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

\+ **CS(OS) 2065/2015**

% **20th July, 2015**

ULTRA HOME CONSTRUCTION PVT. LTD. ..... Plaintiff
Through Mr. R.P. Bhatt, Sr. Advocate along with Mr. Rakesh Kumar and Mr.Bipin Kumar, Advocates

versus

PURUSHOTTAM KUMAR CHAUBEY & ORS. ..... Defendants
Through

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

I.A. No.14257/2015 (Exemption)

1. Exemption allowed subject to all just exceptions.

I.A. stands disposed of.

CS(OS) 2065/2015 & I.A. No.14256/2015 (Stay)

2. This is a suit filed by the plaintiff seeking injunction alleging a cause of action of infringement of its trade mark 'AMRAPALI'.

3. Plaintiff alleges infringement of trade mark as also the copyright of the plaintiff in the depiction of the trade mark. In the suit the following prayers are made:-

> "(a) For a decree of permanent injunction restraining the defendants and also its individual proprietor, Partners, channel partners, agents, representatives, dealers, distributors, assigns, heirs, successors and all others acting for and on their behalf from using, selling, soliciting, displaying, advertising by visual, audio, print mode or by any other mode or manner or dealing in or using the impugned trade mark/label **AMBAPALI LABEL WORD** per se and in AMBAPALI **LABEL** or any other Trade Mark/Label identical with and/or deceptively similar thereto in relation to their impugned services and business of real estate development and related/allied services and from doing any other acts or deeds amounting to or likely to:-
>
> (i) Infringement of aforesaid registered trademarks of the plaintiff under Class 19 and 37 respectively.
> (ii) Passing off and violation of plaintiff's rights in the said trademarks/label **AMRAPALI.**
> (iii) Infringing and/or violating plaintiff's copyrights in the said trade mark/label **AMRAPALI.**
>
> (b) Restraining the defendants from disposing off or dealing with its assets including its shops and premises at Ambapali Green Gupta Green, Bampass Town, Deoghar and its stocks-in-trade or any other assets as may be brought to the notice of this Hon'ble Court during the course of the proceedings and on the defendants' disclosure thereof and and/or on its ascertainment by the plaintiff as the plaintiff is not aware of the same as per Section 135 (2) (c) of the Trade Marks Act, 1999 as it could adversely affect the plaintiff's ability to recover the costs and pecuniary reliefs thereon.
>
> (c) Restraining the defendants from using and selling the flats/other type of unit in its Group housing residential project at Deoghar,

Jharkhand by the impugned name Ambapali Green or to use this name anywhere else.

(d) For an order for delivery up of all impugned finished and unfinished materials bearing the impugned and violative trade mark/label **AMBAPALI LABEL**, or any other deceptively similar trade mark/label including its blocks, labels, display boards, sign boards, trade literature and services etc. to the plaintiff for the purposes of destruction and erasure.

(e) For an order for rendition of accounts of profits earned by the defendants by their impugned illegal trade activities and a decree for the amount so found in favour of plaintiff on such rendition of accounts.

(f) In alternative, to accounts for a decree for grant of damages of Rs.21,00,000/- (Rupees Twenty One Lakhs only) from the defendants, jointly and severally to the plaintiff.

(g) For an order for cost of proceedings, and

(h) For such other and further order as this Hon'ble Court may deem fit and proper in the fact and circumstances of the present case."

4. Jurisdiction of this Court is claimed on the basis of Section 134(2) of the Trade Marks Act, 1999 and Section 62(2) of the Copyright Act, 1957 as per para 52 of the plaint and this para reads as under:-

"52. That this Hon'ble Court has the territorial jurisdiction to entertain and decide the present suit as the Plaintiff operates in Delhi through its registered office at: 307, 3rd Floor, Nipun Tower, Community Centre, Karkardooma, Delhi-92. The Plaintiff Company carries on its

business in Delhi through its several exclusive agents. The plaintiff has extensive goodwill and reputation under the said trademark on account of voluminous sales and advertisement within the jurisdiction of this Hon'ble Court. By virtue of above said this Hon'ble Court has the territorial jurisdiction within the meaning of Section 134 (2) of the Trade Marks Act, 1999 and also under Section 62(2) of the Copyright Act, 1957 and Code of Civil Procedure, 1908."

5. The provisions of Section 134(2) of the Trade Marks Act, 1999 and Section 62(2) of the Copyright Act, 1957 have been the subject matter of pronouncement in a recent judgment of the Supreme Court in the case of ***Indian Performing Rights Society Ltd. Vs. Sanjay Dalia & Anr.,*** Civil Appeal nos.10643-44 of 2010 dated 01.07.2015. This judgment has also laid down the ratio that in case the plaintiff does not carry on business or has branch office or head office etc at a place where cause of action arises then surely such a plaintiff uses the provisions of Section 134(2) of the Trade Marks Act, 1999 and Section 62(2) of the Copyright Act, 1957 to file a suit where the plaintiff is having an office or carrying on business or residing, however, these provisions cannot be invoked to file a suit claiming infringement of trade mark/copyright in case the plaintiff is carrying on business at the place where cause of action arises or has either a branch office or a head office at the place where the cause of action arises. The Supreme Court has clarified that no doubt object of Section 134(2) of the

Trade Marks Act, 1999 and Section 62(2) of the Copyright Act, 1957 was to give convenience to the plaintiff, however, these provisions have to be read in such a manner that it should not lead to harassment of defendants in a case where plaintiff is carrying on business or resides or works for gain or has a branch office or a head office or a registered office at the place where the cause of action arises, and in spite of that a suit is sought not to be filed at such place where the cause of action arises and where the plaintiff has an office or is carrying on business, but at another court simply because a plaintiff has an office or carries on business or resides although the cause of action does not arise at such latter place. The relevant paragraphs of the judgment of the Supreme Court in ***Indian Performing Rights Society Ltd.'s*** case ***(supra)*** are paragraphs 16, 17, 18, 19, 20, 21, 22, 23 and 24 and these paragraphs read as under:-

> "16. On a due and anxious consideration of the provisions contained in section 20 of the CPC, section 62 of the Copyright Act and section 134 of the Trade Marks Act, and the object with which the latter provisions have been enacted, it is clear that if a cause of action has arisen wholly or in part, where the plaintiff is residing or having its principal office/carries on business or personally works for gain, the suit can be filed at such place/s. Plaintiff(s) can also institute a suit at a place where he is residing, carrying on business or personally works for gain *de hors* the fact that the cause of action has not arisen at a place where he/they are residing or any one of them is residing, carries on business or personally works for gain. **However, this right to institute suit at such a place has to be read subject to certain restrictions, such as in case plaintiff is residing or carrying on**

business at a particular place/having its head office and at such place cause of action has also arisen wholly or in part, plaintiff cannot ignore such a place under the guise that he is carrying on business at other far flung places also. The very intendment of the insertion of provision in the Copyright Act and Trade Marks Act is the convenience of the plaintiff. The rule of convenience of the parties has been given a statutory expression in section 20 of the CPC as well. The interpretation of provisions has to be such which prevents the mischief of causing inconvenience to parties.

17. The intendment of the aforesaid provisions inserted in the Copyright Act and the Trade Marks Act is to provide a forum to the plaintiff where he is residing, carrying on business or personally works for gain. The object is to ensure that the plaintiff is not deterred from instituting infringement proceedings "because the court in which proceedings are to be instituted is at a considerable distance from the place of their ordinary residence". The impediment created to the plaintiff by section 20 C.P.C. of going to a place where it was not having ordinary residence or principal place of business was sought to be removed by virtue of the aforesaid provisions of the Copyright Act and the Trade Marks Act. Where the Corporation is having ordinary residence/principal place of business and cause of action has also arisen at that place, it has to institute a suit at the said place and not at other places. The provisions of section 62 of the Copyright Act and section 134 of the Trade Marks Act never intended to operate in the field where the plaintiff is having its principal place of business at a particular place and the cause of action has also arisen at that place so as to enable it to file a suit at a distant place where its subordinate office is situated though at such place no cause of action has arisen. Such interpretation would cause great harm and would be juxtaposed to the very legislative intendment of the provisions so enacted.

18. In our opinion, in a case where cause of action has arisen at a place where the plaintiff is residing or where there are more than one such persons, any of them actually or voluntarily resides or **carries on business or personally works for gain would oust the jurisdiction of other place where the cause of action has not arisen** though at such a place, by virtue of having subordinate office, the plaintiff instituting a suit or other proceedings **might be carrying on business or personally works for gain.**

19. At the same time, the provisions of section 62 of the Copyright Act and section 134 of the Trade Marks Act have removed the embargo of suing at place of accrual of cause of action wholly or in part, with regard to a place where the plaintiff or any of them ordinarily resides, carries on business or personally works for gain. We agree to the aforesaid extent the impediment imposed under section 20 of the CPC to a plaintiff to institute a suit in a court where the defendant resides or carries on business or where the cause of action wholly or in part arises, has been removed. **But the right is subject to the rider in case plaintiff resides or has its principal place of business/carries on business or personally works for gain at a place where cause of action has also arisen, suit should be filed at that place not at other places where plaintiff is having branch offices etc.**

20. There is no doubt about it that the words used in section 62 of the Copyright Act and section 134 of the Trade Marks Act, 'notwithstanding anything contained in CPC or any other law for the time being in force', emphasise that the requirement of section 20 of the CPC would not have to be complied with by the plaintiff if he resides or carries on business in the local limits of the court where he has filed the suit but, in our view, at the same time, as the provision providing for an additional forum, cannot be interpreted in the manner that it has authorised the plaintiff to institute a suit at a different place other than the place where he is ordinarily residing or having principal office and incidentally where the cause of action wholly or in part has also arisen. The impugned judgments, in our considered view, do not take away the additional forum and fundamental basis of conferring the right and advantage to the authors of the Copyright Act and the Trade Marks Act provided under the aforesaid provisions.

21. The provisions of section 62(2) of the Copyright Act and section 134 of the Trade Marks Act are *pari materia*. Section 134(2) of the Trade Marks Act is applicable to clauses (a) and (b) of section 134(1) of the Trade Marks Act. Thus, a procedure to institute suit with respect to section 134(1)(c) in respect of "passing off" continues to be governed by section 20 of CPC.

22. If the interpretation suggested by the appellant is accepted, several mischiefs may result, intention is that the plaintiff should not go to far flung places than that of residence or where he carries on business or

works for gain in order to deprive defendant a remedy and harass him by dragging to distant place. It is settled proposition of law that the interpretation of the provisions has to be such which prevents mischief. The said principle was explained in *Heydon's* case [76 ER 637]. According to the mischief rule, four points are required to be taken into consideration. While interpreting a statute, the problem or mischief that the statute was designed to remedy should first be identified and then a construction that suppresses the problem and advances the remedy should be adopted. The *Heydon's* mischief rule has been referred to in *Interpretation of Statutes by Justice G.P. Singh*, 12th Edn., at pp. 124-125 thus :

> "**(b) Rule in Heydon's case; purposive construction: mischief rule**
>
> When the material words are capable of bearing two or more constructions the most firmly established rule for construction of such words "of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law)" is the rule laid down in *Heydon's* case (76 ER 637) which has "now attained the status of a classic [*Kanailal Sur v. Paramnidhi Sadhukhan* AIR 1957 SC 907]. The rule which is also known as 'purposive construction' or 'mischief rule' [*Anderton v. Ryan* 1985 2 ALL ER 355], enables consideration of four matters in construing an Act: (i) What was the law before the making of the Act, (ii) What was the mischief or defect for which the law did not provide, (iii) What is the remedy that the Act has provided, and (iv) What is the reason of the remedy. The rule then directs that the courts must adopt that construction which "shall suppress the mischief and advance the remedy". The rule was explained in the *Bengal Immunity Co. v. State of Bihar* [AIR 1955 SC 661] by S.R. DAS, CJI as follows: "It is a sound rule of construction of a statute firmly established in England as far back as 1584 when *Heydon's* case (supra) was decided that for the sure and true interpretation of all Statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered:
>
> > 1st - What was the common law before the making of the Act?

2nd - What was the mischief and defect for which the common law did not provide?

3rd - What remedy the Parliament hath resolved and appointed to cure the disease of the commonwealth, and

4th - The true reason of the remedy;

and then the office of all the judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and *pro private commodo*, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, *pro bono publico*. [*Bengal Immunity Co. v. State of Bihar* (supra)]."

23. Considering the first aspect of aforesaid principle, the common law which was existing before the provisions of law were passed was section 20 of the CPC. It did not provide for the plaintiff to institute a suit except in accordance with the provisions contained in section 20. The defect in existing law was inconvenience/deterrence caused to the authors suffering from financial constraints on account of having to vindicate their intellectual property rights at a place far away from their residence or the place of their business. The said mischief or defect in the existing law which did not provide for the plaintiff to sue at a place where he ordinarily resides or carries on business or personally works for gain, was sought to be removed. Hence, the remedy was provided incorporating the provisions of section 62 of the Copyright Act. The provisions enabled the plaintiff or any of them to file a suit at the aforesaid places. But if they were residing or **carrying on business or personally worked for gain already at such place, where cause of action has arisen, wholly or in part,** the said provisions have not provided additional remedy to them to file a suit at a different place. The said provisions never intended to operate in that field. The operation of the provisions was limited and their objective was clearly to enable the plaintiff to file a suit at the place where he is ordinarily residing or carrying on business etc., as enumerated above, not to go away from such places. The Legislature has never intended that the plaintiff should not institute the suit where he ordinarily resides or at its Head Office or registered office or where he otherwise carries on business or personally works for gain where

the cause of action too has arisen and should drag the defendant to a subordinate office or other place of business which is at a far distant place under the guise of the fact that the plaintiff/corporation is carrying on business through branch or otherwise at such other place also. If such an interpretation is permitted, as rightly submitted on behalf of the respondents, the abuse of the provision will take place. Corporations and big conglomerates etc. might be having several subordinate offices throughout the country. Interpretation otherwise would permit them to institute infringement proceedings at a far flung place and at unconnected place as compared to a place where plaintiff is carrying on their business, and at such place, cause of action too has arisen. In the instant cases, the principal place of business is, admittedly, in Mumbai and the cause of action has also arisen in Mumbai. Thus, the provisions of section 62 of the Copyright Act and section 134 of the Trade Marks Act cannot be interpreted in a manner so as to confer jurisdiction on the Delhi court in the aforesaid circumstances to entertain such suits. The Delhi court would have no territorial jurisdiction to entertain it.

24. The avoidance of counter mischief to the defendant is also necessary while giving the remedy to the plaintiff under the provisions in question. It was never visualised by the law makers that both the parties would be made to travel to a distant place in spite of the fact that the plaintiff has a remedy of suing at the place where the cause of action has arisen where he is having head office/**carrying on business** etc. The provisions of the Copyright Act and the Trade Marks Act provide for the authors/trade marks holders to sue at their ordinary residence or where they carry on their business. The said provisions of law never intended to be oppressive to the defendant. The Parliamentary Debate quoted above has to be understood in the manner that suit can be filed where the plaintiff ordinarily resides or carries on business or personally works for gain. Discussion was to provide remedy to plaintiff at convenient place; he is not to travel away. **Debate was not to enable plaintiff to take defendant to farther place, leaving behind his place of residence/business etc.** The right to remedy given is not unbriddled and is subject to the prevention of abuse of the aforesaid provisions, as discussed above. Parliament never intended that the subject provisions to be abused by the plaintiff by instituting suit in wholly unconnected jurisdiction. In the instant cases, as the principal place of business is at Mumbai the

cause of action is also at Mumbai but still the place for suing has been chosen at Delhi. **There may be a case where plaintiff is carrying on the business at Mumbai and cause of action has arisen in Mumbai. Plaintiff is having branch offices at Kanyakumari and also at Port Blair, if interpretation suggested by appellants is acceptable, mischief may be caused by such plaintiff to drag a defendant to Port Blair or Kanyakumari. The provisions cannot be interpreted in the said manner devoid of the object of the Act.**"
(emphasis added)

6. In view of the categorical language used in the aforesaid paragraphs of the judgment in ***Indian Performing Rights Society Ltd.'s*** case ***(supra)*** I do not think it is permissible on behalf of the plaintiff to re-argue the issue which has already been decided and fully covered by the ratio in the case of ***Indian Performing Rights Society Ltd. (supra)*** viz though the provisions of Section 134(2) of the Trade Marks Act, 1999 and Section 62(2) of the Copyright Act, 1957 were meant to give convenience to the plaintiff and for the plaintiff to file the suit where it is having an office and carrying on business, but, by that no right was intended to be created in favour of the plaintiff to file the suit at the place where the cause of action has not arisen, and although plaintiff is carrying on business or has a branch office or head office etc at the place where the cause of action, wholly or in part, has arisen.

7. I may note that it is conceded on behalf of the plaintiff that at the place where defendants are infringing the trade mark at Deogarh, Jharkhand, plaintiff has a hotel, and if the plaintiff has a hotel then surely the plaintiff is carrying on business at that particular place and carrying on of the hotel business is very much a part of carrying of the business of the plaintiff and therefore the ratio of the judgment in ***Indian Performing Rights Society Ltd.'s*** case ***(supra)*** clearly applies. The plaintiff is running the hotel with the Clark-Inn Hotel Group i.e plaintiff company does have a share in the profits and losses in the hotel which is being run along with the Clark-Inn Hotel Group at Deoghar, Jharkhand. Once that is so, there is a running business and plaintiff is therefore carrying on business at Deoghar, Jharkhand, and consequently the ratio of the judgment in the case of ***Indian Performing Rights Society Ltd. (supra)*** applies and hence this Court would not have territorial jurisdiction.

8. I may note that in para 28 of the plaint, plaintiff admits that it has one hotel at Deoghar in Bihar and which is actually Deoghar in Jharkhand, because, by a typing mistake Deoghar, Bihar is written instead of Deogarh, Jharkhand.

9. After arguments I put it to the learned senior counsel for the plaintiff whether the plaintiff wants to invite the judgment or liberty be given by this Court to file a suit at the appropriate court having territorial jurisdiction, but, the learned senior counsel states that he has instructions to invite a judgment.

10. In view of the above, the suit as well as the I.A. stands dismissed as this Court lacks territorial jurisdiction.

JULY 20, 2015 **VALMIKI J. MEHTA, J**

nn