



2025:DHC:3937



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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of decision: 13<sup>th</sup> May, 2025*

CC(COMM) 9/2025, I.A. 37535/2024, I.A. 40541/2024 and I.A. 41844/2024

IN

+ CS(COMM) 729/2024

RIETER AG AND ANR.

.....Plaintiffs

Through: Ms Shwetasree Majumder, Ms Diva Arora Menon and Mr Vivek Shandilya, Advocates.

versus

KAVASSERY NARAYANASWAMY  
VENKATASUBRAMANIAN

.....Defendant

Through: Mr. C. M. Lall, Senior Advocate with Mr. Govind Jee, Mr. Omnan Kuttan K. K., Ms. Rambha Singh and Mr. Akhilesh Kr. Mishra, Advocates.

**CORAM:****HON'BLE MR. JUSTICE AMIT BANSAL****AMIT BANSAL, J. (Oral)****I.A. 41844/2024 (under Order VII Rule 10 of the CPC)**

1. The present application has been filed on behalf of the defendant under Order VII Rule 10 of the Code of Civil Procedure, 1908 (hereinafter 'CPC') seeking return of plaint on the ground of lack of territorial jurisdiction of this Court to try and adjudicate the present suit.

2. Notice in this application was issued on 21<sup>st</sup> October 2024. Reply has been filed on behalf of the plaintiffs and rejoinder thereto has been filed on behalf of the defendant.



### **BRIEF FACTS**

3. Brief facts stated in the plaint, which are relevant in deciding the present application, are as follows:

3.1. The present suit has been filed seeking relief of permanent injunction restraining the defendant from infringement of designs, trade marks and patents along with other ancillary reliefs.

3.2. The plaintiffs are subsidiaries of Rieter Holding AG. The plaintiff no.1 is the proprietor of the suit designs registered in India bearing registration no. 264773, 264774, 264775, 294194 and 271521. The plaintiff no.2 is the proprietor of the trade mark 'SUESSEN' as well as the suit patent registered in India bearing registration no. 339930.

3.3. In December 2022, one of the plaintiffs' representatives came across the defendant's goods at India ITME (India International Textile Machinery Exhibitions) held at Greater Noida, Uttar Pradesh which appeared to be similar to the plaintiffs' goods.

3.4. The plaintiffs' representative had also obtained a brochure of the defendant at the aforesaid exhibition in which the defendant has advertised himself to be the '*World's largest manufacturer of Lattice Apron for all types of Compact Systems*'.

3.5. The plaintiffs thereafter initiated an investigation into the activities of the defendant through their investigator.

3.6. The plaintiffs' investigator, *vide* email dated 25<sup>th</sup> April 2023, enquired from the defendant about the availability of his goods. The defendant responded to the said email on the same day enquiring if the investigator wanted to purchase his goods or to sell any goods to the defendant.

3.7. The plaintiffs' investigator replied to the defendant's query on the



same day stating that he wishes to purchase the defendant's goods. A follow-up email was then sent on 27<sup>th</sup> April 2023 by the plaintiffs' investigator. However, no response was received from the defendant.

3.8. The plaintiffs' investigator therefore visited the premises of the defendant in May 2023 to conduct an on-ground investigation and placed an order for the defendant's goods, which were delivered to the plaintiffs' representative in Delhi along with the invoice dated 17<sup>th</sup> May 2023. Certain samples of the defendant's goods were also delivered at the request of the plaintiffs' investigator, for which a proforma invoice was raised. An affidavit of the plaintiffs' investigator Mr. Rahul Kumar has been filed with the plaint.

#### **SUBMISSIONS OF THE PARTIES**

4. Mr. Chander M. Lall, senior counsel appearing on behalf of the defendant/ application, has made the following submissions:

4.1. The defendant, a supplier of spare parts of textile machinery used in cotton spinning industry, is based in Coimbatore, Tamil Nadu with no other branch office or place of business. In particular, the defendant is neither located nor carries out his business in Delhi.

4.2. The defendant has neither sold nor offered for sale any of his goods in Delhi either on his own or through any of his agents. The defendant also does not have any dealer, stockist or distributor within the territory of Delhi.

4.3. Emails dated 25<sup>th</sup> April 2023 and 27<sup>th</sup> April 2023 were sent by one company, namely, Ukandin International Private Limited (hereinafter 'Ukandin') to the defendant inquiring about his goods only to lure the defendant into a trap transaction. Ukandin is, however, neither registered nor does it have its place of business/ office in Delhi. The said company is also



not even a stockist, distributor or dealer involved in the business of spare parts used in textile industry. Therefore, the sale made by the defendant to Ukandin is not of commercial nature.

4.4. The sale of the alleged infringing spare parts of the defendant was made in Coimbatore and not within the territorial jurisdiction of this court. It was only on the request of the plaintiffs' investigator, who was physically present at the premises of the defendant, that the goods were delivered to an address in Delhi and the invoice was issued in the name of Ukandin. The plaintiffs have therefore deceitfully engaged in the act of one-time trap purchase/ trap transaction to generate a fraudulent singular invoice to invoke the jurisdiction of this court.

4.5. Reliance on behalf of defendant is placed on a judgment of a Division Bench of this court in ***Banyan Tree Holding v. A. Murali Krishna Reddy***, 2009 SCC OnLine Del 3780, and a judgment of a Coordinate Bench in ***Indovax v. Merck Animal Health***, 2017 SCC OnLine Del 9393.

5. Ms. Shwetasree Majumder, counsel appearing on behalf of the plaintiffs, has made the following submissions:

5.1. A holistic reading of the plaint would show that the defendant is selling his goods all across India. This is evident from the fact that the defendant participated in 'India International Textile Machinery Exhibition' held in Greater Noida and was specifically targeting customers in North India which includes Delhi.

5.2. It is evident from the invoice and the proforma invoice raised by the defendant that his goods were sold and delivered to the plaintiffs' investigator in Delhi (*refer page no.1001 of the documents filed with the plaint*). Therefore, the jurisdiction of this court in the present suit has been



invoked under Section 20(c) of the CPC as a part of the cause of action has arisen in Delhi.

5.3. The quantity as well as the invoice value of the transaction between the defendant and the plaintiffs' investigator clearly show that the same was a commercial transaction.

5.4. Ukandin had its registered address in Delhi from its incorporation till September 2023, *i.e.*, when the plaintiffs came across the defendant's goods at 'India International Textile Machinery Exhibition', Greater Noida in December 2022, at the time conducting the investigation in May 2023 as well as at the time of placing the order for the defendant's goods and receiving delivery of the same.

5.5. Ms. Majumder places reliance on the judgment of a Coordinate Bench in *Machinefabrik Rieter v. Tex Tech Industries*, 2021 SCC OnLine Del 1825, wherein the plaintiff no.1 was the same as the plaintiff no.1 herein. She submits that in the said case, a similar challenge to the territorial jurisdiction of this court was made on behalf of the defendants who were also based in Coimbatore. However, the Coordinate Bench dismissed the defendants' application under Order VII Rule 10 while distinguishing the judgments in *Banyan Tree* (supra) and *Indovax* (supra).

#### **ANALYSIS AND FINDINGS**

6. I have heard counsel for the parties and perused the material on record.

7. It is a settled position of law that while deciding an application under Order VII Rule 10 of the CPC, the court only needs to make a reference to the averments made in the plaint and the documents filed therewith by treating the same to be true and correct.



8. With this background a reference may be made to the relevant paragraphs of the plaint:

*“56. In December 2022 a representative of the Plaintiffs came across the Defendant's products at the India ITME (India International Textile Machinery Exhibitions) held at Greater Noida, Uttar Pradesh. The Plaintiffs representative observed that the Defendant had exhibited various products which appeared to be similar to the Plaintiffs products. To ascertain this, the Plaintiffs instructed their investigator to investigate the activities of the Defendant. The investigator, vide email dated 25th April 2023 enquired from the Defendant about availability of the products being (1) Active Cradle, (ii) Pelican Suction Nozzle with transparent tube, (iii) Spacer Nt-3.0 mm and 3.25 mm and Pins NT-0 mm and 0.25 mm, (iv) Sussen elite compact spinning system, (v) Jet Insert (also called Jetsert by Suessen) for Sussen compact (plastic inserts) and (vi) Lattice Apron- Density B and Density C. The Defendant responded to the investigator's email on the same day, 25th April 2023, enquiring if the investigator wants to purchase the products from the Defendant or sell the same to the Defendant. Accordingly, the investigator responded to the email on 25th April 2023 stating that he wishes to purchase the products and enquired about the availability of the products again. A follow-up was sent to the said email by the investigator on 27th April 2023 however, no response was received.*

*57. Since, the investigator did not receive any response from the Defendant, he therefore visited the premises of the Defendant in May 2023 and met a representative of the Defendant there. Upon enquiry, the Defendant's representative confirmed that the following products are available and offered to sell the same to the investigator.*

- A. Active Cradle*
- B. Pelican Suction - Nozzle with transparent tube*
- C. Spacer Nt- 3.0 mm and 3.25 mm and Pins NT- 0 mm and 0.25 mm*
- D. Sussen elite compact spinning system*
- E. Jet Insert (called 'Jetsert' by Suessen) for Sussen compact (plastic inserts)*
- F. Lattice Apron- Density B and Density C*

*58. Accordingly, the Defendant delivered the aforesaid products to the Plaintiffs' representative in Delhi in May 2023 along with invoice dated 17th May 2023 after which the Plaintiffs analyzed the said products and found the ones from A to C (i.e. Active Cradle; Pelican Suction - Nozzle with transparent tube and Spacer NT) and E [i.e. Jetsert for Sussen compact (plastic inserts)] to be infringing the Plaintiffs' suit designs and patent. As for the product mentioned in Serial No. D above (i.e. Sussen elite compact spinning system), the Defendant did not deliver*



*the complete product as requested by the Plaintiffs' investigator but supplied only some parts of the Rocker product for spinning machine. As far as the product F (i.e. Lattice Apron) above is concerned, the Plaintiffs have not been able to ascertain whether it infringes any of the Plaintiffs' patents and reserves their right to amend the plaint if more information becomes available.*

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79. *This Hon'ble Court has the jurisdiction to try and entertain the present suit under Section 20(c) of the Code of Civil Procedure, since a part of the cause of action in the present instance has arisen within the jurisdiction of this Hon'ble Court on account of the Defendants doing business with the Plaintiffs' investigator and thereafter shipping its products to the Plaintiffs' representative in Delhi, which is located within the jurisdiction of this Hon'ble Court. The Plaintiff further submits that there is no pending litigation between the parties herein in any forum prior to the institution of the instant suit."*

[emphasis supplied]

9. In the aforesaid paragraphs extracted from the plaint, the plaintiff has made averments regarding the defendant's participation in the aforesaid exhibition in Greater Noida; enquiry made by the plaintiffs' investigator with the defendant for the availability of his goods through email; order placed by the plaintiffs' investigator for the defendant's goods and delivery of the goods along with the invoice to an address in Delhi.

10. In the judgment in ***Machinefabrik Rieter*** (supra) delivered by a Coordinate Bench of this court, the plaintiff no.1 was the same as the plaintiff no.1 herein. The suit in the aforesaid case was also filed alleging infringement of trade mark and patent as well as passing off against a defendant who had its registered office in Coimbatore. To show the extent of similarity of the said case with the facts of the present case, a reference may be made to paragraph no.10 of ***Machinefabrik Rieter*** (supra), which is set out below:

*"10. Hence, this court has only to look at the averments made in the plaint and the accompanying documents to adjudicate the present*



*application filed under Order 7 Rule 10 CPC. A perusal of the plaint shows that it is averred that the plaintiffs instructed their investigator to ascertain the scope and extent of defendant No.1's activities. Pursuant to initial investigation, the plaintiffs' investigator placed an order with defendant No. 1 via an email dated 26.12.2019. A proforma invoice was issued on 27.12.2019. Thereafter, an email was received from a representative of defendant No. 2 who informed the investigator that defendant No. 2 is a supplier of spare parts manufactured by defendant No. 1. The plaintiffs made the payment and samples were despatched by defendant No. 1 on 29.01.2020 and the same were received by the plaintiffs' investigator on 31.01.2020 in Delhi. Two such separate orders were also received by the plaintiffs' investigator. It is also stated that the Business Development Manager of defendant No. 1 informed the investigator that one Mr. Arora of defendant No.2 was their selling agent in North India. It is stated that the products so received from defendant No. 1 infringe the plaintiffs' patent. The plaintiffs have also filed documents including invoices showing delivery of goods in Delhi."*

[emphasis supplied]

11. The conclusion of the Coordinate Bench in ***Machinefabrik Rieter*** (supra) as given in paragraph no.18 is set out below:

*"18. In the present case, the goods were delivered in Delhi. As per the plaint, the contract was completed in Delhi as the defendant supplied the goods in Delhi and also raised an invoice/delivery note at Delhi. Further, the transactions relied upon by the plaintiffs as elaborated in the plaint and the accompanying documents do show that sale of goods are taking place in Delhi as to whether these transactions are bona fide transactions or not etc., are issues that can be decided only after parties lead their evidence."*

[emphasis supplied]

12. In the present case also, the case set up in the plaint is that the plaintiffs' investigator first enquired about the availability of the defendant's goods through email and thereafter visited the premises of defendant at Coimbatore and placed an order for the defendant's goods, which were delivered to in Delhi along with the invoice. To be noted, the defendant did not state that he would not supply his goods to Delhi.

13. Mr. Lall seeks to distinguish the aforesaid judgment by stating that the





factual situation obtaining in the said case is different from the one prevailing here. It is stated that in the said case, the defendant no.2 was an agent of the defendant no.1 in the northern territories of the country including Delhi and the goods were delivered in Delhi by the said defendant no.2 acting as an agent of the defendant no.1.

14. In my considered view, these minor factual differences would not make any differences in the outcome of the present application. In the present case, it is an admitted position that the defendant participated in a textile machinery exhibition held at Greater Noida. Clearly, if the defendant is participating in an exhibition in Greater Noida, which is on the outskirts of Delhi, the defendant cannot take a stand that his goods are being sold only in or around Tamil Nadu or Southern India. There is nothing on the website of the defendant to show that his goods are sold or offered for sale only in a limited geographical area. In fact, the defendant, in his brochure, claims to be the '*World's largest manufacturer of Lattice Apron for all types of Compact Systems*'.

15. In my considered view, the present case is squarely covered by the aforesaid judgment in ***Machinefabrik Rieter*** (supra). As per the invoice placed on record, a total of 91 units of the defendant's goods were delivered by the defendant in Delhi along with the invoice. Therefore, it cannot be said that the supply of goods by the defendant was not a commercial transaction. It is also an admitted position that the defendant provided certain sample of his goods to the plaintiffs' investigator without charging for the same, in anticipation of further orders. Therefore, at this stage, it cannot be held that the defendant did not intend to do business in Delhi.

16. On behalf of the defendant, reliance has been placed on the judgment



of the Division Bench of this court in ***Banyan Tree*** (supra) in support of the submission that the purchase of the defendant's goods by the plaintiffs' investigator was a trap purchase. However, ***Banyan Tree*** (supra) was distinguished by the Coordinate Bench of this court in ***Machinefabrik Rieter*** (supra) reasoning that the Division Bench in ***Banyan Tree*** (supra) was dealing with the case of the defendants hosting a website that was accessible in Delhi. The relevant observations in ***Machinefabrik Rieter*** (supra) distinguishing ***Banyan Tree*** (supra) are set out below:

*“13. In my opinion the above judgment of the Division Bench does not have application to the facts of this case. That was a case in which territorial jurisdiction was claimed by the plaintiff based on the defendants alleged presence in Delhi through their website which was accessible in Delhi. It was contended that the website is not a passive website since inputs from customers through interactive web-page were being taken. The court was dealing with the issue of territorial jurisdiction of this court on account of the defendants hosting a website which was accessible in Delhi. It was in those facts that the Division Bench had come to the aforesaid conclusions. The present case is a case of offline transaction.”*

[emphasis supplied]

17. I am in complete agreement with the aforesaid reasoning. ***Banyan Tree*** (supra) is distinguishable in the facts of the present case as the issue at hand in ***Banyan Tree*** (supra) was with respect to orders/ transactions made through the internet, which is not the case in the present suit. In the present case, the plaintiffs' investigator visited the premises of the defendant and placed an order which was duly delivered, along with the invoice, to an address in Delhi.

18. Similarly, the judgment in ***Indovax*** (supra) was also considered and distinguished by the Coordinate Bench in ***Machinefabrik Rieter*** (supra) in the following manner:



*“15. Hence, the court was of the view that cause of action partly arises in a given jurisdiction only if it is proved that the defendant has directly made sale of goods under the impugned trademark not to an individual consumer but to a distributor or to a wholesaler or to a retailer and such sale should be at a commercial scale. In the case of a trap transaction, the plaintiff is required to show that the defendant is indulging in commercial sales to persons.*

*16. The facts of the present case are different. In this case, the order was placed on the defendants in Coimbatore from Delhi. The goods were delivered in Delhi. As is evident from the documents filed with the plaint, the defendant sent a quotation on 23.03.2020 to Delhi; it delivered the goods in Delhi as seen by the invoice/delivery note dated 05.08.2020.”*

19. Therefore, the aforesaid judgment would also not come to the aid of the defendant.

20. In view of the discussion above, it cannot be said that no cause of action has arisen within the territorial jurisdiction of this court. The question of jurisdiction would have to be determined at the stage of trial.

21. Accordingly, there is no merit in the present application and the same is dismissed.

**I.A. 40541/2024 (u/O-VII Rule 11 of the CPC)**

22. Counsel for the defendant seeks to withdraw this application.

23. The application is dismissed as withdrawn.

**CS(COMM)729/2024, CC(COMM) 9/2025 and I.A. 37535/2024 (u/O-XXXIX Rules 1 and 2 of the CPC)**

24. List the application for interim injunction for hearing on 14<sup>th</sup> August 2025.

**AMIT BANSAL, J.**

**MAY 13, 2025/R**