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IN THE HIGH COURT OF DELHI AT NEW DELHI

(Ordinary Original Civil Jurisdiction)

I.A. No. ²³³⁶⁷ of 2012

In

C.S. (O.S.) 2475 of 2012

IN THE MATTER OF:

Natco Pharma Ltd.

...Plaintiff


Versus

Shamnad Basheer

...Defendant

S. No.	Particulars	Pages
1.	Application on behalf of Defendant under Order VII Rule 10 for return of Plaint, along with affidavit in support	2-8
2.	Court fee	9

New Delhi
Date: December 17, 2012


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Diary No. 200554
17/12/2012

IN THE HIGH COURT OF DELHI AT NEW DELHI

(Ordinary Original Civil Jurisdiction)

I.A. No. ¹²³⁶⁷ of 2012

In

C.S. (O.S.) 2475 of 2012

IN THE MATTER OF:

Natco Pharma Ltd. ...Plaintiff

Versus

Shamnad Basheer ...Defendant

**APPLICATION ON BEHALF OF THE DEFENDANT UNDER
ORDER VII RULE 10 READ WITH SECTION 151 OF C.P.C. FOR
RETURN OF PLAINT**

THE DEFENDANT MOST RESPECTFULLY SUBMITS AS UNDER:

PRELIMINARY OBJECTIONS:

1. The plaintiff has filed the present suit against the defendant for defamation and libel, permanent injunction and other reliefs. It is stated that the instant plaint is liable to be returned in accordance with the provisions of Order VII Rule 10 of the Code of Civil Procedure, 1908, as this Hon'ble Court is not clothed with the jurisdiction to try and entertain the instant suit.

2. Admittedly, the Defendant resides & works for gain at Kolkata, whereas the Plaintiff is admittedly carrying on business in Hyderabad through its registered office. It is stated that the cause of action does not arise within the territorial jurisdiction of this Hon'ble Court as the impugned article were not published within Delhi. Furthermore, it is respectfully submitted that given that the subject / impugned articles were only carried on the website www.spicyindia.blogspot.in, accordingly the stated articles were

not "published" within the territorial limits of this Hon'ble Court. It is settled law that mere access to a website does not give rise to an actionable claim under tort law. It is submitted that this proposition of law has been settled by a Division Bench of this Hon'ble High Court. The website in question namely www.spicyipindia.blogspot.in is an "online publication" and does not specifically target Delhi and consequently the Defendant cannot be said to have purposefully availed himself of the Jurisdiction of this Hon'ble Court by specifically targeting the territory of Delhi and by that extension the Jurisdiction of this Hon'ble Court. It is stated that the Defendant residing at Kolkata uploaded the article on the Internet at Kolkata. The instant suit is, in the submission of the Defendant, a device to browbeat & suppress fair and justifiable comments on the Plaintiffs own actions. The instant suit is a gross abuse of the process of law.

3. It is submitted that the plaint fails to disclose the publication, in the sense of actual circulation of the impugned articles within Delhi as is required by settled law. It is noteworthy that the plaint does not disclose who or which person or persons "downloaded the articles at Delhi, read the same and expressed shock at reports" allowing the Plaintiff to claim that the said defamation occurred in Delhi. The Plaintiff is therefore liable to be rejected on this ground.

4. It is respectfully stated further that the instant suit is liable to be rejected as it does not contain the material facts necessary to substantiate a cause of action as required by the Code of Civil Procedure, 1908 ("CPC"). It is stated that the "wrong" within the meaning of Section 19 of the CPC, in an action for defamation is done by the publication of an allegedly defamatory article. The "publication" referred to herein is not in the sense of "printing" but with publication as in the case of libel. The publication in the sense

of a libel is not the mechanical act of printing of the article but is necessarily of communication of the libelous article to at least one person other than the plaintiff or the defendant. Admittedly in the instant case, (a) the impugned article is not "circulated" within Delhi; (b) it is merely claimed to be "accessed" from Delhi, which, as per settled law would not invest jurisdiction in a tort or other claim and by such logic would not amount to publication within Delhi, hence the "wrong" claimed by the instant suit cannot be said to have arisen at Delhi; and (c) The article could not be downloaded and received by the Plaintiff within Delhi as admittedly the Plaintiff down 'carry on business' at Delhi, does not have a branch office within Delhi and further apart from the plaintiff's own officers (which is not the claim of the Plaintiff), the Plaintiff does not even aver as to who/ which person 'downloaded' the article within Delhi hence providing cause for a libel claim at Delhi, and (d) the failure to identify members of the 'Patients', 'Public, or 'Officials of the Government of "India", who substantiate such publication in the sense of libel, but only a vague reference to 'Patients', 'Public, or 'Officials of the Government of India', who the Plaintiff claims downloaded the impugned articles fails to show at threshold the libel claimed to have occurred within Delhi. It is pertinent to note that neither are the stated persons who downloaded the allegedly defamatory article identified by name nor has any document by way of correspondence, phone records or even affidavits been filed with the Plaintiff which at threshold provides the required material fact which show that the stated article was indeed downloaded by genuine persons at Delhi who conveyed their shock, thereby providing a basis to claim that a part of the cause of action has arisen in Delhi.

5. Additionally, the Plaintiff's assertion that the mere fact that the suit C.S. (O.S.) No.2279 of 2009 ("**BMS Suit**") is pending before this Hon'ble Court confers jurisdiction on the court has to be rejected outright for the following reasons:

- A. The said argument is not a ground available under the Code of Civil Procedure, 1908 for a Court to assume jurisdiction in respect of any suit.
- B. The present defendant is not a party to the said BMS suit.
- C. Further, the Plaintiff itself has stated that the present suit is not connected in any manner with the BMS Suit and has an independent cause of action.

The Plaintiff itself has challenged the jurisdiction of this Hon'ble Court in paragraph 6 of its written statement in CS (OS) 2279/2009 / the BMS Suit. It is stated that even subsequently the Plaintiff has not withdrawn its objections on lack of territorial jurisdiction to the BMS. It is stated that the Plaintiff's statements are starkly contradictory with its stand in CS (OS) 2279/2009, wherein it claimed that the Hon'ble Court cannot exercise Jurisdiction as the Plaintiff (a) does have an office at Delhi and (b) does not carry on business at Delhi. The Plaintiff's contradictory statements reek of mala fide and reveal its propensity to engage in duplicity with a view to prevailing in court proceedings at any cost. The Plaintiff's contradictory and mala fide statements, in the respectful submission of the Defendant would not evoke confidence of this Hon'ble Court.

6. Admittedly, it is the Plaintiff's own case in the BMS suit that the Plaintiff does not carry on business within the territorial jurisdiction of this Hon'ble Court, nor is the registered office of the Defendants located within this Hon'ble Courts jurisdiction. Furthermore, the Plaintiff has not been able to demonstrate, as

stated above, as to how any part of the cause of action has arisen within the jurisdiction of this Hon'ble Court. Accordingly, the Plaint is liable to be returned under order VII rule 10 of C.P.C for presentation as per law to a 'proper court'.

7. It is further submitted that the present suit is bad for non-joinder of necessary parties. The Plaintiff alleges that the Defendant colluded with Bristol Myers Squib, Inc., to publish the allegedly defamatory posts on the website, www.spicyip.com ("SpicyIP"). However, the Plaintiff has failed to make Bristol Myers Squib as a party to the present suit. It is also submitted that the Plaintiff claims that the Defendant's allegedly defamatory statements were published in the Economic Times, a Times of India publication. Here again, the Plaintiff has failed to make the Times of India/ Economic Times a party to the present suit. It is submitted that the present suit, as framed cannot be adjudicated without making the said party as a Defendant to the suit, as the prayers of the Plaintiff cannot be granted without these necessary parties. Hence, the present suit is liable to be returned on this ground alone.

8. The present application is filed *bona fide* and for the ends of justice and grave prejudice and harm would be caused to the Applicant in the event the present application is not allowed.

PRAYER:

9. In the facts and circumstance of the present case, the defendant humbly prays that this Hon'ble Court:

- a) Return the plaint filed by the plaintiff;
- b) Pass any other order this Hon'ble Court deems fit in the facts and circumstances of the present case.

It is prayed accordingly



A handwritten signature in black ink, appearing to be "Shamnad Basheer".

Mr. Shamnad Basheer
(Defendant)

Through

A handwritten signature in black ink, appearing to be "TMT Law Practice".

TMT Law Practice

Kolkata

Date: December

12, 2012

Advocates for the Defendant

~~12/12/12~~ *[Handwritten signature]*



IN THE HIGH COURT OF DELHI AT NEW DELHI

(Ordinary Original Civil Jurisdiction)

I.A. No. *23367* of 2012

In

C.S. (OS) 2475 of 2012

Natco Pharma Ltd.

...Plaintiff

Versus

Shamnad Basheer

...Defendant

Affidavit of Mr. Shamnad Basheer, age about 36 years, S/o Mr. M. M. Basheer, R/o National University of Juridical Sciences, Salt Lake, Sector III, 12 LB Block, Kolkata - 700098



I, the above named deponent, do hereby solemnly affirm and declare as under:

1. I am the Defendant in the present matter and am conversant with the facts and circumstances of the present case. I am authorised and competent to swear and depose this affidavit.
2. I have read the contents of the accompanying application under Order 7 Rule 10 read with Section 151 of C.P.C. and say that the same are true to the best of my knowledge and derived from records maintained by me.
3. I say that I adopt the contents of the accompanying applications part and parcel of my present affidavit as the same are not reproduced herein for the sake of brevity.

[Handwritten signature]

DEPONENT

VERIFICATION:

Verified at Kolkata on this, the 12th day of December, 2012 that the contents of paragraphs 1 to 3 of my above affidavit are true to my knowledge and nothing material or relevant has been concealed there from.

[Handwritten signature]

DEPONENT

[Handwritten signature]
S. Poddar
Notary, West Bengal
Cal-87

12 DEC 2012

Identified by me