

Legal Issues - Seminar Series

Legal Issues in 'Civil Procedure Code'

Issue: Whether Cause of Action to file an IP suit arises on the basis of reservations made through third-party websites?

Related Provisions

❖ Section 20, Code of Civil Procedure, 1908

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 works for gain, as aforesaid, acquiesce in such institution; or

(c) The cause of action, wholly or in part, arises. (emphasis supplied)

Relevant Judicial Decisions

- ❖ *Millennium and Copthorne International Limited vs. Aryans Plaza Services Private Limited and Ors.*
[CS(COMM) 774/2016, Delhi High Court , Judgment dated March 5, 2018]

“24. In continuation of what was held by the Division Bench in *World Wrestling Entertainment, Inc.*, I may state that the mode of booking/reserving rooms and other facilities particularly of dining therein, in hotels/resorts/spas, has changed over the years with maximum number of bookings/reservations being made through such third party websites, so much so that the rates available on the third party websites are also found to be considerably lower than the rates offered through traditional mode of agents or offices in major cities. Judicial notice can be taken of the fact that much of the volume of businesses of hotels is now through such third party websites, in comparison to the business through direct bookings and/or through travel agents. Thus, **if the Courts at Delhi will have jurisdiction over subject matter of suit owing to defendants having interactive website accessible at Delhi and enabling defendants situated outside Delhi to carry on business at Delhi, I see no reason to hold that it will not be so where the defendants, instead of hosting its own interactive website, avails the service of third party websites to carry on business at Delhi. There is no rationale for carving out such a distinction.** Certainly, making a booking/reservation, even if the same does not subsequently materialise, is part of carrying on business, in as much as the hotel which has taken the booking, even if has not received any payment, being unable to turn back a customer if shows up in pursuance to such booking.” (emphasis supplied)

Relevant Judicial Decisions (contd.)

❖ *EIH Ltd. and Ors. vs. Sahana Realty Pvt. Ltd. and Ors. [2018:DHC:3907, Delhi High Court, Judgment dated July 05, 2018]*

“518. The plaintiffs herein also have pleaded effect of the action of the defendants within the territorial jurisdiction of this Court and sale of the project at Delhi through third party websites. All the said pleas in the plaint if proved, would confer territorial jurisdiction on this Court and the plaintiffs cannot be ousted treating the averments in the plaint to be false.” (emphasis supplied)

4

Relevant Judicial Decisions (contd.)

❖ *Cable News Network INC vs. CTVN Calcutta Television Network Pvt. Ltd. [2023:DHC:2862, Delhi High Court, Judgment dated April 28, 2023]*

42.2.6. *Mere interactivity, without the possibility of concluding a commercial transaction across a website, cannot constitute part of the cause of action, so as to enable a plaintiff to sue the host of the website wherever the website can be accessed. The interactivity must partake of the nature of ability to conclude a commercial transaction. It is only then that it can be said that the host of the website had purposefully targeted customers within the jurisdiction of a court, so as to render that court jurisdictionally capable of entertaining an infringement suit against the host of the website.*

42.2.7. *There is no material, whatsoever, on record in the plaint, to indicate that any commercial transaction could be concluded across the defendant's website within the jurisdiction of this Court. On this aspect of the matter, relatable to Section 20 of the CPC, the only case that the plaintiff has made out, in the plaint, is that the defendant's website can be accessed within the jurisdiction of this Court.*

Relevant Judicial Decisions (contd.)

❖ *Cable News Network INC vs. CTVN Calcutta Television Network Pvt. Ltd. [2023:DHC:2862, Delhi High Court, Judgment dated April 28, 2023] (contd.)*

42.2.8. *The plaintiff does not aver, at any point, that the defendant's website is interactive. To reiterate, all that it asserts is that the defendant's website can be accessed within the jurisdiction of this Court. Though the plaintiff does state that the*

defendant "carries on business" within the jurisdiction of this Court, a holistic reading of the plaintiff reveals that this assertion is founded only on the premise that the defendant's website can be accessed by persons in Delhi.

6

42.2.9. *Mere ability to access a website has not been treated, by any binding authority either of the Supreme Court or of any Division Bench of this Court, to be sufficient to clothe this Court with the jurisdiction in the matter under Section 20 of the CPC. It would be stretching the law beyond breaking point to hold that, merely by hosting a website, which provides for no interactivity with any user, commercial or otherwise, the host has rendered itself vulnerable to being sued for infringement before every court in this country. Nor, for that*

Relevant Judicial Decisions (contd.)

❖ *Cable News Network INC vs. CTVN Calcutta Television Network Pvt. Ltd. [2023:DHC:2862, Delhi High Court, Judgment dated April 28, 2023] (contd.)*

42.2.10. *Mere accessibility of a website does not amount to arising of a part of cause of action, applying the law laid down in the decisions already cited in this regard. "Purposeful availment" is the test, and such purposeful availment can be said to exist either where the website is advertised, either itself or on any other platform, or where a user can interact with the website, howsoever minimal the extent of such interaction may be. (emphasis supplied)*

Relevant Judicial Decisions (contd.)

- ❖ *Impresario Entertainment and Hospitality Pvt. Ltd. vs. S and D Hospitality [2023:DHC:3919, Delhi High Court, Judgement dated May 31, 2023]*

*“17. Learned counsel for the plaintiff relies upon the decision in EIH Ltd. (supra), wherein the learned Single Judge of this Court, referring to its earlier decision reported as Millennium & Copthorne International Limited Vs. Aryan Plaza Services Private Limited & Ors. held that making a booking/reservation from a place, even if the same does not subsequently materialize, is part of carrying on business, inasmuch as the hotel which has taken the booking, even if it has not received the payment being unable to turn back a customer if shows up in pursuance to such booking, would be deemed to have availed of the services of third party website to carry on business from the place of booking even if it is not hosting its own interactive website. **This Court is not impressed by the reasoning given in Millennium & Copthorne International Limited (supra) and followed in EIL Ltd. (supra), for the reason, even if a booking through third website is to be treated as the defendant carrying on its business at that place, then, every place in India would have jurisdiction to try the suit, for the reason, the defendant carries on the business. Section 20 of the CPC cannot be given such a wide interpretation.**” (emphasis supplied)*

19.Further, as noted above, no cause of action also arises at Delhi....”

Conclusion

- ❖ Most courts have proceeded to hold that jurisdiction is conferred even in places where a third- party website facilitates the mere making of bookings or reservations. However, a recent judgement by the Delhi High Court expressed that section 20 of CPC should not be given such a wide interpretation.
- ❖ Determination of cause of action on the basis of availability of services via third-party may lead to forum shopping.
- ❖ The mere virtual presence of an e-commerce business surely cannot be the threshold for determining jurisdiction in cases involving the use of trademarks online. If that were so, rights holders would face an onslaught of legal issues across multiple jurisdictions – transforming their biggest advantage, global reach, into their biggest disadvantage.

THANK YOU!

Questions?

Uroosa Shahzad, Associate

10

© ALG India Law Offices LLP, 2024.

Disclaimer: Views, opinions, and interpretations are solely those of the presenters, not of the firm (ALG India Law Offices LLP) nor reflective thereof.

This presentation hosted at: https://www.algindia.com/wp-content/uploads/2024/07/LIS-GIP_Uroosa_July-01-2024_revised.pdf