

**IN THE COURT OF MS. RUCHIKA SINGLA,
ADDL. DISTRICT JUDGE-03, NORTH-WESTDISTT.,
ROHINI COURTS, DELHI**

07.07.2023

CS DJ. 362/23

**BINAY KUMAR SINGH
VS.
BRITISH BROADCASTING CORPORATION & Ors.**

ORDER

1. Vide this order, I shall decide the issue regarding the service of the summons upon the defendants. Detailed arguments were advanced by both the parties on LDOH. Written arguments have been filed by the plaintiff and the defendants no. 1 & 2. I have also gone through the record.

2. The plaintiff has filed the present suit for permanent injunction and damages. Vide order dt. 03.05.2023, summons were directed to be issued to the defendants. On 11.05.2023, the counsels for all three defendants appeared before the court. However, an objection was taken that the service was not proper as the defendants were foreign entities based in USA and UK. It was submitted that the USA, UK & India were all parties to

the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters concluded on 15.11.1965 (hereinafter referred to as the Hague Convention). As per Article 10 of the said Convention, the service upon a foreign entity can be effected only as per the procedure prescribed therein.

3. It is submitted that India had made its reservations against Article 10 that the service can be effected only through the Central Authority as referred to under Article 4. In pursuance to the said Convention, directions were issued by the Hon'ble High Court vide its circular dt. 13.09.2021, as per which the service can be effected upon foreign entities only in compliance of the Office Memorandum issued by the Government of India, Ministry of Law and Justice, Department of Legal Affairs (Judicial Section) dt. 18.08.2011. It is submitted that as the service has not been effected upon the defendants through the proper channel, the service cannot be deemed to have been effected upon the defendants. Hence, the matter cannot be proceeded further. In this regard, Ld. Counsel for the defendant has relied upon a judgment of the Hon'ble High Court of Delhi in **Microsoft Corporation & Ors. v. Tech Heracles OPC Pvt. Ltd. 2022 (91) PTC 137 (Del)**, wherein it has been observed that the service upon a foreign

entity if not done as per the Hague Convention, the same cannot be treated as proper service.

4. Per contra, Ld. Counsel for the plaintiff has argued that the defendants have already appeared before this court. They have also engaged a counsel to appear on their behalf. Hence, the defendants have submitted to the jurisdiction of this court. Ld. Counsel submits that as per the provisions of CPC, once a party i.e. defendant has appointed his pleader to appear in court on their behalf, this objection cannot be taken that the service upon them is not proper.

5. Ld. Counsel for the plaintiff has also submitted that this objection was not taken by the defendant no. 3 at an earlier stage. The defendant no. 3 had also moved an application under Order 1 Rule 10 CPC for deletion of their name from the parties. Further, the defendant no. 3 had stated that they had already removed the impugned content from their website. Hence, the defendant no. 3 is estopped from taking this argument at this stage.

6. Further, Ld. Counsel for the plaintiff has argued that the defendant no. 1 is not a foreign entity. Ld. Counsel has referred to the address of the defendant no. 1 as

mentioned in the memo of parties. It is submitted that the defendant no. 1 is an Indian private limited company having its office at Kasturba Gandhi Marg, New Delhi. Hence, the objection by the defendant no. 1 that it is a foreign entity is a misleading argument. Ld. Counsel for the plaintiff has relied upon judgments delivered by the US District Courts in **Ocimum Biosolutions (India) Ltd. v. LG Corp, LG Chemical Ltd.; JW Craiglist, Inc. v. Eddie Temple, et. Al. And Group One Ltd. GTE GmbH** in support of his arguments.

7. Ld. Counsels for the defendants have relied upon the judgment titled as **Metro Ortem Ltd. v. Maharashtra State Road Transport Corporation AIR 2023 CC 529 (Bom)** wherein it has been held that merely because a lawyer has been appointed by a person to appear in the court, that shall not imply that the defendant has submitted to the jurisdiction of this court.

8. Further, Ld. Counsel for the defendant no. 1 has argued that BBC Worldwide (India) Pvt. Ltd. is only a subsidiary of the British Broadcasting Corporation (hereinafter referred to as BBC) which is a UK entity. It is submitted that this fact has been acknowledged by the plaintiff in his own plaint in para no. 2 where it is clearly

mentioned that the BBC is a Public Service Broadcaster headquartered in London, England. Further, Ld. Counsel submits that the email Ids of the defendant no.1, which have been provided by the plaintiff in the memo of parties are also of UK. Hence, the plaintiff cannot take this argument that the defendant no. 1 is not a foreign entity.

9. Record perused.

10. First and foremost, the plaintiff has taken this objection that the defendant no. 1 is an Indian entity and not a foreign entity. The judgments relied upon by the plaintiff are not considered as the same have been delivered by the Hon'ble Courts at USA and are not applicable or binding on this court. Further, it is essential to mention that as pointed out by the Ld. Counsel for the defendant no. 1, the plaintiff has himself mentioned in his plaint at para no. 2 that the defendant no. 1 is a Public Service Broadcaster headquartered in London, England. Further, the plaintiff goes on to say that in India, the defendant no. 1 i.e. BBC is working under the name of BBC World Service India Pvt. Ltd. Hence, the plaintiff has himself asserted that both BBC and BBC World Service India Pvt. Ltd are the same. BBC is the parent company. In the memo of parties, the first name as mentioned by the plaintiff is BBC and the email IDs

mentioned are also of the UK. Hence, at this stage, the plaintiff cannot take this plea that the defendant no.1 is an Indian entity.

11. Having said that, it is an admitted fact that the parties to the present case are subject to the Hague Convention as the relevant countries are all parties to the Hague Convention. Article 10 of the Hague Convention is as under:-

“Article 10

Provided the State of destination does not object, the present Convention shall not interfere with -

- a) the freedom to send judicial documents, by postal channels, directly to persons abroad,
- b) the freedom of judicial officers, officials or other competent persons of the State of origin to effect service of judicial documents directly through the judicial officers, officials or other competent persons of the State of destination,
- c) the freedom of any person interested in a judicial proceeding to effect service of judicial documents directly through the judicial officers, officials or other competent persons of the State of destination.”

12. The defendants have placed on record the circular issued by the Hon'ble High Court of Delhi vide no. 3641-58/DHC/Gaz/G-X/Instructions/2011 dt. 13.09.2011 regarding Service Abroad of Judicial and Extrajudicial Documents under the Hague Convention of 1965/ Mutual

Legal Assistance Treaties/ Reciprocal Arrangements with foreign countries in Civil and Commercial Matters-Regarding. In this circular, the Hon'ble High Court has referred to the Office Memorandum issued by the Government of India, Ministry of Law and Justice, Department of Legal Affairs (Judicial Section) dt. 18.08.2011 wherein it had been directed that the service of summons/ notices in foreign countries shall be under the provisions of the Hague Convention through the said department only i.e. the Department of Legal Affairs. Same has been confirmed by the Hon'ble High Court of Delhi in the **Microsoft Corporation & Ors. v. Tech Heracles OPC Pvt. Ltd. Case (supra)**.

13. Hence, by virtue of the same, it is clear that as per the rules formulated under the Hague Convention and by the Government of India, the summons/ notices in foreign countries can be effected only through the Department of Legal Affairs, Ministry of Law and Justice, Government of India, which has admittedly not been done in the present case.

14. Now, the Ld. Counsel for the plaintiff has argued that as the defendants have already engaged their counsels, who have appeared in the court, the service is

deemed to be effected and that the defendant no.3 cannot take the plea of improper service at this stage. However, in the **Metro Ortem Ltd. Case (supra)**, the Hon'ble High Court of Bombay has held that:

“17. From the above quoted decisions, it is seen that the appearance of an Advocate and filing of a Vakalatnama by him cannot and does not dispense with the requirement to serve the writ of summons. Accordingly, Defendant, in the absence of service of summons, could not have made any representation and/or filed its written statement. In light of the above, it is immaterial that the Advocate for Defendant appeared on his behalf before the Trial Court. Mere filing of a Vakalatnama and appearance of the said Advocate could not have dispensed with/waived the requirement of service of summons. The said Vakalatnama cannot be considered to be a proof of service of summons.”

15. Hence, in view of the above discussion, it is clear that mere filing of vakalatnama by the Ld. Counsel shall not do away with the mandatory requirement of the service of the summons upon the defendant under the prescribed procedure. Furthermore, as the defendants are foreign entities, the service must be effected as per the guidelines issued by the Hon'ble High Court vide its

circular dated 13.09.2011 as per the Hague Convention 1965.

16. Hence, it is directed that the summons be issued afresh to the defendants on filing of PF within 7 days to be served through the Department of Legal Affairs, Ministry of Law & Justice, Govt. Of India, as per rules.

(RUCHIKA SINGLA)
ADJ-03 (N/W)
Rohini Courts :Delhi/07.07.2023