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

% *Judgment delivered on: 10/04/2026*

\+ **CS(COMM) 456/2023, I.A. 12412/2023, I.A. 22866/2023 & I.A. 23176/2023**

INNOVATION GLASS INDIA PVT LTD AND ANR. .....Plaintiffs

Versus

BLICK SYSTEM INDIA PVT LTD .....Defendant

Advocates who appeared in this case

For the Plaintiffs : Ms. Diya Kapur, Senior Advocate along with Mr. Sangram Singh R. Bhonsle, Mr. S. D' Costa, Ms. Pushkara A. Bhonsle, Mr. Nrupal A. Dingankar, Mr. Sanmitra Y. Pol, Mr. Raghav Kumar and Mr. Aaditya Laddha, Advocates.

For the Defendant : Mr. J. Sai Deepak, Senior Advocate along with Mr. Utkarsh Joshi, Ms. Sudarshana Bandopadhyay, Mr. Krishan Singhania, Ms. Srishti Singhania, Mr. Manas Adhangle, Mr. Vinay Thakur, Mr. Avinash, Ms. Anjali Menon, Mr. Om Singhania & Mr. Navneet Kumar Shukla, Advocates.

CORAM:
HON'BLE MR. JUSTICE TEJAS KARIA

JUDGMENT

TEJAS KARIA, J

INTRODUCTION

1. The Plaintiffs have filed the present Suit under Section 48 read with Section 109 of the Patents Act, 1970 ("**Act**") seeking permanent injunction, infringement of patent and rendition of accounts with regards to patent

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bearing Patent No. IN284904 titled "*Sectional Construction Assemblies*" ("**Suit Patent**") granted in favour of Plaintiff No. 2, *Innovation Glass India Pvt. Ltd.* and thereafter licensed to Plaintiff No. 1, *Franz Safford vide* a License Agreement dated 17.11.2022.

2. Prior to the filing of the present Suit, Plaintiff No. 1 issued a cease and desist notice dated 24.08.2020 to the Defendant stating violation of the Suit Patent which was responded by the Defendant, but no case was initiated at that point in time. Thereafter, again in August, 2022, the Plaintiffs sent a subsequent cease and desist notice stating violation of the Suit Patent which was responded to by the Defendant, but no case was initiated. Thereafter, again in February, 2023, the Plaintiffs sent a legal notice stating violation of the Suit Patent which was responded to by the Defendant. But this time, the Defendant in April 2023 filed a Revocation Petition bearing C.O. (COMM. IPD-PAT) No. 4/2023 ("**Revocation Petition**") under Section 64 of the Act seeking revocation of the Patent IN 284903 granted to Plaintiff No. 2 and thereafter, licensed to Plaintiff No. 1 *vide* a License Agreement dated 17.11.2022. Lastly, in July 2023, the present Suit was filed.

I.A. No. 24284/2023

3. This Application is filed on behalf of the Defendant under Order VII Rules 10 and 11 read with Section 151 of the Civil Procedure Code, 1908 ("**CPC**") seeking rejection / return of the Plaint.

4. On 05.12.2023, notice was issued in the present Application. In the integrum, the Defendant also filed its Written Statement ("**WS**"), which was taken on record by order of 03.10.2023. Thereafter, on 16.10.2023, the Plaintiffs filed I.A. No. 20475/2023 seeking to amend the Plaint in which notice was issued on 16.10.2023.

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SUBMISSIONS ON BEHALF OF THE APPLICANT / DEFENDANT

5. The learned Senior Counsel for the Defendant made the following submissions:

5.1. The Plaint, on face of it, does not disclose any cause of action, wholly or in part, arising within the territorial jurisdiction of this Court. The Plaintiffs have sought to invoke jurisdiction by relying upon the proviso to Section 104 of the Act and Section 20 of the CPC. Section 104 of the Act does not apply to the present case and does not help the Plaintiffs in creating jurisdiction. The proviso to Section 104 of the Act had also been wrongly interpreted by the Plaintiffs. The Defendant cited the decision in ***Aloys Wobben & Anr. v. Yogesh Mehra & Ors.***, (2014) 15 SCC 360, which has been interpreted wrongly by the Plaintiffs. The Defendant has not filed any counterclaim for revocation of the patent but has filed a Revocation Petition. There is a fundamental difference between a revocation petition under Section 64 of the Act and a civil suit by a patent holder seeking injunction against infringement of the patent under Section 104 of the Act as has been held by this Court in ***Dr. Reddy's Laboratories Limited and Another v. Controller of Patents and Others***, 2023 SCC OnLine Del 4701. If revocation proceedings succeed, the patent is effaced from the register of patents. On the other hand, in a patent infringement suit, the validity of a patent is challenged as a defence under Section 107(1) of the Act. Thus, the reason that the Revocation Petition has been filed before this Court, does not grant jurisdiction to file the patent

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infringement suit before this Court as both are independent proceedings.

5.2. Further, none of the requirements under Section 20 of the CPC are satisfied in the present case. The Defendant is situated in Thane, Maharashtra and does not carry out any business within the territorial jurisdiction of this Court. None of the alleged acts of infringement or projects relied upon by the Plaintiffs are situated within Delhi and therefore, no part of the cause of action has arisen within the territorial jurisdiction of this Court.

5.3. Only after the Defendant raised a specific objection to territorial jurisdiction in its WS, the Plaintiffs filed an amendment Application bearing I.A. No. 20475/2023 seeking to introduce new averments in an attempt to create jurisdiction. Such amendment seeks to rely upon the location of Airports Authority of India ("**AAI**") in Delhi, a chain of contractual arrangements and an alleged bid for a project in Delhi. These averments were not part of the original Plaint and are clearly an afterthought to cure the defect of jurisdiction. Jurisdiction must be determined on the basis of the plaint as originally filed and cannot be conferred by way of subsequent amendment. Reliance was placed upon the decision in ***Archie Comic Publications Inc. v. Purple Creations (P) Ltd.***, 2010 SCC OnLine Del 3101 while making the above submission.

5.4. Where the plaint does not disclose territorial jurisdiction, this Court cannot entertain an application for amendment. In such a case, the only course available is to return or reject the plaint. The amendment Application bearing I.A. No. 20475/2023 filed by the

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Plaintiffs is not maintainable and cannot cure the fundamental defect in jurisdiction. Reliance was placed upon ***HSIL Limited. v. Imperial Ceramic & Anr.***, 2018 SCC OnLine Del 7185 while making the above submission. The relevant extract is reproduced hereunder:

> "***22.*** *Thus, if the plaint in these suits as it exists, does not disclose this Court to be having territorial jurisdiction, then the only option for this Court is to return/reject the plaint and this Court would not have jurisdiction to even consider the application of the plaintiff for amendment of the plaint and which amendment, if allowed, would disclose the plaint as having the necessary averments for this Court to have jurisdiction to entertain the suit.*"

5.5. If the amendments being sought by the Plaintiffs are entirely allowed, there is no jurisdiction created in terms of Section 20 of the CPC. The basis on which the Plaintiffs are seeking jurisdiction in Delhi is that the Maryada Purushottam Shri Ram International Airport ("**Ayodhya Airport**") which is situated in Uttar Pradesh, an initiative by AAI having its registered office in Delhi.

5.6. The Plaintiffs further claim that the Defendant is bidding for a project named '*Commercial Complex @ Khyber New Delhi*' in New Delhi ("**Khyber**") for which no documentary evidence has been provided. In any case, even if it is established that the Defendant has submitted a bid for Khyber, the Plaintiffs and Defendant are in the same line of business and simply bidding for a project does not amount to infringement of the Suit Patent.

5.7. Allegations for patent infringement in respect of a project that has not even been awarded to any party are malicious. A project which has not been constructed cannot be a determining factor for

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establishing jurisdiction in Delhi. Thus, no 'reasonable apprehension' to establish jurisdiction in terms of *quia timet* action has been demonstrated by stating that any possible infringement has been demonstrated within the territorial jurisdiction of this Court.

5.8. Hence, I.A. No. 24284/2023 for rejection / return of the Plaint be allowed and the Plaint be returned / rejected.

SUBMISSIONS ON BEHALF OF THE PLAINTIFFS

6. The learned Senior Counsel for the Plaintiffs made the following submissions:

6.1. The Revocation Petition has been filed by the Defendant before this Court, the averments made therein and the relief sought for in the Revocation Petition collectively form the cause of action giving rise to the Suit for patent infringement. The principle of ***Aloys Wobben*** (*supra*) is equally applicable in circumstances where a revocation petition and a suit are filed, and therefore, the institution of the Revocation Petition before this Court confers jurisdiction to entertain the present Suit.

6.2. The AAI situated in New Delhi, opened / issued a tender e-bid dated 29.06.2021 for the construction of Pre-Engineered Buildings and other associated works on Design and Build Basis ("**Tender**"), and the supply of a glass façade pursuant to such tenders was made by the Defendant infringing the Suit Patent. The cause of action of the present Suit has, therefore, arisen within the jurisdiction of this Court. Further, the Defendant is also bidding to supply a new glass façade to Khyber, thereby, infringing the Suit Patent.

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6.3. Both the Parties had participated for a project *viz.* Ayodhya Airport which is an initiative of the AAI having its registered office in Delhi. The Tender was granted to the Defendant *vide* letter dated 02.12.2021 to *M/s S.K. Integrated Consultants through Shankar Fenestration & Glasses India Pvt. Ltd.* having its registered office in Delhi. Since the Ayodhya Airport, though admittedly to be executed in Uttar Pradesh, has the office of the owner of the project in Delhi, in terms of Section 20(c) of the CPC, it can be determined that the cause of action of the present Suit has partly arisen within the jurisdiction of this Court. Even though the Ayodhya Airport is executed outside Delhi, the originating tendering authority being, AAI situated in Delhi gives rise to a part of the cause of action within the meaning of Section 20(c) of the CPC.

6.4. The amendment sought by the Plaintiffs does not alter the nature of the Suit or introduce any new cause of action, but merely clarifies and elaborates the existing pleadings. Such an amendment is necessary for proper adjudication of the dispute and does not cause any prejudice to the Defendant. Reliance was placed upon the decision in ***Gaganmal Ramchand v. Hongkong and Shanghai Banking Corporation,*** 1950 SCC OnLine Bom 20 while making the above submission.

6.5. A revocation petition filed under Section 64(1) of the Act can also be construed as a counterclaim in a suit for infringement of patent, more particularly, for the purpose of revocation of such a patent, on the grounds enumerated in Section 64(1) (a) to (q) of the Act. The decision in ***Aloys Wobben*** (*supra*) can also be interpreted to mean

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that since a counter-claim under the Act has to be filed in the same Court in which the plaint has been instituted, therefore, since a counterclaim under the Act is a revocation petition under Section 64(1) of the Act, a revocation petition ought to be filed in the same Court in which the plaint has been instituted. Therefore, in the present case, since the Revocation Petition is filed prior in time before this Court, the present Suit has also been instituted before this Court as the Revocation Petition is nothing but equivalent to a counterclaim filed in the present proceedings.

6.6. The decision in ***HSIL Limited*** (*supra*) is not applicable to the present case. Errors of a 'defective jurisdiction' are curable defects and do not fall within the scope of Order VII Rules 10 and 11 of the CPC. The Plaintiffs have already sought to cure any such defect by filing an amendment application bringing on record additional facts including subsequent events.

6.7. Reliance was placed upon the decision in ***Dr. Reddy's Laboratories Limited & Anr. v. The Controller of Patents & Ors.*** 2022:DHC:004746, wherein this Court reiterated that Section 64 of the Act confers an independent right to any person interested in a patent or the Central Government to seek revocation as held in ***Ajay Industrial Corporation v. Shiro Kanao of Ibaraki City***, AIR 1983 Delhi 496, wherein while dealing with two petitions filed under Section 64 of the Act seeking revocation of patents, it was held that wherever the 'commercial interest' of the applicant is affected, a revocation petition could be filed in the concerned High Court.

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6.8. Once an amendment is allowed unless it is expressly excluded by the Court, a plaint or petition would be deemed to have been filed as it appears after the amendment. The unclear and ambiguous pleadings can be rectified through an amendment. Reliance was placed upon the decisions in ***Archie Comic Publications Inc.*** (*supra*) and ***Kedar Lal Seal & Anr. v. Hari Lal Seal***, 1951 SCC 1189 while making the above submission.

6.9. Procedural law is intended to facilitate and not to obstruct the course of substantive justice. Provisions relating to pleadings in civil cases are meant to give to each side intimation of the case of the other so that it may be met, to enable Courts to determine what is really at issue between the parties, and to prevent deviations from the course which litigation on particular causes of action must take. Reliance was placed upon the decision in ***M/s Ganesh Trading Co. v. Moji Ram***, (1978) 2 SCC 91 while making the above submission.

6.10. There is no dispute with the proposition that a *quia timet* action is based upon an apprehended use and is preventive in nature intended to prevent an apprehended wrong and an anticipated mischief. It is settled law that the Court cannot exercise the power to return or reject the plaint where the averments made in plaint do disclose cause of action. As to what constitutes a 'cause of action', has been described as every fact, which, if traversed, would be necessary for the plaintiff to prove for supporting his right to a judgment of the Court. Reliance was placed upon the decisions in ***Allied Blenders & Distillers Pvt. Ltd. v. Prag Distillery Pvt. Ltd.***, 2017 SCC OnLine Del 7225 and ***Shilpa Medicare Limited v. Bristol-Myers***

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Squibb Company, 2015 SCC OnLine Del 11164 while making the above submission.

6.11. For the purpose of deciding an application under Order VII Rule 11 of the CPC, the averments in the plaint alone are to be considered and the defence raised by the Defendant is irrelevant at this stage. The Plaint must be read as a whole and if it discloses a cause of action, it cannot be rejected. Reliance was placed upon the decisions in ***Saleem Bhai v. State of Maharashtra***, (2003) 1 SCC 557 and ***Mayar (H.K.) Ltd. v. Vessel M.V. Fortune Express***, (2006) 3 SCC 100 while making the above submission.

6.12. The ouster of Order VI Rule 17 of the CPC will throttle the very lifeline of Order VII Rule 11 of the CPC. Instead of promoting, it would defeat the ends of justice. Order VI Rule 17 of the CPC is held to be neither restricted nor controlled by Order VII Rule 11 of the CPC. Reliance was placed upon the decision in ***Wasudhir Foundation v. C. Lal & Sons***, 1991 SCC OnLine Del 569 while making the above submission.

6.13. Accordingly, the present Application be dismissed.

REJOINDER SUBMISSIONS ON BEHALF OF THE APPLICANT / DEFENDANT

7. The learned Senior Counsel for the Defendant made the following submissions:

7.1. The reliance on the decision in ***HSIL Limited*** (*supra*) is not applicable to the present case as it is only if the Court decides that this Court has the jurisdiction to try the present Suit, then the Court can allow or reject the application filed for amending the Plaint.

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7.2. The reliance on the decision in ***Aloys Wobben*** *(supra*) is misplaced. The ratio of the said decision is not applicable in the present case as the Defendant has not filed any counterclaim for revocation of patent in the Suit filed by the Plaintiffs for the alleged infringement of the Suit Patent.

7.3. A revocation petition can be filed on various statutory grounds, including lack of novelty, whereas a suit for patent infringement is premised on alleged infringement of patent rights; the two proceedings being distinct in nature, scope and consequence, are capable of being adjudicated independently.

7.4. The act of opening or issuance of a tender by AAI from New Delhi is no infringement of patent, hence, does not give any cause of action to the Plaintiffs for filing a suit. Further, the Defendant purported bidding to supply a new glass façade for Khyber does not by itself give any cause of action to the Plaintiffs to file a suit of patent infringement against the Defendant. Any reliance on the above two instances for conferring jurisdiction on this Court to try the suit of infringement of patent, is contrary to law laid down under Section 20 of the CPC.

7.5. Section 20(c) of the CPC requires the Plaintiffs to "*demonstrate*" that the cause of action has wholly or partly arisen before this Court. None of the construction projects based on which the allegations of infringement have been made on the Defendant were in Delhi.

7.6. Both, the Plaintiffs and the Defendant operate in the same industry and participation in bidding processes is a normal commercial

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activity. Mere submission of a bid does not constitute infringement in the absence of actual use, manufacture or delivery of the allegedly infringement of the Suit Patent. The contract in question not having been awarded, the allegations are speculative and premature.

7.7. A preliminary objection to the maintainability of the Suit before this Court in the WS, specifically that revocation and counterclaim are distinct from one another. Reliance was placed upon the decision in ***Dr. Reddy's Laboratories & Anr. v. Controller of Patents and Ors.***, 2023 SCC OnLine Del 4701, wherein it was held that in the absence of any provision by which a revocation petition under Section 64 of the Act can be treated as a suit, the Court cannot deem a revocation petition to be a suit.

7.8. The amendment Application being I.A. No. 20475/2023 was moved to confer cause of action when the issue was raised in the WS. Where the Plaint does not disclose territorial jurisdiction at the outset, this Court cannot entertain any application in such a suit; the Plaintiffs have the option to withdraw and re-file with proper pleadings.

7.9. An application under Order VI Rule 17 of the CPC cannot be heard if the Court does not have territorial jurisdiction to try the case. Reliance was placed upon the decision in ***Archie Comic Publications Inc.*** (*supra*), wherein it was held that if a plaint is bereft of jurisdictional facts, the Court has no jurisdiction to proceed with the suit or to allow an amendment.

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7.10. A prayer for amendment cannot be allowed where the nature of the suit / cause of action is amended. Reliance was placed upon the decision in ***Life Insurance Corporation of India v. Sanjeev Builders Private Limited and Ors.***, Neutral Citation: 2022 INSC 896, wherein it was held that if the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed.

7.11. The decision in ***Kedar Lal Seal & Anr.*** (*supra*) has no bearing on the present matter, as the said decision does not concern Intellectual Property Rights. The amendment sought in the present Application is fundamentally misconceived, for its very foundation finds no place in the Plaint.

7.12. In ***M/s Ganesh Trading Co.*** (*supra*), it was held that the complete omission to properly invoke the jurisdiction from the plaint cannot be termed as a mere 'shortcoming'. The case further states that defective pleadings are only curable when it is not completely absent. The present Plaint was completely devoid of any proper jurisdiction paragraph.

7.13. In ***Allied Blenders & Distillers Pvt. Ltd.*** (*supra*), the learned Division Bench held that the learned Single Judge erred in rejecting the plaintiff's apprehension of the defendant selling products in Delhi for the lack of supporting material. The plaint has to be read as a whole, showed a composite cause of action both existing in multiple states. However, the present Plaint is silent on the territorial jurisdiction. In ***Shilpa Medicare Limited*** (*supra*), it was

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held that the plaint is acquiescent on the *quia timet* action and the said argument has no foundational averment in the plaint.

7.14. In ***Saleem Bhai*** (*supra*), the written statement had been filed after the Order VII Rule 10 of the CPC had been filed by the defendant. In ***Mayar (H.K.) Ltd.*** (*supra*), the general principle that the plaint has to be read as a whole was reiterated by the Court.

7.15. In ***Wasudhir Foundation*** (*supra*), the decision specifically states that the rejection of the plaint precludes the plaintiff from filing a fresh suit correctly. However, it does not provide that a jurisdiction can be included through an Order VI Rule 17 of the CPC application to a plaint. The Court made an observation that this judgment should be confined to their own facts. Thus, the Plaintiffs cannot completely rely on this decision, and the decision can be distinguished based on the facts of the present case.

7.16. Accordingly, the present Application be allowed.

I.A. No. 20475/2023

8. This is an Application filed on behalf of the Plaintiffs under Order VI Rule 17 read with Section 151 of the CPC seeking amendments to the Plaint.

9. The Plaintiffs seek to amend Paragraph Nos. 7(f), 7(l), 12(b), 12 (c), 12(cc) and add 13(c) to (f) of the Plaint.

SUBMISSIONS ON BEHALF OF THE APPLICANTS / PLAINTIFFS

10. The learned Senior Counsel for the Plaintiffs made the following submissions:

10.1. As per Order VI Rule 17 of the CPC, the Court may at any stage of the proceedings allow either party to either alter or amend the pleadings in a such a manner and on such terms as maybe just and

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all such amendments shall be made as may be necessary for the purpose of determining the real question in controversy between the parties. The Plaintiffs have only introduced clarificatory changes with regards to the Ayodhya Airport. It is settled law that the Court can take into notice subsequent events and / or changed circumstances and allow an amendment application.

10.2. The Plaintiffs have also brought on record additional material relating to the Khyber project, including the inquiry e-mail dated 04.08.2023 along with bill of quantities and drawings, which demonstrate continuing and imminent acts of infringement and are relevant for adjudication of the dispute.

10.3. Unclear or ambiguous pleadings can be rectified through an amendment. In ***Archie Comic Publications Inc.*** (*supra*), the Court held that in the case of unclear or ambiguous pleadings in a plaint, the same may be allowed to be amended to clarify the already pleaded facts, till the same does not give rise to addition of a new cause of action or pleading of new facts.

10.4. No prejudice would be caused to the Defendant if the amendment is allowed. In ***Kedar Lal Seal & Anr.*** (*supra*), it was held that Courts should be slow to throw out a claim on a mere technicality of pleading, when substance is there and no prejudice is caused to the other side, however clumsily or inartistically the plaint may be worded.

10.5. The amendment does not introduce a new cause of action. In ***M/s Ganesh Trading Co.*** (*supra*), the Court held that procedural law is intended to facilitate and not to obstruct the course of substantive

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justice. A cause of action is constituted by the whole bundle of essential facts which the plaintiff must prove before he can succeed in the suit. If an essential fact is lacking from the averment in the plaint, the cause of action will be defective and defective pleadings are generally curable, if the cause of action sought to be brought out was not *ab initio* completely absent.

10.6. Defective pleadings should not result in prejudice to a party. In ***Ex. Nursing Orderly A.K. Bhagat v. Union of India***, 2019 SCC OnLine Del 10689, the Court held that when, even well-trained and skilled legal minds are known to make mistakes while framing pleadings and documents, and the law is that such mistakes should not result in prejudice to the concerned party, it would be unfair and rather harsh to lay down higher standards for scrutinizing documents.

10.7. A defective cause of action can be cured by amendment. In ***Gaganmal Ramchand*** (*supra*), the Court held that in a case when the plaint discloses an imperfect or defective cause of action, the said defect can be cured by allowing the plaintiff to make an amendment to the plaint.

10.8. *Bona fide* amendments necessary for determining the real controversy ought to be allowed. Reliance was placed upon the decision in ***Mrs. Evelyn J. Disney v. Rajeshwas Nath Gupta & Ors.***, 1995 (33) DRJ (DB) while making the above submission.

10.9. Accordingly, the present Application be allowed.

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SUBMISSIONS ON BEHALF OF THE DEFENDANT

11. The learned Senior Counsel for the Defendant made the following submissions:

11.1. It is settled law that amendment under Order VI Rule 17 of the CPC is permissible only if necessary for determining the real controversy between the parties. The present Application seeks to confer territorial jurisdiction upon this Court, which was absent in the Plaint as originally filed, and is therefore, impermissible in law. Reliance was placed upon the decision in ***HSIL Limited*** (*supra*) while making the above submission.

11.2. The Plaintiffs, fully conscious of the absence of cause of action within this Court's jurisdiction, have attempted to manufacture jurisdiction through remote and speculative pleadings which the Plaintiffs seek to add by way of the present Application.

11.3. The present Application discloses the following averments:

a. Ayodhya Airport project constructed by the Defendant was commissioned by the AAI, having registered office in Delhi;

b. AAI awarded the project to *M/s SK Integrated Consultants* having their office in Delhi, who subcontracted to Shankar Fenestration, who have their registered office in Uttar Pradesh, who in turn subcontracted the project to the Defendant;

c. The Defendant was also allegedly bidding for a project in Delhi, namely, Khyber. However, no supporting documents to the allegations were submitted by the Plaintiffs.

These new abovementioned pleadings are not part of the original Plaint and are an afterthought to cure the objection to territorial

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jurisdiction. It is settled law that jurisdiction must be established from the averments in the plaint itself, not through subsequent pleadings or speculative assertions.

11.4. The Defendant has neither a business presence within this Court's jurisdiction nor any project involving the alleged infringement within the territorial jurisdiction of this Court. The contractual chain relied upon does not disclose any cause of action attributable to the Defendant in Delhi. The Plaintiffs tried to confer jurisdiction based on an alleged bidding process in Delhi namely, Khyber, in which the Defendant purportedly participated, without any substantiating documents. Pertinently, merely bidding for a project does not amount to infringement. Reliance was placed upon the decision in ***Archie Comic Publications Inc.*** (*supra*), wherein it was held that where the Court lacks territorial jurisdiction, it cannot entertain an amendment application.

11.5. The absence of jurisdictional pleadings cannot be treated as a mere drafting defect. The liberal interpretation applies only where foundational facts exist, which are absent in the present case. Reliance was placed upon the decisions in ***Ex. Nursing Orderly A.K. Bhagat*** (*supra*) and ***Teva Pharmaceutical Industries Ltd. v. Natco Pharma Ltd***., (2014) 210 DLT 591 (DB) while making the above submission.

11.6. The proposed amendments in the present Application cannot be taken into consideration for determining I.A. No. 24284/2023 being filed for return / rejection of Plaint. In ***Gaganmal Ramchand***

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(*supra*), the Court can only permit amendment to prevent an otherwise curable pleading from being rejected.

11.7. Accordingly, the present Application be dismissed.

ANALYSIS AND FINDINGS

12. I.A. No. 24284/2023 for rejection / return of the Plaint raises an objection to the territorial jurisdiction of this Court to entertain the present Suit for the infringement of the Suit Patent. Therefore, it is required to be considered whether the Plaint, as originally instituted, disclosed any cause of action, wholly or in part, within the territorial jurisdiction of this Court.

13. It is settled law that for the purposes of an application under Order VII Rule 11 of the CPC, the averments contained in the plaint alone are required to be examined to determine if the Plaint discloses cause of action and held in ***Saleem Bhai*** (*supra*) and ***Mayar (H.K.) Ltd.*** (*supra*) relied upon by the Plaintiffs, which hold that the plaint must be read as a whole.

14. In the present case, Paragraph Nos. 12 and 13 of the Plaint detail the factual background pertaining to the projects, including Ayodhya Airport and the Defendant's involvement. Referencing Ayodhya Airport in the Plaint was sufficient as the Tender for the same was issued by AAI having office in Delhi. Furthermore, the Tender was awarded to the Defendant *via* letter dated 02.12.2021 to *M/s S.K. Integrated Consultants through Shankar Fenestration & Glasses India Pvt. Ltd.*, also having its registered office in Delhi. Although the execution of the Ayodhya Airport project was outside Delhi, the origin of the tendering authority, AAI being in Delhi, establishes a partial cause of action within the meaning of Section 20(c) of the CPC.

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15. In view of the proviso to Section 104 of the Act and the decision in ***Aloys Wobben*** (*supra*), where the defendant sought revocation, it would not be permissible to raise the counter claim in the suit for infringement. As the Defendant has instituted the Revocation Petition on 10.04.2023 prior to filing of the present Suit, it would not be permissible for the Defendant to raise a counter claim in the present Suit. Accordingly, a conjoint reading of Sections 64 and 104 of the Act indicates that the same Court, which is deciding the Revocation Petition should also decide the Suit for infringement. Accordingly, this Court has jurisdiction to entertain the present Suit.

16. Furthermore, *quia timet* principles as held in ***Allied Blenders & Distillers Pvt. Ltd.*** (*supra*) and ***Shilpa Medicare Ltd.*** (*supra*) are applicable to the facts of the present case as the Plaint contains foundational averments indicating imminent or credible threat of infringement within Delhi.

17. The proposed amendments in Application being I.A. No. 20475/2023 introducing the facts regarding the location of the AAI in Delhi, issuance of tenders from Delhi, the contractual chain involving entities in Delhi, and the alleged participation of the Defendant in a proposed project namely, Khyber, have the foundation already existing in the Plaint. Hence, the amendments sought by the Plaintiffs are clarificatory in nature and necessary for determining the real controversy between the Parties.

18. Accordingly, the amendments sought by the Plaintiffs do not alter the nature of the Suit or introduce a new cause of action and is clarificatory in nature by elaborating on the existing pleadings. These amendments are essential for the proper adjudication of the dispute and cause no prejudice to the Defendant.

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CONCLUSION

19. I.A. No. 24284/2023 under Order VII Rules 10 and 11 of the CPC filed by the Defendant is hereby dismissed as the Plaint sufficiently discloses the cause of action within the territorial jurisdiction of this Court and, therefore, the Plaint cannot be rejected or returned under Order VII Rule 10 or Rule 11 of the CPC.

20. I.A. No. 20475/2023 under Order VI Rule 17 of the CPC filed by the Plaintiffs for seeking amendment of Plaint is allowed. The amended Plaint is taken on record. The Defendant is granted liberty to file amended Written Statement in the Suit within a period of four weeks from date.

21. Both I.A No. 20475/2023 and I.A. No. 24284/2023 stand disposed of.

TEJAS KARIA, J

APRIL 10, 2026
'N'

Signature Not Verified
Signed By:NEELAM SHARMA
Signing Date:18.04.2026 14:56:50