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Supreme Court Clarifies Suit Section 62 Of The Copyright Act Or Section 134 Of The Trade Marks Act To Be Filed Plaintiff Is Residing Or Carrying On Business If Cause Of Action Wholly Or Partly Has Also Arise There

Supreme Court held that 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 and clarified that if the plaintiff is residing or carrying on business etc. at a place where cause of action, wholly or in part, has also arisen, he has to file a suit at that place.

The Court observed that under 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 defendant further away from such a place also as is being done in the instant cases.

The Court held that 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 C.P.C. 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.

On a due and anxious consideration of the provisions contained in section 20 of the 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. 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 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, 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 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 of the CPC as well. The interpretation of provisions has to be such which prevents the mischief of causing inconvenience to parties.

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 C.P.C. 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.

In our opinion, in a case where 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.

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 the impediment imposed under section 20 of the 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 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 plaintiff is having branch offices etc.

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 of the 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.

The Supreme Court further refuting the submission of the Appellant observed that it is settled proposition of law that the interpretation of the provisions has to be such which prevents mischief. The said principle was explained in *Heydon's* case [76 ER 637]. According to the mischief rule, four points are required to be taken into consideration. While interpreting a statute, the problem or mischief that the statute was designed to remedy should first be identified and then a construction that suppresses the problem and advances the remedy should be adopted.

The rule was explained in the *Bengal Immunity Co. v. State of Bihar* [AIR 1955 SC 661] by S.R. DAS, CJI as follows: "It is a sound rule of construction of a statute firmly established in England as far back as 1584 when *Heydon's* case (supra) was decided that for the sure and true interpretation of all Statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered:

- 1st - What was the common law before the making of the Act?
- 2nd - What was the mischief and defect for which the common law did not provide?
- 3rd - What remedy the Parliament hath resolved and appointed to cure the disease of the commonwealth, and
- 4th - The true reason of the remedy;

Considering the first aspect of aforesaid principle, the common law which was existing before the provisions of law were passed was section 20 of the CPC. It did not provide for the plaintiff to institute a suit except in accordance with the provisions contained in section 20. The defect in existing law was inconvenience/deterrence caused to the authors suffering from financial constraints on account of having to vindicate their intellectual property rights at a place far away from their residence or the place of their business. The said mischief or defect in the existing law which did not provide for the plaintiff to sue at a place where he ordinarily resides or carries on business or personally works for gain, was sought to be removed. Hence, the remedy was provided incorporating the provisions of section 62 of the Copyright Act. The provisions enabled the plaintiff or any of them to file a suit at the aforesaid places. But if they were residing or carrying on business or personally worked for gain already at such place, where cause of action has arisen, wholly or in part, the said provisions have not provided additional remedy to them to file a suit at a different place. The said provisions never intended to operate in that field. The operation of the provisions was limited and their objective was clearly to enable the plaintiff to file a suit at the place where he is ordinarily residing or carrying on business etc., as enumerated above, not to go away from such places. The Legislature has never intended that the plaintiff should not institute the suit where he ordinarily resides or at its Head Office or registered office or where he otherwise carries on business or personally works for gain where the cause of action too has arisen and should drag the defendant to a subordinate office or other place of business which is at a far distant place under the guise of the fact that the plaintiff/corporation is carrying on business through branch or otherwise at such other place also. If such an interpretation is permitted, as rightly submitted on behalf of the respondents, the abuse of the provision will take place. Corporations and big conglomerates



etc. might be having several subordinate offices throughout the country. Interpretation otherwise would permit them to institute infringement proceedings at a far flung place and at unconnected place as compared to a place where plaintiff is carrying on their business, and at such place, cause of action too has arisen. In the instant cases, the principal place of business is, admittedly, in Mumbai and the cause of action has also arisen in Mumbai. Thus, the provisions of section 62 of the Copyright Act and section 134 of the Trade Marks Act cannot be interpreted in a manner so as to confer jurisdiction on the Delhi court in the aforesaid circumstances to entertain such suits. The Delhi court would have no territorial jurisdiction to entertain it.

The avoidance of counter mischief to the defendant is also necessary while giving the remedy to the plaintiff under the provisions in question. It was never visualised by the law makers that both the parties would be made to travel to a distant place in spite of the fact that the plaintiff has a remedy of suing at the place where the cause of action has arisen where he is having head office/carrying on business etc. The provisions of the Copyright Act and the Trade Marks Act provide for the authors/trade marks holders to sue at their ordinary residence or where they carry on their business. The said provisions of law never intended to be oppressive to the defendant. The Parliamentary Debate quoted above has to be understood in the manner that suit can be filed where the plaintiff ordinarily resides or carries on business or personally works for gain. Discussion was to provide remedy to plaintiff at convenient place; he is not to travel away. Debate was not to enable plaintiff to take defendant to farther place, leaving behind his place of residence/business etc. The right to remedy given is not unbridled and is subject to the prevention of abuse of the aforesaid provisions, as discussed above. Parliament never intended that the subject provisions to be abused by the plaintiff by instituting suit in wholly unconnected jurisdiction. In the instant cases, as the principal place of business is at Mumbai the cause of action is also at Mumbai but still the place for suing has been chosen at Delhi. There may be a case where plaintiff is carrying on the business at Mumbai and cause of action has arisen in Mumbai. Plaintiff is having branch offices at Kanyakumari and also at Port Blair, if interpretation suggested by appellants is acceptable, mischief may be caused by such plaintiff to drag a defendant to Port Blair or Kanyakumari. The provisions cannot be interpreted in the said manner devoid of the object of the Act.

The Court further refuted the argument that *Heydon's* rule is not applicable where the words of the statute are clear. Reliance has been placed on *M/s. Hiralal Rattanlal etc. etc. v. State of U.P. and Anr. etc.* [1973 (1) SCC 216] in which it has been observed that when the provision is unambiguous and if from the provision legislative intent is clear, the court need not call into aid the other rule of construction of statutes such as that of 'mischief'. The Court opined that when two interpretations are possible, the court has to adopt the one which furthers the object as provided in the statute itself.

Court opined that 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 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 cause of action, wholly or in part, has also arisen, he has to file a suit at that place, as discussed above.