



Place Of Suing In E-Commerce Disputes:

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“A customer is the most important visitor on our premises. He is not dependent on us. We are dependent on him. He is not an interruption in our work. He is the purpose of it. He is not an outsider in our business. He is part of it. We are not doing him a favour by serving him. He is doing us a favour by giving us an opportunity to do so”

-Mahatma Gandhi

Abstract: E-Commerce is a mean to support the trade. Effectiveness of market and improving the efficiency of market and business become possible through e-commerce. with the fourth industrial revolution and revolution in mobile industry, there is a great boom in e-commerce transactions. It is the way of avoiding physical contact while doing business transactions. Almost everything including goods and services of all kind can be brought or hired through mobile internet. E-Commerce sector is the fastest growing sector in India and in world economy. "e-commerce" means buying or selling of goods or services including digital products over digital or electronic network. This research provides an analysis and try to cover all aspects of jurisdictional issues covering to e-commerce dispute in India. This research also highlights the main legal provisions relating to e-commerce disputes.it includes the provisions of consumer protection Act and IT Act,2000 as well.

Key Words: E-Commerce, IT Act, Digital business.

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E-Commerce: E-Commerce sector is the fastest growing sector in India and world economy. It attracts investors from across the world. E-Commerce emerges due to adnate of information technology. Contracting, advertising, negotiating and promotion of business through information technology is the main goal of E-Commerce industry. Within a very short period of time, E-Commerce industry achieve substantial growth, both globally and in India.

E-Commerce provides more efficient and profitable shaping worldwide without interruption; E-Commerce website is economical than opening retail showrooms and maintain big offices. The number of employees is less required in online business as compare in traditional business. E-Commerce business is easy and faster than retail business. In many case E-Commerce industries can directly engage with the customers and solve their problems. E-Commerce market is open all days without holiday and even in nights too., customers can access anytime without any rush. It provides a complete information to the customers about the products. E-Commerce industry save time of both customers as well as manufacturers. It enables the business to understand the need and trend of customers. Thus, almost in all field whether it is price of goods or service, profit to E-Business, and the cost of advertisement, E-Business is more profitable than traditional business to both consumers and business.

Definition: to precisely defining the term ecommerce is nt easy task. Through the different legislative and judicial point of view I try to define e-commerce in the following way. Thus, various definitions by different organization and bodies given but not a single definition has yet been accepted universally

World Trade organization definition on e-commerce commonly used in general parlance by nations and adopted in original or by modification. According to World Trade Organization e-commerce means

*"Production, distribution, marketing, sale or delivery of goods and services by electronic means". An e-commerce transaction can be between enterprises, households, individuals, governments and other public or private organizations.*³

Another definition is given un the Consumer Protection Act, 2019 as Section 2 (16) of Consumer protection Ac, 2019, "e-commerce" means *buying or selling of goods or services including digital products over digital or electronic network;*

Electronic Commerce has been defined in Sec. 2(44) of the CGST Act, 2017 to mean the supply of goods or services or both, including digital products over digital or electronic network.⁴

Review of policy on Foreign Direct Investment (FDI) in e-commerce, Press Information Bureau Government of India Ministry of Commerce & Industry on 25 December 2018, define e-commerce and related terms in the following manner

³Electronic commerce; "WORLD TRADE ORGANIZATION"; available on https://www.wto.org/english/thewto_e/minist_e/mc11_e/briefing_notes_e/bfecom_e.htm, visited on 25/01/2023.

⁴ E-Commerce; Directorate General of Taxpayer Services CENTRAL BOARD OF EXCISE & CUSTOMS <https://texmin.nic.in/sites/default/files/faq-e-commerce.pdf>

***E-commerce-** E-commerce means buying and selling of goods and services including digital products over digital & electronic network.*

***E-commerce entity-** E-commerce entity means a company incorporated under the Companies Act 1956 or the Companies Act 2013 or a foreign company covered under section 2 (42) of the Companies Act, 2013 or an office, branch or agency in India as provided in section 2 (v) (iii) of FEMA 1999, owned or controlled by a person resident outside India and conducting the e-commerce business.*

***Inventory based model of e-commerce-** Inventory based model of e-commerce means an e-commerce activity where inventory of goods and services is owned by e-commerce entity and is sold to the consumers directly.*

***Marketplace based model of e-commerce-** Marketplace based model of e-commerce means providing of an information technology platform by an e-commerce entity on a digital & electronic network to act as a facilitator between buyer and seller.⁵*

According to the editor-in-chief of International Journal of Electronic Commerce, Vladimir Zwass, *‘Electronic commerce is sharing business information, maintaining business relationships and conducting business transactions by means of telecommunications networks.* According to Anita Rosen Electronic commerce refers to a wide range of online business activities for products and services. According to Thomas L. Massenburg, E-commerce is usually associated with buying and selling over the Internet, or conducting any transaction involving the transfer of ownership or rights to use goods or services through a computer-mediated network. A new definition fit to everywhere may be given as such is: *E-commerce is the use of electronic communications and digital information processing technology in business transactions to create, transform, and redefine relationships for value creation between or among organizations, and between organizations and individuals.* – Emmanuel Lallana, Rudy Quimbo, Zorayda Ruth Andam, ePrimer⁶

Legal provisions relating to jurisdiction:

E-commerce market is growing in India with a rapid speed as was not expected ever. There are many reason covid is one among them. Many central government initiatives, such as Bharat Net, Digital India, the Internet Saathi project etc. are responsible for increasing the size of the e-commerce market in India. The problem relating to the followings is the main problem arises due to rapid growth of ecommerce industry, Lack of information on consumer rights and dispute resolution mechanism,

⁵ Review of policy on Foreign Direct Investment (FDI) in e-commerce, Press Information Bureau Government of India Ministry of Commerce & Industry, 26-December-2018, available on <https://pib.gov.in/newsite/PrintRelease.aspx?relid=186804>, visited on 12.02/2023.

⁶ E- Commerce; “PONDICHERRY UNIVERSITY (A Central University) DIRECTORATE OF DISTANCE EDUCATION” at page 5. visited on https://backup.pondiuni.edu.in/storage/dde/dde_ug_pg_books/E-%20Commerce.pdf, visited on 14.02.2013.

Violation of data privacy , Delays in receiving or return of product, False/misleading information about the product, Irreversibility of transactions, Difficulties in payment and refunds, Lack of after-service customer support and care , Numerous instances of fraud, identity theft and scams and Unclear pricing mechanism and numerous surcharges.⁷

Section 19 of the Civil Procedure Code, 1908, carry provisions relating to place of suing. According to section 19 of the Code, plaintiff may file a suit for immovable property at any court in whose jurisdiction the cause of action arises or in whose court jurisdiction defendant either reside or work for gain. In *Harelishah v. Shaikh Pinda*⁸, the Privy Council held that a civil suit under section 19 of the Civil Procedure Code may either be instituted where defendant reside or where wrong has been done.⁹

according to section 34 of the Consumer Protection Act, 2019, in a consumer dispute according to this section, the complainant may file a complaint in any forum in which jurisdiction the defendant resides or personally work for gain. Farther, a complaint may also be filed where decedent reside or personally work for gain. Thus, a new clause in the form of extending jurisdiction at complainant was firstly included in any code. In these new provisions, plaintiffs place of resident also become a place of filing complaint regarding any consumer dispute including online disputes from online buying or selling of goods or hiring any services. Similar provisions applicable under section 47 in case of State Consumer Commission and under the section 58 in case of National Consumer Commission.¹⁰

In *Kiran Singh Vs Chaman Paswan*¹¹, the supreme court in this case very early in 1955 had made it clear that court all order made by a court when the court does not have the legal jurisdiction to hear the case is not good and that all are null and void. In all these cases either the Jurisdiction, be of place of suing, subject matter jurisdiction or pecuniary the result would be same. As a result, if the court lacks legal jurisdiction, it loses all authority to determine a matter. The basic rule that the court must have jurisdiction will follow in all cases when a court decide any dispute. Except in excepted circumstances, without jurisdiction, the court cannot in law pass an appropriate order.¹²

Article 3 (1)¹³ of the Convention, entitled "Freedom of Choice" states: "A contract shall be governed by the law chosen by the parties. The choice must be express or demonstrated with reasonable

⁷ Patil R. Ashok dr.; "LANDMARK JUDGMENTS ON CONSUMER LAW AND PRACTICE: 2008-2020", Ministry of Consumer Affairs, Food & Public Distribution, Government of India, New Delhi & Chair on Consumer Law and Practice, National Law School of India University, Bengaluru, Karnataka, 2021, at p. 58.

⁸ AIR 1926 PC 88.

⁹ Ibid.

¹⁰ Ojha Srishti; "Provisions For Jurisdiction Of Consumer Commissions Under Consumer Protection Act 2019 Not Retrospective In Operation: NCDRC", 21 March 2021, available on <https://www.livelaw.in/news-updates/jurisdiction-of-consumer-commissions-under-onsumer-protection-act-2019-not-retrospective-in-operation-ncdrc-171484>, visited on 12/02/2023.

¹¹ AIR (1955) 1 SCR 117

¹² Ibid.

¹³ Convention 80/934/EEC on the law applicable to contractual obligations opened for signature in Rome on 19 June 1980

certainty by the terms of the contract or the circumstances of the case. By their choice the parties can select the law applicable to the whole or a part only of the contract".¹⁴

Article 4 *Choice of court* Hague Conference on Private International Law Preliminary Draft Convention on Jurisdiction and the Effects of Judgments in Civil and Commercial Matters Adopted provisionally by the Special Commission on 18 June 1999 Stated that *If the parties have agreed that a court or courts of a Contracting State shall have jurisdiction to settle any dispute which has arisen or may arise in connection with a particular legal relationship, that court or those courts shall have exclusive jurisdiction unless the parties have agreed otherwise. Where such an agreement designates a court or courts of a non-Contracting State, courts in Contracting States shall decline jurisdiction or suspend proceedings unless the court or courts chosen have themselves declined jurisdiction.*¹⁵

Section 28 of the Contract Act, the agreement made between two parties to refer their dispute to arbitration is valid agreement. if a question has already arisen between the contracting parties, the parties to the contract may refer the question to arbitration in writing. In *M/S Atlas Export Industries v. M/S Kotak & Co.*,¹⁶ Supreme court held that if one of the parties to a contract agree to refer their dispute to arbitration, the mere fact that the one of the arbitrators living in foreign state does not nullify the agreement.¹⁷

Under the traditional rules of contracts in the real world, the place where a contract is concluded is the place where the letter of acceptance is posted (where the postal rule is applicable) and in the case of instantaneous contracts it is where the offeror receives the acceptance. The IT Act proposes that the place of the dispatch and the place of receipt is the place where the originator and the acceptor have their respective places of business. This means that irrespective of the place from where the electronic record is sent or received, the place of contract would be either a place where business of the offeror or the acceptor is. This would lead to some contradiction with the Civil Procedure Code which in Section 20 lays down that a suit may be brought up in the place where the defendant has his place of business or where the cause of action arises. The place where the cause of action occurs may be the place where the contract takes place or where the performance takes place. The IT Act appears to have fused these two concepts of place of business and the place where the contract is formed. The situation may be summed up as under: That in the case of e-mail contracts the place of contract formation will be the place where the acceptor has his place of business and in the case of web-click contracts, the place of contract will be the place where the offeror has his place of business. Thus, by fusing the concepts of place of contract formation and the

¹⁴ 41998A0126(02) 1980 Rome Convention on the law applicable to contractual obligations (consolidated version) Official Journal C 027 , 26/01/1998 P. 0034 – 0046 Convention 80/934/EEC on the law applicable to contractual obligations opened for signature in Rome on 19 June 1980

¹⁵ WIPO sct/3/3 original: English date: September 28, 1999 standing committee on the law of trademarks, industrial designs and geographical indications third session Geneva, 8 to 12 November 1999 information on the preliminary draft convention on jurisdiction and the effects of judgments in civil and commercial matters memorandum prepared by the international bureau

¹⁶ AIR 1999 SC 3286.

¹⁷ Bangia Dr. R.K.; "Contract-1", Allahabad Law Agency, 2021, at p. 255.

defendant's place of business, the jurisdictional avenues available to the aggrieved party appear to have been limited.¹⁸

In *McIntyre Machinery, Ltd v. Nicastro*¹⁹, there was a British company J. McIntyre Machinery Ltd. This company was incorporated in England and work in England. Plaintiff Robert Nicastro suffered injury by a metal-shearing machine in New Jersey. This company was made by the respondent company in England. The case against the respondent company brought in New Jersey State Court. The respondent company challenge the jurisdiction of the New Jersey court to decide the matter. The court held that because the article in this case was sold in New Jersey, the jurisdiction is new jersey court is proper. In appeal, justice Kennedy, with concurrence of other justices give the following opinion: "the due process is basic law of America. Exercising jurisdiction by new jersey court is a clear violation of the of Due Process. Due process protects the defendants right not to be coerced except by lawful judicial power. It is unwise to announce a rule of broad applicability without full consideration of the modern-day consequences."²⁰

In *Amway India Enterprises Pvt. Ltd. V. 1Mg Technologies Pvt. Ltd. & anr.*²¹, the question before the supreme court was that whether e-commerce platforms such as Amazon, Flipkart, 1MG etc.; are liable in an action as tortious liability with contractual relationship. Amway company file suit against the 1Mg Technologies Pvt. Ltd. & ors, an e-commerce platform, for several grounds. One was the selling of Amway company product above the maximum price., which according to the plaintiff lower down his company reputation in market. The other such ground of challenge was changing of return and refund policy by the platform. The e-commerce platform also levied facilitation fee which was not a part of original contract between the parties. The defendant also commits another mistake by selling the article in violation of the government guideline such as FSSAI guideline. It was held by the supreme court that e-commerce platform can not claim a Fundamental right to sell products which are only meant to be sold through direct selling. The seller on such platforms cannot claim that they have a fundamental right to sell the goods of direct selling entities without their consent. The direct selling business is being unique in nature and the government having considered it to be fit for being regulated in consumer interest and public interest, the seller on these platforms is bound to abide by the said guidelines.²²

In *World Wrestling Entertainment, Inc v. M/S Reshma Collection &ors.*²³, in this case two companies registered in different place viz; one in India and another in America. These companies entered into an e-commerce transaction. The suit file for issues arises between the parties in Delhi court. It was held that the court at the buyers place of residence is a proper power to entertain and decide the matter.

¹⁸ Kamat Devadatta; "information technology act, 2000 — a contractual perspective" available on <https://www.ebc-india.com/lawyer/articles/2004v1a2.htm>, visited on 13/02/2023.

¹⁹ 564 US 873 (2011).

²⁰ Ibid.

²¹ DEL 1322, (2019) 260 DLT 690.

²² Ibid.

²³ Ibid.

Renaissance Hotel Holdings, Inc. v. B.Vihaya Sai & Anr²⁴ A suit filed by plaintiff, a resident of America, against a resident of Bangalore. The defendants include a hotel and a managing director of that Hotel in Bangalore, India. The plaintiff wants to stop use of his trademark without his permission. He also contended that an injunction should be granted in his favor to stop defendant from using deceptive similar mark and domain name www.sairenaissance.com. Lastly the plaintiff wants to be compensated by rupees twenty-five lakh. It was held that mere online booking of hotel does not shift hotel to America. The place of business can not be outside the Bangalore. Mere online booking from another place does not confer right to jurisdiction from that place. Thus, jurisdiction to the suit would always be in Bangalore in this case because the hotel is situated in Bangalore.

Rajinder Chawla v. Make My Trip²⁵, plaintiff booked a hotel in Manali and done payment through credit card. Total Rs. 18,693 was paid through debit card. Hotel was booked for six members. Hotel booked through the defendant. Said booking was confirmed by hotel through online. On reaching the plaintiff to hotel, he was informed that only two rooms are available. The hotel authority could not arrange or immediate arrangement of all the six members. Even though the payment was already made by the party. They were forced to accommodate in two room in place of three room. Plaintiff file a complaint under the under Section 12 of the Consumer Protection Act, 1986. The territorial jurisdiction was in question in this case. It was held that the Chandigarh district forum had no territorial jurisdiction because only Manali court would have jurisdiction.

SpiceJet Limited v. Ranju Aery²⁶, air ticket from Kolkata to New Delhi were booked by the complainant through online website Yatra.com. ticket fair Rs. 70,900/- were paid through credit card. The complainant with his family reached at Kolkata airport on time but find the flight cancelled. Airport authority fail to make alternative arrangements. Complainant then arranged a connecting flight from Kolkata to Mumbai and then Mumbai to Delhi for which he paid Rs. 80,885/-. It was held by the supreme court that the online consumer can file complaint before a consumer forum for any deficiency of services

In Kusum Ingots & Alloys Limited v. Union of India and Anr²⁷ The Supreme Court has held that the High Court may apply the and invoke forum convenience test to avoid the jurisdiction to decide where only a small part of act done in his jurisdiction.

²⁴ 2009 SCC OnLine Del 258.

²⁵ First Appeal No. 355/2013 SCDRC Chandigarh.

²⁶ 2017 SCC OnLine NCDRC 739.

²⁷ AIR (2004) 6 SCC 254.

Conclusion and Suggestions:

Internet was developed to make communication between research scholar and universities. with the march of time the use of internet went into the public domain and become a part of their life including their online purchase. This article bring light on the national and international law relating to jurisdiction in online transitions including e- contract. I have covered all the relevant provisions of international law, CPC, 1908, Consumer Protection Act, 2019 and IT Act,2000 and other relevant legislation and judicial decisions. In legal provisions, status of domicile of legal person conducting business online without registration is still remain in the interpretation of court, no proper legislation could deal with this issue so far. Normal consumer could not easily understand the forum without proper consultancies about the jurisdiction from an expert advocate. It led many cases to be unregistered ported. It put burden on the higher judiciary to decide cases of jurisdiction e commerce matters.