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

+ CS(COMM) 75/2021

R X INFOTECH PRIVATE LIMITED Plaintiff
Through: Mr. Sumit Nagpal, Ms. Dolly
Luthra and Ms. Aastha Sood, Advs.

versus

JALPA RAJESH KUMAR JAIN Defendant
Through: Ms. Kangan Roda and Mr.
Sharad Besoya, Advs.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGMENT

29.08.2023

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I.A. 4953/2023 (Order VII Rule 11 of the CPC)

1. This is an application, by the defendant, under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC) for rejection of the plaint on the ground of want of territorial jurisdiction.

2. Though a finding of want of territorial jurisdiction would ordinarily carry one to Order VII Rule 10 of the CPC rather than Order VII Rule 11 of the CPC, Ms. Kangan Roda has drawn my attention to a judgment of the Division Bench of this Court in *Radico Khaitan Ltd. v. Nakshatra Distilleries & Breweries Ltd¹* which upholds the decision of a learned Single Judge to reject a plaint under Order VII Rule 11 of the CPC on the ground of want of territorial jurisdiction.

¹ (2017) 241 DLT 48



3. Without, therefore, entering into the distinction between Order VII Rule 10 of the CPC and Order VII Rule 11 of the CPC, I have proceeded to hear learned Counsel on the core issue as to whether this Court can be said to be lacking in territorial jurisdiction to adjudicate the plaint. Ms. Roda initially drew my attention to para 46 of the plaint, which deals with the jurisdiction of this Court to entertain the plaint which reads thus:

“46. That this Hon'ble Court has jurisdiction under Section 134 of the Trade Marks Act, 1999 as the Plaintiff, has been voluntarily carrying on its activities in the jurisdiction of Delhi through its head office and registered office at 601, 6th Floor Bhandari House, 91, Nehru Place New Delhi 110019, India.”

4. Ms. Roda submits that invocation of the territorial jurisdiction of this Court has, therefore, been predicated in the plaint solely on Section 134² of the Trades Mark Act, 1999. She submits that, seen solely in the light of Section 134, this plaint would not be amenable to the jurisdiction of this Court, as the case would fall within the third category of cases envisaged in para 14 of the judgment of the Division Bench of this Court in *Ultra Home Construction Pvt Ltd v. Purushottam Kumar Chaubey*³. In the said paragraph, this Court had

² 134. **Suit for infringement, etc. to be instituted before District Court. –**

- (1) No suit –
- (a) for the infringement of a registered trade mark; or
 - (b) relating to any right in a registered trade mark; or
 - (c) for passing off arising out of the use by the defendant of any trade mark which is identical with or deceptively similar to the plaintiff's trade mark, whether registered or unregistered,

shall be instituted in any court inferior to a District Court having jurisdiction to try the suit.

- (2) For the purpose of clauses (a) and (b) of sub-section (1), a “District Court having jurisdiction” shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908) or any other law for the time being in force, include a District Court within the local limits of whose jurisdiction, at the time of the institution of the suit or other proceeding, the person instituting the suit or proceeding, or, where there are more than one such persons any of them, actually and voluntarily resides or carries on business or personally works for gain.

Explanation. – For the purposes of sub-section (2), “person” includes the registered proprietor and the registered user.

³2016 SCC OnLine Del 376



expressed the opinion, apropos Section 134(2) of the Trade Marks Act that, if the plaintiff has a principal office at one place and subordinate or branch office at another place and the cause of action arises where the subordinate office is located, the plaintiff would be deemed to be carrying on business where the subordinate office is located and would necessarily have to institute the suit before the Court having jurisdiction over the subordinate office, and not before the Court having jurisdiction over the principal office, which would be *coram non judice*. The said passage reads thus:

“14. It is evident from the above observations that the interpretation given to the expression “carries on business” in the context of a defendant under section 20 of the Code has also been employed in the context of a plaintiff under the said sections 134(2) and 62(2). Thus, in addition to the places where suits could be filed under section 20 of the Code, the plaintiff can also institute a suit under the Trade Marks Act, 1999 and the Copyright Act, 1957, as the case may be, by taking advantage of the provisions of section 134(2) or section 62(2), respectively. Both the latter provisions are in *pari materia*. Under these provisions four situations can be contemplated in the context of the plaintiff being a corporation (which includes a company). First of all, is the case where the plaintiff has a sole office. In such a case, even if the cause of action has arisen at a different place, the plaintiff can institute a suit at the place of the sole office. Next is the case where the plaintiff has a principal office at one place and a subordinate or branch office at another place and the cause of action has arisen at the place of the principal office. In such a case, the plaintiff may sue at the place of the principal office but cannot sue at the place of the subordinate office. *The third case is where the plaintiff has a principal office at one place and the cause of action has arisen at the place where its subordinate office is located. In this eventuality, the plaintiff would be deemed to carry on business at the place of his subordinate office and not at the place of the principal office. Thus, the plaintiff could sue at the place of the subordinate office and cannot sue (under the scheme of the provisions of section 134(2) and 62(2)) at the place of the principal office.* The fourth case is where the cause of action neither arises at the place of the principal office nor at the place of the subordinate office but at some other place. In this case, the plaintiff would be deemed to carry on business at the place of its principal office and not at the place of the subordinate office. And,



consequently, it could institute a suit at the place of its principal office but not at the place of its subordinate office.”

(Emphasis supplied)

5. If one were to examine the issue of jurisdiction in the present case solely with reference to Section 134, then, perhaps, the submission of Ms. Roda, might pass muster. However, *Ultra Home Construction*³ itself referred, with emphasis, to *Indian Performing Rights Society Ltd v. Sanjay Dalia*⁴, which held that Section 20⁵ of the CPC would continue to apply despite Section 134 of the Trade Marks Act and that, therefore, a plaintiff could sue the defendant before any Court which would have jurisdiction either under Section 20 of the CPC or Section 134 of the Trade Marks Act. Section 20 of the CPC permits the institution of the plaint before any Court within whose jurisdiction the whole or any part of the cause of action has arisen.

6. Ms. Roda has sought to point out that there is no reference, in the plaint, to Section 20 of the CPC. As she somewhat quaintly expressed it, if one were to attempt a “Ctrl F” search of the plaint, with “Section 20” as the search term, it would yield no result.

⁴ (2015) 10 SCC 161

⁵ 20. **Other suits to be instituted where defendants reside or cause of action arises.** – Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction –

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.

Explanation. – A corporation shall be deemed to carry on business at its sole or principal office in India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.



7. The issue of whether a particular provision has been invoked in a plaint, cannot, however, be admeasured in such a fashion, despite all the benefits that technology now provides us. One is required to read the plaint wholly and in a meaningful fashion. The cause of action, it is well settled, is a compendious term for the bundle of facts which constitute the basis for institution of the suit and which the plaintiff has to prove in order to entitle itself to an order or a decree⁶. If, therefore, any part of the facts pleaded in the plaint discloses a cause of action having arisen in Delhi; then, despite there being no specific reference to Section 20 in the plaint, the suit would, nonetheless, be maintainable before this Court.

8. Various decisions of Division Benches of this Court⁷ have held that, where the defendant is carrying on its infringing activities across, *inter alia*, a website which is interactive, then, every Court which has jurisdiction over a place where the website can be interactively accessed would be competent to adjudicate on an infringement suit. The prevailing reason for so holding, as per the said decisions, is that, by making its infringing products available, or carrying out its infringing activity on a virtual platform of website, the infringer defendant has purposefully availed the jurisdiction of every Court where the website can be accessed.

9. In the present case, there is a specific assertion, in para 36 of

⁶ Refer *Gurdit Singh v. Munsha Singh*, (1977) 1 SCC 791, *State of Rajasthan v. Swaika Properties*, (1985) 3 SCC 217, *ONGC v. Utpal Kumar Basu*, (1994) 4 SCC 711, *Bloom Dekor Ltd v. Subhash Himatlal Desai*, (1994) 6 SCC 322, *A.V.M. Sales Corporation v. Anuradha Chemicals (P) Ltd*, (2012) 2 SCC 315

⁷ Refer *Absogain Retail Solutions v. Puma Se*, 2023 SCC OnLine Del 2827, *Tata Sons Pvt Ltd v. Hakunamatata Tata Founders*, 2022 SCC OnLine Del 2968, *Advertising Standards Council of India v. Reckitt Benckiser India Pvt Ltd*,



the plaint, which reads thus:

“36. That Furthermore any subsequent third-party user of the mark deceptively similar to the registered trademark of the Plaintiff that is **LAPCARE** for identical/similar activities, goods and services as that of Plaintiff, would either be considered to be the Plaintiff's themselves or someone who has been authorised by the Plaintiff to



use the mark. Such unauthorized activities and services under Plaintiff's trademark **LAPCARE** and constitute infringement of Plaintiff's rights. *Details of the products sold by the Defendant as displayed on their website are being filed with this suit.*”

10. While adjudicating on an application under Order VII Rule 11 – or Order VII Rule 10 – of the CPC, it is settled that one is to restrict oneself to the plaint along with the documents filed with the plaint. If a document is in excess of the assertions in the plaint, then, perhaps, the document could be ignored. However, the plaint in the present case specifically refers to sale, by the defendant of infringing products on its website. The pages of the website have been placed on record. The pages of the website of the defendant clearly indicate the products of the defendant. The last page of the website contains the following recital:

“BUY LAPTOP ACCESSORIES ONLINE

Lappie Care is the best laptop accessories shop to buy laptop accessories online. We offer free shipping, 7-day money back guarantee and maximum 6-months warranty. The support we provide is 24 x 7 which has benefited lot of customers. You can buy **Laptop Keyboard, Laptop Battery, Laptop Adapter**. Buy high quality laptop accessories from lappiecare. We are in the business since 2005.”

11. It is not Ms. Roda's case – as it, quite obviously, cannot be – that the facility of purchasing laptops or accessories from the



defendant's website online was not available at Delhi. Ms. Roda submits that, by a glance at the aforesaid website, it is not apparent that the products can be purchased at Delhi. The submission flies in the face of common sense and simple principles governing the internet. There is nothing on the website to indicate that an online transaction cannot be carried out within Delhi. It is legitimately presumable that it is possible to purchase laptops from the defendant's website even within the jurisdiction of this Court. The afore-noted webpage, which empowers purchase of laptop accessories from the defendant's website online, read with the concluding assertion in para 36 of the plaint, reproduced *supra*, clearly indicates that at least a part of the cause of action, within the meaning of Section 20 of the CPC, can be said to have arisen within the jurisdiction of this Court.

12. Inasmuch as Section 20 of the CPC and Section 134 of the Trade Marks Act both provide fora within which the suit could be instituted and the present suit would lie within the territorial jurisdiction of the Court, tested on the touchstone of Section 20 of the CPC, I am unable to agree with the submissions of Ms. Roda that the plaint is liable to be dismissed under Order VII Rule 11 or for that matter, even returned for presentation before any other forum under Order VII Rule 10 of the CPC. On the basis of the averments contained in the plaint seen in the light of the documents filed therewith, a *prima facie* case of rightful invocation of the jurisdiction of this Court, in the present case, by the plaintiff is made out.

13. Accordingly, this application, being devoid of merit, is dismissed.



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14. List before the learned Joint Registrar (Judicial) for completion of the pleadings, admission and denial of documents and marking of exhibits on 3 October 2023, whereafter the matter would be placed before the Court for case management hearing and further proceedings.

C.HARI SHANKAR, J

AUGUST 29, 2023

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