

Consumer Protection in Cyberspace: Validity of E-contracts and Jurisdictional Issues

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Introduction

Computers, internet and information technology has played an important role in every sphere of human life and consumers are also affected by this environment. This virtual environment has facilitated the consumers in many ways, but unfortunately it has also raised certain problems. E-commerce has grown to become the buzzword in corporate circles. The lure of conducting global operation through a web site has become irresistible. Ironically, because a page on the World Wide Web can reach web surfers in every state in the nation and perhaps every nation on earth, there arises the issues of where exactly a person who has a cause of action, based upon a web transaction, may sue.¹ Thus, this situation created the problems of validity of online contracts and jurisdiction in case of domestic consumer disputes and cross-border consumer disputes.

In olden times, the society was composed of different people who were dependent on each other for their needs. The scope of needs of human was limited only to available goods and services. But after the industrialisation and globalisation the world has become a small village, which resulted in enlargement of the extent of markets. It ultimately led to increase in the demand from the consumer side. So, the traders supplying the goods in the market deemed themselves to be superior to the consumers. The traders started various unfair trade practices against the consumers like under weighing, black marketing, adulteration in goods etc. These unfair trade practices ultimately need to be rectified by the law for which various enactments were made by the different governments at national and international level.

In India, the interest of the consumers is protected by dozens of enactments². In spite of all these enactments the right of consumers cannot be said to be fully protected, the reason is simple that majority

¹ Nadan Kamath, "Law Relating to Computers Internet and E-commerce," 2009, 4th ed., p. 17

² a) The Sale of Goods Act, 1930; b) The Indian Contract Act, 1872; c) Agricultural Produce, (Grading and Marketing) Act, 1937; d) Drugs and Cosmetics Act, 1940; e) Drugs (Control) Act, 1950; f) Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954; g) Prevention of Food Adulteration Act, 1954; h)

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of population is not aware of laws and protections provided to them. If anyone is aware he is confident that he will not get justice by simple means, because the procedures provided for protection of rights are very lengthy, technical and expensive. The seller/trader/ service provider is in safest position and the consumer is the serving party.

The formation of a valid contract requires a proposal/offer from one side and its acceptance from the other side. But now as in E-commerce the consumer is at the pitiful condition. The seller is selling the product to the consumer for which the consumer must follow the conditions as provided by the seller. The process of online purchasing by consumers is as follows:

1. The consumer has first to visit the website of the seller.
2. Consumer must make his login ID.
3. He will select the product.
4. Then to select the option, "I have read this agreement and ready to the terms and conditions." (Most important where the interest of the consumer is being taken out with his consent and buyer has no option except to agree with the terms of seller).
5. Finally, the goods are purchased.

Here the conditions of all the companies are providing that the consumer cannot return the product other than the technical fault, jurisdiction shall be subject to the place of the seller and other conditions by which he will be in superior position than the consumer. So, one of the important essential of a valid contract i.e. freedom of will and equality between the parties is missing in the online contracts.

To protect the right of innocent consumer the General Assembly of United Nations adopted certain guidelines in 1983. In 1985 it also adopted a resolution requesting the all the member states to formulate laws for the protection of consumers and educate them in their respective territories.

The Indian Parliament enacted Consumer Protection Act, 1986, which has brought several drastic changes in consumer movement in India. The Consumer Protection Act was enacted to provide a simple and quicker access to redressal of consumer grievances. The main objective of the act is to provide better

Essential Commodities Act, 1955; i) Essential Services Maintenance Act, 1968; j) Trade and Merchandise Marks Act, 1968; k) Standards of Weights and Measures Act, 1976;l) Bureau of Indian Standards Act, 1986; m) The Monopolies and Restrictive Trade Practices Act, 1969; etc.

protection to consumers. The Consumer Protection Act, 1986 is a milestone in the history of socio-economic legislation in the country.

The Supreme Court in case of *Secretary, Thirumurugan Co-operative Agricultural Credit Society v. Lalitha*³ has interpreted that the remedies provided under the Consumer Protection Act are in addition to the remedies provided under other statutes. Hence, the fact that a remedy is specifically provided for under another statute would not necessarily oust the jurisdiction of the appropriate authority under the Act.

Formation and Validity of Online and Offline Contracts

In simple words contract means an agreement between two or more parties competent to contract to do a lawful act with free consent of all. The contract can take place orally or in writing or by conduct or by means of one or more of the means. It also means a voluntary, deliberate, and legally binding agreement between two or more competent parties.⁴ All agreements are contracts if they are made by the free consent of the parties competent to contract, for a lawful consideration and with a lawful object, and not hereby expressly to be void.⁵

The essentials of a valid physical contract are:

1. An agreement i.e. proposal and acceptance.
2. Free consent of parties to the contract.
3. Parties must be competent to contract i.e. must be major, of sound mind and not suffering from any other legal disability.
4. Contract must be made for the lawful consideration.
5. Contract must be made for lawful object.
6. Contract must not be expressly declared to be void.

In the physical mode of contract the parties must be personally present and sign the document or the document is sent by post to other party for acceptance, but in the electronic contact the parties need to

³ (2004) 1 SCC 305

⁴ Retrieved from <http://www.businessdictionary.com/definition/contract.html#ixzz34QlyW5xu> on 12/06/2014 at 07:00 p.m.

⁵ Section 10 of Indian Contract Act, 1872

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sign the documents by the electronic mode. It is done to overcome the delay in postal services and to avoid the moving of person from a distant place only to sign the document and it has led to speedy formation of contract between the parties. Electronic contracts (contracts that are not paper based but rather in electronic form) are born out of the need for speed, convenience and efficiency.⁶

A contract can only come into existence if it is lawful and consent of all the parties to it is free and properly communicated to other party. But to conclude a contract there must be communication of same. The place of formation of contract will be based totally on the communication of proposal and acceptance. The communication of proposal is complete when it comes to the knowledge of the person to whom it is made.⁷ Further, when the person to whom the proposal is made signifies his assent thereto the proposal is said to be accepted.⁸ The communication of acceptance is complete:

- As against the proposer, when it is put in the course of transmission to him and is out of the power of the acceptor
- As against the acceptor, when it comes to the knowledge of the proposer.⁹

In *ONGC v. Modern Construction and Company*¹⁰, it was held that if there is an acceptance of a tender by telegram, the contract becomes concluded where the telegram is dispatched and therefore the place of contract is that where the acceptance telegram begins its journey. But this postal rule seems to be harsh on the proposer. Sometimes, even if there is delay on the part of postal department the proposer suffers. To overcome it, the communication was made somewhat faster by means of the telephonic or telex mode. This point was made clear in *Bhagandas Goverdhandas Kedia v. Girdharilal Purshottamdas Co.*¹¹, the court held that in telephonic conversation, the position is same as the parties are in presence of each other and rule of post is not applicable to such matter. The contract is complete when the acceptance is received by the offeror at his place. So, the place of offeror is place where the contract is concluded and the court in that place is having jurisdiction to determine the matter.

Further in *Entores Limited v. Miles Far Eastern Corporation*¹², Denning L.J. observed, “when a contract is made by post it is clear law throughout the common law countries that acceptance is complete as soon

⁶ Retrived from http://dict.mizoram.gov.in/uploads/attachments/cyber_crime/electronic-contracts.pdf on 13/06/2014 at 12:30 p.m.
⁷ Section 4, Indian Contract Act, 1872
⁸ Section 2(b), Indian Contract Act, 1872
⁹ *Supra* Note 7
¹⁰ (1997) 3 GLR 1855
¹¹ 1966 SCR (1) 656
¹² (1955) 2 QB 326

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as letter is posted into post box and this is place where contract is made. But, in telephonic or telex mode the communication is instantaneous and is complete at the end of the proposer.” Thus, it has been accepted by the courts that contract can be concluded online and these are valid contracts. Combined reading of Indian Contract Act and Information Technology Act has also similar results.

In reference to contracts made orally as by telephone, or in writing as by telex or fax, that the contract is complete when and where the acceptance is received.¹³ But these principles can apply only where the transmitting terminal and the receiving terminal are at fixed points. In case of e-mail, the data (in this case acceptance) can be transmitted from anywhere by the e-mail account holder, it goes to the memory of a 'server' which may be located anywhere and can be retrieved by the addressee account holder from anywhere in the world and, therefore, there is no fixed point either of transmission or of receipt.¹⁴ It has been explained by the new legislation that what would be the time for dispatch and receipt of data in case electronic mode of communication.

According to section 13(3) of the Information Technology Act, 2000

“Save as otherwise agreed to between the originator and the addressee, an electronic record is deemed to be dispatched at the place where the originator has his place of business, and is deemed to be received at the place where the addressee has his place of business.”

Determination of Jurisdiction

Historically, the matter regarding the jurisdiction was based on territorial principles. The place of jurisdiction was based on the physical existence of the subject matter. Like in case of dispute in relation to land or immovable properties, the place where the land or such property is situated, In case of movables, where such movable is and where the cause of action arose or according to the physical existence of the person claiming. A valid contract comes into existence when one party i.e. offeror/proposer makes an offer and the other party i.e. acceptor/offeree gives his acceptance to such offer. The main requirement for formation of a contract is unqualified communication of the acceptance and this is the main point to determine the jurisdiction of the matter.

In India, the jurisdictional matter regarding all civil matters has been prescribed by Civil Procedure Code and in regard to Consumer matters by the Consumer Protection Act, but to determine the jurisdiction, we had to determine first the place where the contract has been concluded. Under the civil law/consumer law

¹³ *Halsbury's laws of England* 4th ed., Vol. 9(1), P. 434-435

¹⁴ *P.R. Transport Agency v. Union Of India*, 2006 (1) AWC 504

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jurisdiction can be determined based on the place where defendant resides or where cause of action arises. But in cyberspace or online contracts both these are difficult to establish.

If the parties agreed by contract to confer the jurisdiction on some definite court, then that court is having the jurisdiction to determine the matter, but it does not mean that it will oust the jurisdiction of the other courts. Where the parties to a contract agreed to submit the disputes arising from it to a particular jurisdiction which would otherwise also be a proper jurisdiction under the law, their agreement to the extent they agreed not to submit to other jurisdictions cannot be said to be void as against public policy. If on the other hand the jurisdiction they agree to submit to would not otherwise be proper, jurisdiction to decide disputes arising out of the contract it must be declared void being against public policy.¹⁵

It is not open to the parties by agreement to confer jurisdiction on any court which it did not otherwise possess under the Code. But where two courts have under the Code of Civil Procedure jurisdiction to try a suit an agreement between the parties that the dispute between them shall be tried in one of such courts is not contrary to public policy. Such an agreement does not contravene the section 28 of the Contract Act, 1875.¹⁶

Types of E-commerce Disputes

Types of e-commerce Disputes

Electronic commerce brings both comfort and discomfort to its users. The comforts include on-the-spot sales and purchases, competitive costs, convenience, saving time, etc. The discomforts include fraud and cyber-crimes committed against e-commerce users. At times there are disagreements and dissatisfactions as well among buyers and purchasers that cannot be resolved using traditional litigation methods.²⁴ Thus, it can be said that disputes are inevitable in the course of the life of a business, whether online or offline. The business disputes which the enterprise may encounter in e-commerce are:

A. Contractual Disputes:

Disputes that arise out of some non-fulfilment of any contractual obligation are said to be known as Contractual disputes. There are numerous kinds of contractual disputes existing in the corporate arena, some of which are:

1. Disputes between the enterprise and the Internet Service Provider: These are the dispute that arises between the enterprise and the Internet Service Provider or web-hosting services provider, including disagreements over interruptions in service, the breach in data security, etc.

¹⁵ *A.B.C. Laminart Pvt. Ltd. & Anr. v. A.P. Agencies*, SALEM 1989 SCR (2) 1

¹⁶ *Hakam Singh v. M/S. Gammon (India) Ltd.* 1971 SCC (1) 286

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2. Business-to-business disputes: These kinds of disputes usually take place between the enterprise and its suppliers such as non-performance of contractual obligations, misrepresentations, and complaints from customers regarding services provided by suppliers.

3. Business-to-consumer disputes: These disputes are common between the enterprise and its customers such as non-payment for goods or services, non-performance of contractual obligations, the poor performance of a contract, misrepresentations, breach of the privacy policy, and breach of security of confidential information. It is between the enterprise and its customers that lies the greatest possible scope for disputes.²⁵

B. Non-contractual disputes:

Non-contractual disputes are those disputes that arise due to non-observance of any statutory obligation on part of the parties to the transaction. These are the common kinds of non-contractual disputes that may arise in an online enterprise.²⁶

1. Dispute over Copyright: The enterprise might be liable for copyright infringement if it uses copyrighted material over fair use and without permission.

2. Failure in Data Protection: The enterprise may be liable for sharing or revealing confidential data of customers, as discussed in the segment on Privacy.

3. Right of Free Expression: The enterprise may be subject to defamation suits for defamatory material posted online.

4. Competition law, Domain Name Disputes: The enterprise may be subject to trademark infringement suits if it infringes a registered or otherwise legally recognized trademark. Henceforth, it is significant to note that although many of the issues such as jurisdictional issues, choice of law issues and high cost of a cross-jurisdictional litigation issue, which arise concerning the different categories of disputes, are similar, the difficulties are perhaps more pronounced in respect of business to consumer dispute transactional disputes which are often of small monetary value. Traditional methods of resolving cross-jurisdictional commercial disputes, such as international commercial arbitration, are often too costly, inconvenient and burdensome in the context of consumer disputes.¹⁷

Jurisdiction in E-Commerce and the Information Technology Act, 2000

In deciding the jurisdiction of courts in contractual disputes, the place where the —cause of action‖ has arisen plays an important role. The place where the contract is formed is considered a place where the part of the cause of action‖ has arisen. In the case of the non-instantaneous mode of communication, a

¹⁷ Mahantesh G S, Mamatha R Jurisdictional Issues in E-Commerce – A Critical Appraisal of the Indian Legal Regime
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contract is formed at a place where acceptance of the offer is dispatched. Whereas, in the case of an instantaneous mode of communication, a contract is formed at a place where the acceptance of the offer is received. Section 13 of the Information Technology Act 2000 (hereinafter referred to as the IT Act) incorporates provisions to identify the place of despatch and receiving of electronic communication, which helps in identifying the place of formation of e-contact and decides the place of cause of action and jurisdiction of courts. Section 13(3) of the IT Act reads as:

(3) Save as otherwise agreed to between the originator and the addressee, an electronic record is deemed to be despatched at the place where the originator has his place of business and is deemed to be received at the place where the addressee has his place of business.

Further, section 13(5)(b) of the IT Act provides the following provision which reads as:

(5) For the purposes of this section, – (a)

(b) if the originator or the addressee does not have a place of business, his usual place of residence shall be deemed to be the place of business; ¶

Hence, in applying the principles of section 13 of the IT Act and the principles of contract law, it may be concluded that in e-commerce, a contract is formed at the place of business or the place of residence of a consumer, the place where the consumer receives acceptance to his offer in e-commerce. Thus, the cause of action partly arises at the place of business or residence of the consumer (where the consumer makes the offer and the e-trader accepts that offer), in the event of any consumer dispute in e-commerce. Therefore, under the provisions of section 13 of the IT Act, principles of contract law and rules of the cause of action, the consumer may knock on the door of the court having territorial jurisdiction over his place of business or residence. However, the provisions under section 13 of the IT Act are subject to the contract between the parties, which gives an upper hand to the e-trader to override the default rules laid down in section 13 of the IT Act.

So far as exercising jurisdiction over foreign e-traders is concerned, the IT Act provides for the extraterritorial application of the Act. Section 75 of the IT Act expands its applicability outside the country. Section 75 of the IT Act reads as:

— Act to apply for offences or contraventions committed outside India. — (1) Subject to the provisions of sub-section (2), the provisions of this Act shall apply also to any offence or contravention committed outside India by any person irrespective of his nationality.

(2) For the purposes of sub-section (1), this Act shall apply to an offence or contravention committed outside India by any person if the act or conduct constituting the offence or contravention involves a computer, computer system or computer network located in India. ¶

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However, it has been observed that the above provision is applicable concerning the offences and contraventions as provided under the IT Act. Since the IT Act is an industry-based law, hence it does not address the issues of local consumer grievances. Secondly, whether the authority established under the IT Act would have power over foreign e-traders who enter into a contract with consumers over the internet is not clear under the existing provisions of the IT Act. Further, presuming the e-traders would be bound by the authority, yet, foreign e-traders may simply ignore such authority.⁴³ It has been argued that the extraterritorial application of the IT Act is —only self-claimed. This provision of the IT Act cannot compel foreign courts to enforce judgments passed by Indian courts based on the provisions laid down in the IT Act.⁴⁴

Apart from the above provisions, courts in India may also follow the Principles of International Law to exercise jurisdiction over foreign websites. The following are the four principles recognised as a principle of International Law for deciding jurisdiction:⁴⁵

1. Passive personality test: As per this theory, any act in foreign nation which is harmful to the national of the forum state, the foreign national may be punished for such act.
2. Protective principle: According to this principle, if the act of aliens, which is done from abroad affects the security of the state, the state can assume jurisdiction over aliens.
3. Extra territoriality principle: As per this principle, if the acts occurring abroad have an effect within the forum state, the courts in the forum state can interfere with the acts occurring in a foreign state.
4. Universal principle: According to this principle, it is a matter of international public policy to suppress any criminal activities like trafficking, hijacking. Therefore, exercising jurisdiction in such cases is justified.

In civil matters, it has been recognised that by the agreement between the parties, parties may determine applicable law and jurisdiction. Yet, in the absence of such terms in the contract, the jurisdiction can be decided based on the following objective principles:⁴⁶

1. Place of business or habitual residence of the person who has to perform the contract.
2. For the performance of the contract, the place where the necessary step was taken.
3. A place where an invitation to enter into a contract or an advertisement was received.
4. A place where an agency or a branch is located.

However, in the case of a consumer contract, it has been recognised that mandatory rules of national law shall apply irrespective of the choice of law.⁴⁷

Thus, in an internet dispute, each party and service provider may come from different jurisdictions and the effect of its transaction might be felt altogether in a different jurisdiction; therefore, it is justifiable for

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the state to assume jurisdiction over internet-based disputes. The internet allows everyone to deal with the people of every country in the world. Even without soliciting any customer in any state, simply with a website, one can receive an order for illegal goods, and bets for any prohibited services or behavior from any jurisdiction. Due to the pervasiveness of the internet, without really trying, it may be everywhere. Thus, without accepting the burden of being held liable wherever they do business, one cannot take the benefit of the convenience of the internet.⁴⁸ Though in absence of a specific provision in the IT Act, the Delhi High Court in the *Banyan Tree*⁴⁹ case tried to evolve principles to determine the jurisdiction of the court in internet-related activities, however, the following issues remain unanswered: (a) the issues concerning jurisdiction to regulate foreign e-commerce platforms doing businesses in India; (b) use of legality of jurisdiction exclusion clause or choice of law clause (by foreign e- traders) in e-commerce consumer contracts; (c) the issue concerning anonymity in internet resulting in lack of clarity about the geographical location of e-commerce platforms; (d) the issue of enforcement of Indian court's judgment in a foreign nation.

Thus, the Indian legal position is ambiguous and unclear without any specific principle for the court concerning the jurisdiction of courts in e-commerce. Hence, concrete principles are needed to determine the jurisdiction of Indian courts in the virtual world.¹⁸

Jurisdictional Issues in Cyberspace

Jurisdiction on the internet is an all-pervasive issue. Regardless of what substantive legal issues one is dealing with, whether it be copyright or defamation or privacy, jurisdiction is an issue that is constantly looming so much so that it has been said that the internet is one big jurisdictional problem.¹⁹ The main problem of internet jurisdiction is the presence of multiple parties in various parts of the world who have only a virtual nexus with each other.

The unsettled matter at international level is that, in case of involvement of jurisdiction of more than one country *where to sue?*

There is no difficulty for the application of law and jurisdiction if both the parties are citizens of same country. But if one party is non-citizen or resident of a foreign country the problem may arise which is likely to be occurred in case of online contracts.

¹⁸ Mahantesh G S, Mamatha R Jurisdictional Issues in E-Commerce – A Critical Appraisal of the Indian Legal Regime INTERNATIONAL JOURNAL OF INNOVATIVE RESEARCH IN TECHNOLOGY March 2023 | IJIRT | Volume 9 Issue 10

¹⁹ Yee Fen Lim, "Cyberspace Law: Commentaries and Material," 2008, 2nd ed., p. 68

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Now, another the question is when one country wants to give its citizens an option to sue non-residents in local courts, whether it is feasible?

This could be seen in *International Shoe v. Washington*²⁰ in which Supreme Court of U.S.A. upheld a Massachusetts Statutes, deeming those non-residents using the roads of Massachusetts consented to be sued in that state. After analyzing the perspective of natural person, the court held that a state may sue a non-resident foreign corporation provided the corporation has "Minimum Contact Test" with the forum state and provided that exercise of jurisdiction does not violate the "principle of fair play and justice". This case permits the exercise of jurisdiction in the light of "virtual" presence of defendant within a state.²¹

In so far as the position in India is concerned, there is no law as such which deals with jurisdiction as regards to non-resident defendants. However, there are a large number of cases where Courts have exercised jurisdiction over non-resident defendants. In case *India TV (Independent News Service Ltd) v. India Broadcast Live LIC & Ors*²² the domain name *Indiatvlive.com* registered and used by the defendants as a domain name for video streaming of Indian television channels. After the commencement of the action in the Delhi High Court, the defendants filed a 'Reverse Domain Name Hijacking' action in Arizona against India TV. The court was concerned with two issues:

- (a) Whether the jurisdiction over the defendants located in the US can be exercised?
- (b) Whether an injunction ought to be granted restraining the defendants from proceeding with the suit filed in the United States?

The court held that the defendant, against whom injunction is sought, is amenable to the personal jurisdiction of the court and injunction was allowed by the court.

Supreme Court of India in the case of *Oil and Natural Gas Commission v. Utpal Kumar Basu*²³ decided the question of jurisdiction in case of online contract. It was a case where the petitioner learnt about tenders being invited for a particular project at Hazira in Gujarat from advertisements appearing in the Times of India having circulation in West Bengal. By reading it at Calcutta, submitted its offer from Calcutta, made representations and also sent fax messages from Calcutta and received reply thereto at

²⁰ 326 U. S. 310 (1945)

²¹ Golak Prasad Sahoo, "Jurisdictional Jurisprudence and Cyberspace" *Assam University Journal of Science & Technology: Physical Sciences and Technology*, 2009, Vol. 4 Number II 58-66

²² 2007 (35) PTC 177 DEL

²³ 1994 SCC (4) 711

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Calcutta. A writ petition was filed before the Calcutta High Court on the plea of part of cause of action having arisen at Calcutta.

In view of the aforesaid facts, holding lack of jurisdiction on the part of Calcutta High Court, which it had assumed by passing impugned order, while allowing the appeal, the Supreme Court laid down in the following terms; ' merely because it read the advertisement at Calcutta and submitted the offer from Calcutta and made representations from Calcutta would not in our opinion, constitute facts forming an integral part of the cause of action. So also the mere fact that it sent fax messages from Calcutta and received a reply thereto at Calcutta would not constitute an integral part of the cause of action.' Where the cause of action arises from contract, and the parties have not effectively selected the governing substantive law, the relevant criteria in choice of law analysis are: (1) the place of contracting, (2) the place of negotiation of the contract, (3) the place of performance, (4) the location of the subject matter of the contract and (5) the location of the parties.

In case of *Lilly ICOS LLC v. Richie Laboratories Ltd.*²⁴ Delhi High Court has again decided similar case regarding jurisdictional issue. In this case plaintiff has invoked the jurisdiction of this court contending that the offending trademarks are being advertised by the defendant through their website which can be accessed in Delhi which is within the jurisdiction of this court. The defendant is advertising and selling on its website a Tadalafil tablet under the brand name TADARICH using a pill shape which is identical to the Cialis Tablet Trade Dress, all over the world, including India and in Delhi, upon orders being placed through their website.

Delhi High Court held mere fact that a website is accessible in a particular place may not itself be sufficient for the courts of that place to exercise personal jurisdiction over the owners of the website. However, where the website is not merely passive but is interactive permitting the users not only to have access to the contents thereof but, also subscribe to the services provided by the owners/operators, may in certain circumstances create jurisdiction in the court of that place where the website is accessible. Where the website is interactive, the level of interactivity becomes relevant and in cases of limited interactivity such interactivity may not be sufficient for a court to exercise jurisdiction.

In *Kusum Ingots and Alloys Limited v. Union of India and Anr.*,²⁵ it was observed that if a small part of the cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merits. It

²⁴ 2009(41) PTC 297

²⁵ 2004 (6) SCC 254

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was further observed that in appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of *forum conveniens*.

In case of *P.R. Transport Agency v. Union of India & Others*²⁶, Baharat Cooking Coal Limited, The respondent held e-auction for certain coal in different lots. The petitioner submitted its tender in the said auction and the same was accepted. The acceptance letter was issued on 19.7.2005 by e-mail at the petitioner's e-mail address calling to deposit the balance amount. Acting upon the said acceptance, the petitioner deposited the full amount on 28.7.2005. The cheque was accepted and encashed by respondent. Subsequently, instead of delivering the coal to the petitioner, respondent sent an e-mail dated 10.8.2005 to the petitioner saying that the sale as well as the e-auction in favour of the petitioner stands cancelled "due to some technical and unavoidable reasons". This communication has been challenged in the Writ petition before Allahabad High Court. The respondents contend that the Allahabad High Court is having no jurisdiction. Moreover, they claim that Jharkhand High Court is having jurisdiction to determine the matter. On basis of the facts of the case the Allahabad High Court held that as the email can be accessed from any place and the Petitioner is having its office at Chandauli and Varanasi, both within its jurisdiction, it is having jurisdiction to determine the matter. The High court referred Section 13(3), of the Information Technology Act, 2000.

One of the interesting provisions of Section 75 of Information Technology Act, 2000 which contemplates for offences or contraventions committed outside India. According to this provision, this Act shall apply to an offence or contravention committed outside India by any person if the act or conduct constituting the offence or contravention involves a computer, computer system or computer network located in India. Thus, this Act provides the extra-territorial jurisdiction to the Indian Courts. But there is one important condition for the cognizance of case that for the act there must be use/involvement of a computer, computer system or computer network located in India.

Conclusion

On one side, the Consumer Protection Act is protecting the rights of consumers from the scrupulous dealings of clever traders and on the other hand scammers are developing loopholes of laws. The Consumer Protection Act is an effective device to protect the interest of innocent consumers and also an effective means for the growth of business/commerce in the country. The Information Technology Act, 2000 has helped the existing laws.

²⁶ 2006(1) AWC 504

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Technology has also helped the consumer in various ways. E-commerce has revolutionized the commercial field and it is very easy for the consumers to know about the product and to purchase the suitable one. But it has also created the problems and various initiatives have been taken to overcome those problems but still consumer are humiliated, harassed and degraded. Sometimes in the enforcement of online contracts and sometimes courts are helpless due to lack of jurisdiction. In various cases if courts have taken the cause, then there are many difficulties to enforce the order of the courts.

The solution to this problem can only be made by combined efforts of all the countries, by entering treaties, whereby the citizens of those countries who are using internet, will come under 'Uniform Law of Internet' and be punished by a definite authoritative body whose decision will be binding on all the parties. For this end Online Dispute Resolution (ODR) and the concept of E-courts should also be developed, which will be helpful to solve cross- border consumer disputes. Many a times, decisions are given by the courts but same could not be executed, which ultimately undermined the power of law. The law is required to be enforced; otherwise, there will be no international security and harmony. The person who is purchasing goods or availing services from other person shall be treated as a consumer and there shall be no discrimination on the grounds of nationality.