

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

**SUBJECT : SUIT FOR RECOVERY**

**CS(OS) 1280/2002**

**DATE OF DECISION : DECEMBER 02, 2008**

ASIA TODAY LTD. ....

Plaintiff  
Through Ms. Pratibha M. Singh and Mr.  
Deepak Gogie, Advocates. ECHO is on.

versus

MODI RUBBER LTD. ....

Defendant  
Through Mr. Sanjay Gupta, Advocate for  
defendant No. 1.

I.A. Nos. 2643/2003 and 1787/2003

1. In spite of second call, there is no appearance on behalf of the defendant No. 2. I have heard learned counsel for the plaintiff and defendant No. 1 on the application for leave to defend.

2. Asia Today Limited and Zee Telefilms Limited, the plaintiffs herein have filed a suit for recovery of Rs.21,62,524.63 against Modi Rubber Limited, defendant No. 1 and Bharat Marketing and Advertising Company Private Limited, defendant No. 2. In the prayer clause, the plaintiffs have bifurcated the said claim with prayers that a decree for Rs.17,80,902.64 along with pendente lite and future interest be passed in favour of the plaintiff No. 1 and against defendants and a decree for Rs.3,81,621.99 along with pendente lite and future interest be passed in favour of the plaintiff No. 2 and against the defendants.

3. The first contention raised by the counsel for the defendant No. 1 is that the two plaintiffs could not have combined the two prayers for separate decrees and therefore this Court does not have pecuniary jurisdiction.

4. Plaintiff No. 1 is engaged in the business of satellite broadcasting of programs through various TV channels including TV channel of plaintiff No. 2. The plaintiff No. 1, on the basis of instructions, had televised advertisements of defendant No. 1 on the TV channel of plaintiff No. 2. The plaintiffs have placed on record release order, invoices and memorandum notice with regard to the advertisements of defendant No. 1s products telecast by the plaintiff No. 1 on the TV channel of plaintiff No. 2. These documents are not denied. Telecast of advertisements of products of defendant No. 1 is also not denied. The release orders, invoices as well as memorandum note reveal that the invoice raised

was for a lumpsum figure and out of the said amount, a part payment was to be made on account of the plaintiff No. 1 to plaintiff No. 2. Thus, the transaction in question was one but as per internal arrangement between plaintiff Nos. 1 and 2, part payment was to be made to plaintiff No. 1 and the balance payment was to be made to plaintiff No. 2 by the defendant No. 1. This was as per instructions of the plaintiff No. 1 to the defendant No. 1. The transaction in question being one is covered by the provisions of Order I, Rule 1 read with Order II, Rule 3 of the Code of Civil Procedure, 1908, which are reproduced below:-  
Order I, Rule 1, CPC: 1. Who may be joined as plaintiffs. All persons may be joined in one suit as plaintiffs where- (a) any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist in such persons, whether jointly, severally or in the alternative; and (b) if such persons brought separate suits, any common question of law or fact would arise. Order II, Rule 3, CPC: 3. Joinder of causes of action (1) Save as otherwise provided, a plaintiff may unite in the same suit several causes of action against the same defendant, or the same defendants jointly; and ECHO is on. any plaintiffs having causes of action in which they are jointly interested against the same defendant or the same defendants jointly may unite such causes of action in the same suit. (2) Where causes of action are united, the jurisdiction of the Court as regards the suit shall depend on the amount or value of the aggregate subject-matters at the date of instituting the suit.

5. Reading of the two Rules show that more than one person can be joined in a suit as plaintiffs where the relief or the claim is in respect of the same act or transaction. Order II, Rule 3 stipulates that where a plaintiff joins or unites several causes of action, the pecuniary jurisdiction of the Court depends upon the aggregate value of the subject matter on the date of filing of the suit. The aggregate value of subject matter on the date of filing of the suit in the present case is more than Rs.20 lacs and, therefore, this Court has pecuniary jurisdiction to entertain the present suit. Plaintiff no.1 is the creditor and defendants are the debtors. Plaintiff No.1 wanted the debtors to pay a percentage of debt to plaintiff No.2. The total quantum of debt is more than Rs.20 lacs. Therefore, this Court has jurisdiction.

6. The second contention raised by the learned counsel for the defendant No. 1 is with reference to territorial jurisdiction of this Court. Learned counsel for the defendant No. 1 in this regard has drawn my attention to the memorandum note in which it is mentioned subject to Mumbai jurisdiction only.

7. In this connection, I may refer to the averments made in the plaint relating to the territorial jurisdiction of this Court. It is stated by the plaintiffs that the contract and the release orders, invoices etc. were all placed on or by the plaintiffs at Delhi. It is also the case of the plaintiffs that the contract in question was executed at Delhi and even payments were to be made at Delhi. A perusal of the memo of parties reveals that plaintiff No. 1 is a Hong Kong based company, plaintiff No. 2 is based in Mumbai but the defendants are Delhi based companies. To confer exclusive jurisdiction on Courts at Mumbai, cause of action or at least part of cause of action should have arisen at Mumbai. It is well settled that parties by a contract cannot confer territorial jurisdiction of a Court, which otherwise as per the Code of Civil Procedure does not have jurisdiction. If two or

more Courts have territorial jurisdiction, then by a contract, parties can confer exclusive jurisdiction on Courts located at one of the said locations. The application for leave to defend by defendant no.1 does not state and explain how and why a part of cause of action has arisen at Mumbai. In paragraph 6 of the application, the defendant No. 1 has merely referred to the memorandum note without stating that part of cause of action had arisen at Mumbai and, therefore, the Courts at Mumbai alone will have territorial jurisdiction. The plaintiffs in their reply to the said application have stated that no part of cause of action had arisen at Mumbai and the defendants are located at Delhi and the release orders were sent by defendant No. 2 at Delhi office of plaintiff No. 1. Invoices and memorandum notes were raised on the defendants at Delhi. There is no written document/communication by plaintiff no.2. The defendant No. 1 has not filed any rejoinder and controverted the said statement. The second contention raised by the defendant No. 2 is, therefore, rejected.

8. The third contention raised by learned counsel for the defendant No. 1 is in respect of privity of contract between defendant No. 1 and plaintiff Nos. 1 and 2. The said contention has to be rejected as in the application for leave to defend and the affidavit, the defendant No. 1 has not denied the release orders, invoices and memorandum note pertaining to advertisements of the said defendant. Defendant No. 1 has also denied that the advertisements of the products of the defendant No. 1 were telecast. It is not alleged or stated that the defendant No. 1 had not given any direction for issue and telecast of the ECHO is on. said advertisements. It is apparent that the defendant No. 1 had engaged services of defendant No. 2-advertising agency for telecast of advertisements and defendant No. 2 as an agent of defendant No. 1, had placed orders and issued release note for issue of advertisements. The defendant No. 1 has not denied agency agreement with defendant No. 2 and right and authority of defendant No. 2 to place release orders for telecast of advertisements on their behalf.

9. The last plea raised by the learned counsel for the defendant No. 1 is that the application for issue of summons for judgment is not supported by an affidavit of the authorized representative of plaintiff No. 1. The said contention is also liable to be rejected as the application for issue of summons for judgment is signed by the authorized representatives of both the plaintiff No. 1 as well as plaintiff No. 2. The affidavit in support of the application is by authorized representative of plaintiff No. 2 but this does not make any difference. It was open for the plaintiffs to file affidavit of any one of the plaintiffs in support of the application for issue of summons for judgment.

10. Accordingly, the application filed by the defendant No. 1 for leave to defend is dismissed and the suit filed by the plaintiff against the defendant No. 1 is decreed.

11. Learned counsel for the plaintiff, at this stage, states that she is not pressing for decree against defendant No. 2 in view of the order passed above and as the suit has been decreed against defendant No. 1. The applications are disposed of. CS(OS) No. 1280/2002

12. In view of the order passed above, the suit filed by the plaintiffs is decreed against defendant No. 1. Decree for sum of Rs.17,80,902.64 is passed in favour of plaintiff No. 1 and against defendant No. 1 along with costs and pendente lite and future interest @ 10% per annum from the date of filing of suit till payment. Similarly, a decree of Rs.3,81,621.99 is passed in favour of the plaintiff No. 2 against defendant No. 1 along with costs and pendente lite and future interest @ 10% per annum from the date of filing of the suit till payment. Plaintiffs will be entitled to costs in proportion to the amount payable in terms of the decree. The suit against defendant No. 2 is dismissed as withdrawn with no order as to costs. All pending applications are also disposed of.

Sd./-  
SANJIV KHANNA, J.

DECEMBER 02, 2008