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The Judicial Redefining of Jurisdictions

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Recent decisions of the Supreme Court have wrought far reaching changes in regard to prescriptions, regarding jurisdiction, hitherto availing through legislation or previous court decisions in relation to the Copyright Act, 1957, the Trade Marks Act, 1999 and the Negotiable Instruments Act, 1881. In terms of contemporary Indian legal history, the judgments signify the commanding heights scaled by judge made law as a powerful source of law in India.

Copyright and Trade Marks Acts

The issue of jurisdiction was most recently addressed by the Supreme Court in the case of *Indian Performing Rights Society Ltd. v. Sanjay Dalia and Ors*, (2015) 42 SCD 753. Addressing themselves to the issue of the jurisdictional court in Copyright Act and Trade Marks Act cases, their lordships of the Two-judge Bench decided in favour of importing the language of section 20 of the Civil Procedure Code (CPC) into the relevant, corresponding, provisions of the Copyright and Trade Marks Acts. Thereby the Supreme Court read the cause of action centric provisions of the CPC into the complainant centric provisions of the statutes pertaining to Copyright and Trade Marks.

In regard to any suit or civil proceeding under the Copyright Act, section 62(2) thereof provides that—

“a ‘district court having jurisdiction’ shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in

force, include a district court within the local limits of whose jurisdiction, at the time of the institution of the suit or other proceeding or, the person instituting the suit or other proceeding 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”

A similar provision, regarding jurisdiction, exists in section 134 of the Trade Marks Act—Infringement of any registered trade mark or any right in a registered trade mark.

The Supreme Court cited authorities on interpretation to decide that the aforesaid provision – despite the *non obstante* clause contained therein – cannot extend to cases where the complainant could sue from anywhere the complainant may be situated (either principally or by way of a branch office) unless the cause of action also arose in that same jurisdiction where the proceedings were sought to be instituted.

In doing so, the Supreme Court imported the “Cause of Action” prescription from section 20 of the CPC, the relevant portions of which are extracted hereunder:

“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—

(c) the cause of action, wholly or in part, arises.

The Supreme Court felt that abiding solely by the wording of

jurisdiction provisions in the Copyright and Trade Marks Acts would enable the plaintiff to file a suit at a distant and unconnected place where its (plaintiff’s) subordinate office is situated though no Cause of Action has arisen at such place, thereby causing great harm (to the respondent) and would not truly reflect the legislative intent behind the jurisdiction sections of the Copyright and Trade Marks Acts.

7. In doing so, their lordships of the Supreme Court resorted to the Rule of “purposive construction”, established in *Heydon’s Case* (1584) EWHC Exch J36, which stipulates:

In applying the mischief rule the court must discern and consider:

i) *What was the common law before making the Act?*

ii) *What was the mischief and defect for which the common law did not provide?*

iii) *What was the remedy the Parliament passed to cure the mischief?*

iv) *What was the true reason for the remedy?*

The role of the judge is to suppress the mischief and advance the remedy.

Drawing strength from the Rule in *Heydon’s case*, the Supreme Court concluded that it could not have been the intention of the Parliament to abolish one mischief only at the cost of establishing another which is just as bad or worse. The original mischief, as spelt out by their lordships, was that inconvenience was caused to authors, suffering from financial constraints, upon being compelled to vindicate their IPR at a place far away from their

place of residence or business. Hence, the enactment of section 62 of the Copyright Act (and the equivalent section 134 of the Trade Marks Act) prescribing the jurisdictional court to be one within whose local limits of jurisdiction, the person instituting the suit/ proceeding resides or carries on business. However, this provision led to the greater counter mischief of complainants commencing proceedings at distant places, where respondent had no presence whatsoever, thus causing considerable discomfiture to the respondent.

Therefore, arguing on the grounds of convenience, the Supreme Court effectively overruled the *non obstante* provision in section 62, Copyright Act (and section 134, Trade Marks Act) holding that it did not oust the applicability of section 20 of the CPC. Thus, although the plaintiff remained free to file a suit at any place where he is residing or carrying on business, it would also be imperative that the cause of action, wholly or in part, should also have arisen in such place.

Hypothetically, one consequence of the Supreme Court decision would be that if an author's work (protected by copyright) in Mumbai, is plagiarized by someone else in Kolkata, then the author would have to sue the plagiarist only in Kolkata because the cause of action would have arisen wholly in Kolkata. Hence, there is a possibility, howsoever remote, that the hardship to the IPR holder, accruing on account of the Supreme Court judgment could be greater than the one which the Honourable Court has attempted to cure.

The Negotiable Instruments Act

Ever since 1999, the jurisdictional issues in respect of complaints lodged under section 138, Negotiable Instruments Act, 1881 (NIA) stood decided in terms of the guidelines laid down

by the Supreme Court in *K Bhaskaran v. Sankaran Vaidhyan Balan*, (1999) 7 SCC 510. Thereby, in the event of a cheque being returned unpaid (on account of insufficiency of funds in the drawer's account or exceeding arrangement), the plaintiff could file a criminal complaint under Section 138 of the NIA in the court of a Magistrate or a Judicial Magistrate of the First Class whose jurisdiction included the branch of the bank where the plaintiff (payee or holder of the cheque in due course) had lodged the dishonoured cheque for credit to his account with the said bank branch. In effect, it was the location of the collecting bank branch (and not the location of the drawee bank branch) which decided the situs of the court having jurisdiction over a complaint under section 138, NIA.

However, the Supreme Court, in *Dashrath Rupsingh Rathore v. State of Maharashtra*, (2014) 9 SCC 129, completely overturned the rule laid down in the *Bhaskaran case* and decided that the jurisdiction, in all complaints under section 138 of the NIA, would vest in the court in whose jurisdictional limits the drawee bank (bank on which the bounced cheque was drawn by the accused for payment to the complainant) is situated.

Their lordships opined that "It is now not uncommon for the courts to encounter the issuance of a notice in compliance with clause (b) of the proviso to section 138 of the NIA from a situs which bears no connection with the accused or with any facet of the transaction between the parties, leave aside the place where the dishonour of the cheque has taken place."

In order to reorder the jurisdiction issue, the Court invoked section 20 of the CPC, *inter alia*, proceedings in court to be within local limits of that court where the defendant resides/ does

business/ works for gain or where the cause of action wholly or partly arises. Their lordships conceded that they were alive to the possible incongruities arising from importing the civil law concept of "cause of action" into criminal proceedings under section 138 NIA. However, they justified this action on the argument that in order to bring the culprit to book but without harassing the accused through "vexatious proceedings", precision and exactitude are necessary where the location of a litigation is concerned. Their lordships also cited the Parliamentary Debates attending the induction of sections 138 to 142 into the NIA in 1988, to assert that the Parliament was aware that civil liability was being converted to criminal content by the deeming fiction of culpability built into the dishonouring of cheques under section 138.

While defining the cause of action, in terms of section 138 NIA, their lordships declared that it arose where the drawee bank of the dishonoured cheque was situated. Simultaneously, the Supreme Court also prescribed compliance with section 177 of the CrPC for a complainant under section 138 NIA and mandated that the jurisdiction would be restricted to the court within whose jurisdiction the cheque is dishonoured by the bank on which it is drawn.

While the Supreme Court decision has, doubtlessly entailed relief for defendants harassed by complaints deliberately filed at distant sities, there may be instances where, say, a miller at Bharatpur in Rajasthan, who supplies edible oil to a trader in Tinsukia, Assam, may have to cross the entire country to prosecute under section 138 if the cheque, issued in payment of the edible oil consignment, drawn on a bank branch in Tinsukia, is returned unpaid due to insufficient funds or arrangements.