint as initially filed shows that both the Plaintiff and the Defendant are residing outside India. The cause of action which is pleaded in paragraph 49 of the plaint is that the Plaintiff became aware in August-2023 about the infringing product at the office of the client Century Enka Limited which is situated at MIDC Bhosari Pune. As far as the jurisdiction clause is concerned it is pleaded that this Court has jurisdiction to entertain and try the present suit under provisions of Section 20 of CPC r/w Section 104 of Patents Act since the cause of action has arisen within the territorial jurisdiction of this Court on

account of infringing products being imported and used in Pune.

10. Perusal of the said pleadings would indicate that the jurisdictional pleading is based on twin facts. First as the Defendant is located at Bhosari Pune and secondly the machine having been imported at JNPT, Navi Mumbai. The provisions of Section 104 of the Patents Act provides that no suit for infringement of Patent shall be instituted in any Court inferior to District Court having jurisdiction to try the suit. Taking the initial averments in the plaint as it is, even if it is accepted that the machines have been imported, the Court having jurisdiction based on the cause of action of import would be Thane District Court and based upon the location of the Defendant would be the Pune District Court. Pertinently the Plaintiff has not impleaded Century Enka Limited as party to the proceedings.

11. It cannot be disputed that this Court did not have the jurisdiction to entertain and try the suit as it originally stood. Faced with this difficulty, the application for amendment came to be filed by the present Plaintiff. Irrespective of whether the application for return of the plaint was filed by the Defendant prior in point of time, or not, the issue which arises for consideration is whether the Court which does not have jurisdiction to entertain the suit can entertain the application for amendment of the pleadings which will have the effect of conferring jurisdiction. The said issue was considered by the Delhi

High Court in the case of **Archie Comic Publications, Inc. vs. Purple Creations Pvt. Ltd., (supra)**. In identical facts the Delhi High Court held in paragraph nos. 9 and 14 which reads as under:

“9. This discussion, Therefore, clearly indicates that the question of jurisdiction has to be determined on the basis of the averments made in the plaint as originally filed. It must also be kept in mind that at the stage of consideration of the return of the plaint under Order 7 Rule 10 CPC what has to be looked into is the plaint and the averments made therein though the plaint must be read in a meaningful manner to find the real intention behind the suit. This is what has been held in Begum Sabiha Sultan v. Nawab Mohd. Mansur Ali Khan. A reading of paragraph 32 of the plaint, which has been set out above, indicates that the plaintiff has invoked the jurisdiction of this Court on two grounds:

(I) That part of the cause of action arose within the territorial jurisdiction of this Court on account of the fact that the defendants' mark has been advertised in the Trademarks Journal which was circulated in Delhi; and

(II) This Court has jurisdiction to entertain the present suit in view of the provisions of Section 134(2) of the Trademarks Act, 1999 as the plaintiff is carrying on business in Delhi at least since 1979.

As regards the first aspect with respect to the advertisement in the Trademarks Journal, the Supreme Court decision in Dhodha House (supra) has settled the issue in the following words:

...a suit may lie wherein infringement of trademark and copyright takes place. But a cause of action for filing the suit would not arise within the jurisdiction of the court only because an advertisement has been issued in the Trademarks

Journal or any other journal, notifying the factum of filing of such an application.

In Pfizer Products Inc. v. Rajesh Chopra and Ors. I had occasion to consider the decision in Dhodha House (supra) and it was concluded that the ratio in Dhodha House (supra) is that an advertisement by itself in a Trademarks Journal would not confer jurisdiction upon a court within whose territorial limits the advertisement is published or is seen. This being the legal position, the mere allegation that the defendants' mark had been advertised in the Trademarks Journal which was circulated in Delhi would not constitute a part of the cause of action. Consequently, the plea of this Court having territorial jurisdiction, which has been founded on this allegation, is untenable."

14. *The result of this discussion is that, considering the averments made in the plaint as originally filed, this Court does not have territorial jurisdiction to entertain the present suit. The effect of such a conclusion, as noted earlier, is that the plaintiff's application under Order 6 Rule 17 cannot be heard by this Court and the same would not be maintainable before this Court inasmuch as this Court does not have jurisdiction in the matter. As a result, the plaint is liable to be returned to the plaintiff for the purposes of filing before the competent court."*

12. The decision of the learned Single Bench of the Delhi High Court was upheld by the Division Bench of the Delhi High Court. The position of law which was affirmed is that considering the averments in the plaint as originally filed, if the Court did not have jurisdiction to entertain the suit, the Plaintiff's Application under Order VI Rule 17 cannot be heard by the Court and the same would not be maintainable

before the Court lacking jurisdiction.

13. A similar view was taken in ***M/s. Vivienda Luxury Homes LLP vs. M/s. Gregory & Nicholas (supra)***, which concurred with the view taken by the Delhi High Court and held in paragraph 27 as under:

“27. The argument of the learned counsel for the petitioner that an opportunity to rectify the defects has to be afforded to the petitioner, does not hold weight in light of the fact that, an amendment that seeks to rectify the absence of essential juridical facts conferring jurisdiction upon the court cannot be stated to be merely curing of defects. Such an amendment would lead to a change in the very nature of the dispute and isolate the character of the plaint that is filed from the character of the amended plaint. Further, to state that since the proceedings are underway, it would cause prejudice to the petitioners if the plaint is now returned, does not find favour with this court. No saving of judicial time can counteract the lack of jurisdiction. If for want of convenience of the petitioners, the suit is allowed to be heard and decided and subsequently, it is found that the suit was not instituted before a Court of competent jurisdiction based on subject matter, the entirety of the judicial exercise will be futile and a nullity.”

14. The pivotal point to be determined is therefore whether this Court which did not have the jurisdiction in case of the suit as originally filed can consider the amendment application. Though it is sought to be answered by learned Counsel appearing for the Defendant that the amendment application can be considered in view of settled position of law, however, there is no decision cited to support the said proposition. On the other hand the decision of the Co-

ordinate Bench is very clear that an amendment that seeks to rectify the absence of essential juridical facts conferring jurisdiction upon the Court cannot be stated to be merely curing of defects. In the absence of jurisdiction, the only option is to return the plaint.

15. The other contention raised by learned Counsel appearing for the Defendant is that return of the plaint for the purpose of presentation to the proper Court would only result in multiplicity of proceeding as it is open for the Plaintiff to incorporate necessary pleadings conferring jurisdiction and thereafter present the plaint, will again be filed before this Court. An identical submission was considered in the decision of *M/s. Vivienda Luxury Homes LLP vs. M/s. Gregory & Nicholas(supra)* where it has been held that no saving of judicial time can counter lack of jurisdiction. While holding so, the Co-ordinate Bench has considered the ruling of the Delhi High Court where the Delhi High Court has held that the Court cannot in the name of technicalities violate law or decide contrary to law and the Plaintiff itself is to blame for the position in which it is today.

16. The issue as to whether the amendment could be allowed is dependent on the issue as to whether this Court had jurisdiction to adjudicate the Application for amendment itself and as this Court lacks jurisdiction, the application for amendment cannot be considered.

17. In light of the above, the Interim Application (L) No. 4738

Of 2025 filed under Order VII Rule 10 of CPC for return of the Plaint is allowed. The Registry is directed to return the plaint to the Plaintiff for presentation before the proper Court. Resultantly, Interim Application No. 1092 of 2025 stands dismissed.

18. Refund of Court fees as per rules.

19. At this stage, learned Counsel appearing for the Defendant seeks liberty for filing of fresh suit. The liberty is not required in view of the provisions of Order VII Rule 13 of CPC which provide that the rejection of the plaint on any of the grounds shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action.

[Sharmila U. Deshmukh, J.]