

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE M.R.ANITHA

FRIDAY, THE 10TH DAY OF FEBRUARY 2023 / 21ST MAGHA, 1944

FAO NO. 147 OF 2022

AGAINST THE ORDER DATED 25TH NOVEMBER, 2022 IN IA 11/2022

IN OS 14/2022 OF PRINCIPAL DISTRICT COURT, KOZHIKODE

APPELLANT/PLAINTIFF/1ST RESPONDENT:

THAIKKUDAM BRIDGE,
233 B, DHWANI, UNITY LANE, MANIYANKALA ROAD,
VADACODE P.O., ERNAKULAM-682021, DULY REPRESENTED
BY ITS MANAGING PARTNER, GOVIND P. MENON.

BY ADVS.

C.UNNIKRISHNAN (KOLLAM)

ANANDA PADMANABHAN

UTHARA A.S

VIJAYKRISHNAN S. MENON

NIDHI BALACHANDRAN

VIVEK NAIR P.

M.UMA DEVI (K/591/1994)

RESPONDENTS/DEFENDANTS/PETITIONER:

- 1 HOMBALE FILMS, (DELETED)
2ND FLOOR, SAMPARKA SOUDHA, OPPOSITE ORION MALL,
RAJAJINAGAR, BANGALORE- 560010, REPRESENTED BY
ITS PROPRIETOR, VIJAY KIRGANDUR.
- 2 MR.RISHABH SHETTY, (DELETED)
DIRECTOR AND ACTOR, WG72 + 347, BEML LAYOUT, 7TH
STAGE, MAILASANDRA, BANGALORE-560098.
- 3 PRITHVIRAJ FILMS LLP-NO. 59/300-E, (DELETED)
FLAT NO. 4, ASSET CASA GRANDE MALIEKAL ROAD,
THEVARA, COCHIN, KERALA 682013, REPRESENTED BY
ITS DIRECTOR, PRITHVIRAJ SUKUMARAN.
- 4 AMAZON SELLER SERVICES PRIVATE LIMITED, (DELETED)
8TH FLOOR, WORLD TRADE CENTER, BRIGADE GATEWAY
CAMPUS, 26/1, DR. RAJKUMAR ROAD, MALLESHWARAM
MALLESHWARAM (WEST), BANGALORE 560055, REPRESENTED
BY ITS HEAD OF CONTENT.

- 5 B.L. AJANEESH, (AKA AJJU),
AGED 34 YEARS, SON OF B. LOKMATH, 343, DIVIK
GOKUL, 3RD FLOOR, DOOR NUMBER 3/6, 14TH CROSS,
7TH MAIN, JAYANAGAR 2ND BLOCK, BANGALORE- 560011.
- 6 THE MATHRUBHUMI PRINTING AND PUBLISHING CO. LTD.,
(DELETED)
M.J. KRISHNAMOHAN MEMORIAL BUILDING, K.P. KESAVA
MENON ROAD, KOZHIKODE-673001, REPRESENTED BY ITS
GENERAL MANAGER (HRD) .
- 7 GOOGLE INDIA HEAD OFFICE ADDRESS: BLOCK 1,
(DELETED)
DIVYA SREE OMEGA, SURVEY NO. 13, KONDAPUR
VILLAGE, HYDERABAD, ANDHRA PRADESH, INDIA,
REPRESENTED BY ITS COUNTRY MANAGER.
- 8 SPOTIFY INDIA PRIVATE LIMITED, (DELETED)
OFFICE NO. V-01, 5TH & 6TH FLOOR, MAFATLAL HOUSE
(BUILDING) H.T. PAREKH MARG, BACKBAY RECLAMATION,
MUMBAI CITY MAHARASHTRA-400020, REPRESENTED BY
ITS GENERAL MANAGER.
- 9 WYNK LIMITED, (DELETED)
BHARTI CRESCENT, 1, NELSON MANDELA ROAD, VASANT
KUNJ, PHASE - II, NEW DELHI SOUTH DELHI DL
110070, REPRESENTED BY ITS HEAD OF PRODUCT.
- 10 SAAVN MEDIA LIMITED, (DELETED)
A WING, 19TH FLOOR, ONE BKC, G BLOCK, BANDRA
(EAST), MUMBAI-400051, REPRESENTED BY ITS
MANAGING DIRECTOR.
- 11 PRITHVIRAJ PRODUCTIONS LLP, (DELETED)
59/300-E, FLAT NO 4, ASSET CASA GRANDE MALIEKAL
ROAD, THEVARA, COCHIN KERALA 682013, REPRESENTED
BY ITS PARTNER, SUPRIYA VIJAY MENON.
- 12 PRITHVIRAJ PRODUCTIONS PRIVATE LIMITED, (DELETED)
59/300-E, FLAT NO 4, ASSET CASA GRANDE MALIEKAL
ROAD, THEVARA, COCHIN KERALA 682013, REPRESENTED
BY ITS DIRECTOR, PRITHVIRAJ SUKUMARAN.
- 13 MR. PRITHVIRAJ SUKUMARAN, (DELETED)
AGED ABOUT 37 YEARS, SON OF SUKUMARAN NO. 59/300
E, FLAT NO. 4, ASSET CASSA GRANDE MALIEKAL ROAD
COCHIN ERNAKULAM 682013.

14 MS. SUPRIYA VIJAY MENON, (DELETED)
AGED ABOUT 35 YEARS, WIFE OF PRITHVIRAJ
SUKUMARAN, 59/300 E, FLAT NO. 4, ASSET CASSA
GRANDE MALIEKAL ROAD, COCHIN, ERNAKULAM 682013.
(RESPONDENTS 1 TO 4 AND 6 TO 14 ARE DELETED FROM
THE PARTY ARRAY AT THE RISK OF THE
PETITIONER/APPELLANT AS PER THE ORDER DATED
12/01/2023 IN IA 1/2023)
BY ADVS.
SANTHOSH MATHEW
ANOOP.V.NAIR
BENOY K.KADAVAN
Laya Mary Joseph
DINOOP P.D.
VIJAY V. PAUL
AJAY BEN JOSE (K/729/2012)
P.B.KRISHNAN (K/1193/1994)
B.G.HARINDRANATH
ARUN THOMAS
KARTHIKA MARIA
ANIL SEBASTIAN PULICKEL
ABI BENNY AREECKAL
MATHEW NEVIN THOMAS
KARTHIK RAJAGOPAL
KURIAN ANTONY MATHEW
E.ADITHYAN
MEENAKSHY S DEV
ROHAN MAMMEN ROY
LAYA GEORGE
SATISH MURTHI
AIVAN RAJ
SHERYL ELIZABATH SEBASTIAN
UTHARA.P.V
SHASHIRAJ RAO KOVOOR

THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR FINAL
HEARING ON 23.01.2023, THE COURT ON 10.02.2023 THE
FOLLOWING:

M.R.ANITHA, J

F.A.O No.147 of 2022

Dated this the 10th day of February, 2023

JUDGMENT

Appellant is the plaintiff in O.S.No.14/2022 on the file of Principal District Court, Kozhikode. The suit was one for declaration that appellant/plaintiff is the original author and composer having absolute moral and legal rights and entitlements reserved to it under Copyright Act in the musical work and sound recording of *navarasam* and further that *varaharoopam* deployed and synchronized in the cinematographic film *Kantara* in Kannada and all other languages is an infringement of the musical work and sound recording of *navarasam* composed by the appellant/plaintiff and consequential injunction. (Parties would hereafter be referred as per their status before the trial court).

2. The District Judge, Kozhikode, as per the impugned order in I.A.No.11/2022 in O.S.No.14/2022 returned the plaint and other documents produced along with the suit for representation before the Commercial Court at Ernakulam. Aggrieved by the same, the present appeal has been filed.

3. Though the appeal has been filed against 14 respondents as per the order dated 12.01.2023 in I.A.No.01/2023, respondents 1 to 4 and 6 to 14 were deleted from the party array in the appeal, suit and all petitions except the petition for rejection of the plaint from which the impugned order arose.

4. Heard the learned counsel for the appellant/plaintiff and the learned counsel for the 5th respondent/5th defendant.

5. Learned District Judge returned the plaint mainly relying on **Vishal Pipes Ltd v. Bhavya Pipe Industry & Others : 2022 SCC OnLine Delhi 1730** finding that the suit ought to have been filed before the Commercial Court at Ernakulam. It is also found that Kozhikode is not the place where

the defendants reside or carry on business. The decision in **Jaycee Housing Private Limited & Others v. Registrar (General), Orissa High Court (Live Law 2022 (SC) 860)** was also placed reliance to find that when the agreement between the parties says that in case of any dispute, the parties are governed by the Arbitration and Conciliation Act and Commercial Courts Act has also power to deal with the situation, the District Judge has no power to intervene. It is further found that under Section 3 of the Commercial Courts Act, 2015, State Government has issued notification empowering the Principal Sub Courts as Commercial Courts and notification did not confer jurisdiction upon the District Court to deal with the matters under the provisions of Commercial Courts Act which include dispute under Section 19A of the Copyright Act and it can only act as the appellate court. It is also found that non-inclusion of 6th respondent in I.A.No.02/2022 is with an ulterior motive and accordingly the plaint was returned under Order VII Rule 10 of the Code of Civil Procedure Code, 1908 (for short 'the Code').

6. According to the learned counsel for the plaintiff, presently the relief of the plaintiff is confined to Section 57 of the Copyright Act, 1957 (in short 'the Act') claiming the author's right of the plaintiff. It is also the contention of the learned counsel that the court below has passed the order on the basis of the counter affidavit and documents produced from the side of the defendants and that, according to her, is illegal and arbitrary.

7. Learned counsel for the 5th defendant, on the other hand, would vehemently contend that the head office of the plaintiff company is at Ernakulam and part of cause of action also arouse at Ernakulam since, as per the averments in the plaint, cause of action includes the release of the film *Varaharoopam* all over Kerala and in Kozhikode. So, admittedly, by the plaintiff, film is released in Ernakulam also and the head office of the plaintiff being at Ernakulam and part of cause of action also arose in Ernakulam and as per the dictum laid down in **Indian Performing Rights Society Limited v. Sanjay Dalia and Another : (2015) 10 SCC 161**, District Court or

Commercial Court at Ernakulam alone will have territorial jurisdiction to entertain the suit. In the aspect of the issue regarding the jurisdiction of Commercial Courts, learned counsel for the defendant relies on **Vishal Pipes Ltd v. Bhavya Pipe Industry : FAO-IPD 1/2022 & CM APPLs. 12-14/2022** in the High Court of Delhi at New Delhi dated 03.06.2022. The dictum laid down in **Jaycee Housing Private Limited** also relied on. It is further contended that, the valuation shown as Rs.1,000/- for relief No.1, for declaring that the plaintiff is the author and composer of the musical work and sound recording of *navarasam* is incorrect. It is also contended that drastic changes have been made to the plaint when defendants 1 to 4 and 6 to 14 were deleted and the reliefs c, d, e and f cannot be resorted to by the plaintiff/petitioner since those reliefs are sought for against other defendants also. He would also contend that necessary deletion and addition would also be necessary in the pleadings and whether this Court can appropriately evaluate the contentions now raised by the plaintiff against the 5th defendant alone without making

amendment of the pleadings is another issue. As such, according to learned counsel, there is no reason to interfere with the findings of the District Court in returning the plaint to the Commercial Court, Ernakulam.

8. Since drastic changes may occur due to the deletion of defendants except defendant No.5 in the suit, appeal and applications with respect to the relief sought, pleadings etc a full fledged disposal of this F.A.O as rightly contended by the learned counsel for 5th defendant is not possible. However in view of the lengthy arguments advanced from either side I deem it appropriate to make a discussion of the law involved in the field.

9. Learned counsel for the plaintiff would contend that in **Indian Performing Rights Society Limited (IPR Society)** referred above, the question arising for consideration was as to the interpretation of Section 62 of the Act and Section 134(2) of Trade Marks Act, 1999 with regard to places where a suit can be instituted by the plaintiff. According to the learned counsel in that decision, the Apex Court has given sufficient leverage to

Section 20 of the Code and only an additional remedy has been provided to the plaintiff as per Section 62 to file a suit where he is residing or carrying on business etc., and Section 20 of the Code enables the plaintiff to file a suit where the defendant resides or where cause of action arose. Section 20(c) enables a plaintiff to institute a suit where the cause of action wholly or in part, arises. Section 62 of the Act and Section 134 of the Trade Marks Act are in addition and will not in any way take away the right of the plaintiff to invoke the jurisdiction of the District Court, Kozhikode under Section 20(c) of the Act. According to the learned counsel, the decision in IPR Society will not in any way go against the claim of the plaintiff to institute the suit before the District Court, Kozhikode.

10. Learned counsel for the 5th defendant, on the other hand, would contend that once it is found that plaintiff is carrying on business and a part of the cause of action arouse within the jurisdiction of District Court or Commercial Court, Ernakulam, the plaintiff has no other option than to institute the suit before the

District Court, Ernakulam and he cannot file a suit at Kozhikode where a part of cause of action alleged to have arisen by releasing the movie. In order to ascertain the actual position, it would be necessary to analyse Section 62 of the Copyright Act. Section 62 of the Act reads thus:

Jurisdiction of court over matters arising under this Chapter.—

(1) Every suit or other civil proceeding arising under this Chapter in respect of the infringement of copyright in any work or the infringement of any other right conferred by this Act shall be instituted in the district court having jurisdiction.

(2) For the purpose 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 other 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."

11. As per sub Section (2) of Section 62, the Court having jurisdiction includes the 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 other 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.

12. Section 134 of the Trade Marks Act, 1999 provides that suit for infringement of registered trademark was relating to any right in a registered trade mark for passing off arising out of 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 and 'District Court having jurisdiction' is also stated as including a District Court within the local limits of whose jurisdiction, the person, or one of the persons, instituting the suit or other proceedings, actually or voluntarily resides or carries on business or personally

works for gain and the explanation further provides that 'person' includes the registered proprietor and the registered user.

13. In paragraphs 14 and 18 of **IPR Society**, the Apex Court has made a vivid discussion with regard to the harmonious construction of Section 62 of the Act and Section 134 of the Trade Marks Act and Section 20 of the Code which is relevant in this context to be extracted which reads thus:

"14. Considering the very language of Section 62 of the Copyright Act and Section 134 of the Trade Marks Act, an additional forum has been provided by including a District Court within whose limits the plaintiff actually and voluntarily resides or carries on business or personally works for gain. The object of the provisions was to enable the plaintiff to institute a suit at a place where he or they resided or carried on business, not to enable them to drag defendant further away from such a place also as is being done in the instant cases. In our opinion, the expression "notwithstanding anything contained in the Code of Civil Procedure" does not oust the applicability of the provisions of section 20 of the Code of Civil Procedure and it is clear that additional remedy has been provided to the plaintiff so as to file a suit

where he is residing or carrying on business etc., as the case may be. Section 20 of the Code of Civil Procedure enables a plaintiff to file a suit where the defendant resides or where cause of action arose. Section 20(a) and Section 20(b) usually provides the venue where the defendant or any of them resides, carries on business or personally works for gain. Section 20(c) of the Code of Civil Procedure enables a plaintiff to institute a suit where the cause of action wholly or in part, arises. The Explanation to Section 20 C.P.C. has been added to the effect that 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 subordinate office at such place. Thus, 'corporation' can be sued at a place having its sole or principal office and where cause of action wholly or in part, arises at a place where it has also a subordinate office at such place.

18. *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."

14. From the above, it can reasonably be concluded that if a cause of action arise wholly or in part, where the plaintiff is residing or carrying on business or personally works for gain, the

suit can be instituted at such places, inspite of the fact that cause of action has not arisen at the place where he is residing or carrying on business or works for gain. It also provides that if a plaintiff is residing or carrying on business in a particular place having its head office at such place and cause of action also has arisen wholly or in part in that place, plaintiff cannot ignore such a place under the guise that he is carrying on business at other far away places also. But it is pertinent to note that the above provision was pointing towards the plaintiff's place of residence or the place where plaintiff carrying on business or working for gain. Then, plaintiff cannot ignore such place and file the case in a far away place under the guise that he is carrying on business at other place. But, it does not take away the right of the plaintiff to institute a suit in another place where a part of cause of action arise which is saved by Section 20(c).

15. In the present case, the plaintiff instituted the suit in District Court, Kozhikode at present alleging that a part of cause of action arise within the jurisdiction of Kozhikode District Court

since the film was released in the theaters in Kozhikode also. That definitely would amount to the arising of part of cause of action within the jurisdiction of Kozhikode District Court. That is why, in paragraph 17 of IPR, the Apex Court quoted **Rajasthan High Court Advocates Association v. Union of India & Ors : AIR 2001 SC 416** wherein it has been held that a plaintiff can also file a suit where the cause of action wholly or in part arises. If the argument advanced by the learned counsel for the 5th defendant is accepted, Section 20(c) of the Code would become redundant since the plaintiff would be bound to institute the suit in the place where the plaintiff resides or carrying on business and a part of cause of action also arise within the jurisdiction of that court, the plaintiff would be bound to institute the suit in that court alone. Resultantly, the plaintiff would be prevented from filing the case by invoking Section 20(c) which enables him to file the suit in a court where part of cause of action arise. On going through paragraph 21 of the said decision, it could be discerned that Section 62 of the Act and Section 134 of the Trade

Marks Act is in addition to the right provided under Section 20 of the Code to the plaintiff. Section 20 provides that every suit shall be instituted in a Court within the local limits of whose jurisdiction 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 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 the cause of action, wholly or in part, arises. Hence, as per Section 20, the choice of the plaintiff is limited to file a suit in a court within whose jurisdiction defendant or each of the defendants reside or carries on business or personally works for gain etc or in a place where cause of action wholly or partly arise. But, it has no whisper regarding the

institution of suit with regard to the place of residence or the place where carrying on business etc of the plaintiff. As per Section 62 of the Act, a wider power has been given to the plaintiff to institute the suit including the District Court where the plaintiff or any of the plaintiffs actually and voluntarily resides or carries on business or personally works for gain. It has no reference with respect to the cause of action or the place of residence or the place of carrying on business by the defendant or defendants etc or any connection with cause of action either in part or whole. So, Section 62 only expands the right of the plaintiff to institute a suit in a place where he actually or voluntarily resides or carries on business or works for gain. It will not in any way curtail the right of the plaintiff to institute the suit in any of the places provided under Section 20 of the Code.

16. Learned counsel for the plaintiff in this context also drew my attention to **M/s.Copenhagen Hospitality and Retails & Ors. v. M/s.A.R.Impex & Ors.** of Delhi High Court dated 29.07.2021. Paragraph 8 of the said judgment was

highlighted by the learned counsel which reads thus:

"The question of territorial jurisdiction in matters relating to infringement of trademarks is now well-settled. The judgments relied upon by the Defendants in Sanjay Dalia (supra) and Ultra Homes (supra) deal with the situation where the jurisdiction is clearly determinable on the basis of Section 134(2) of the Trade Marks Act, 1999 and also under Section 62(2) of the Copyright Act, 1957. Therein it has been observed that the aforesaid provisions of the Trade Marks and the Copyright Acts are in addition to Section 20 of the CPC. Thus, the Plaintiff is entitled to file the suit for infringement of trademark where the cause of action arose under Section 20(c) of CPC."

17. **V.Guard Industries Ltd. v. Sukan Raj Jain & Anr.** of Delhi High Court dated 05.07.2021 and **M/s.RSPL Limited v. Mukesh Sharma & Anr** of Delhi High Court dated 03.08.2016 wherein a Division Bench of High Court had occasion to consider the same issue and it has been held that plaintiff cannot file a suit alleging infringement of trade mark or copyright at a place where it has a subordinate office by resort to Section 134 of the Trade Marks Act or Section 62 of the Act unless one of the

conditions of Section 20 of the Code are specified. Paragraph 12 of **Saisons Trade and Industry Private Limited v. Maithri Acquatech Private Limited & Ors.** of Delhi High Court dated 02.03.2022 was highlighted by the learned counsel wherein it has been provided that Section 20(c) provides for jurisdiction inherent in that court where the cause of action wholly or in part arises.

18. In **Burger King Corporation v. Techchand Shewakramai & Ors** of Delhi High Court dated 27.08.2018, paragraph 17 was highlighted by the learned counsel wherein it has been held that Section 20 enables the plaintiff to file suit where the cause of action arise under Section 20(c). It is also held that **IPR Society** referred above does not dilute the principles of Section 20(c) of the Code in any manner whatsoever. Division Bench ruling in **Ultra Home Construction Pvt.Ltd. v. Purshottam Kumar Chaubey and others : (2016) DLT 320 (DB)** is also quoted. In paragraph 13 of the said decision, it has been provided that the expression 'carries on

business' in the context of defendant under Section 20 of the Code has been employed in the context of a plaintiff under the said Sections 134(2) and Section 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 Copyright Act, 1957, by taking advantage of the provisions of Section 134(2) or Section 62(2). Both the provisions are in pari materia. It is also held that in these provisions, four situations can be contemplated in the context of the plaintiff being a Corporation (which includes a company) (i) 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. (ii) is the case where the plaintiff has a principal office at one place or the subordinate or branch office at another place and the cause of action has arisen at the place of the principal office. Then, the plaintiff may sue at the place of the principal office but cannot sue at the place of the subordinate office. (iii) where the plaintiff

has a principal office at one place and the cause of action had arisen at the place where its subordinate office is located, 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. (iv) is the case 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 such case, plaintiff would be deemed to carry on business at the place of its principal office and not at the place of the subordinate office. Consequently, plaintiff could institute a suit at the place of its principal office and not at the place of its subordinate office.

19. In this case, admittedly, the principal office of business of the plaintiff is at Ernakulam and 5th defendant is residing in Karnataka. Now the suit is instituted in Calicut where a part of cause of action alleged to have been arisen. So, though the

plaintiff in this case cannot invoke Section 62(2) of the Act or 134(2) of the Trade Marks Act, plaintiff by invoking Section 20(c) of the Code institute the suit before the District Court, Kozhikode.

20. Next contention is with regard to bar under Section 12(b) of the Commercial Courts Act, 2015. Learned counsel for the defendant, in this context, placed reliance on **Vishal Pipes** referred above and would contend that in the plaint, the plaintiff valued the suit at Rs.1,000/- for the relief of declaration which is incorrect. But the relief sought is a declaration that the plaintiff is the original author and composer having absolute moral and certain legal rights and entitlements under the Copyright Act in the musical work and song *Navarasam* and to pass a decree declaring that the song *Varaharoopam* deployed and synchronized in the cinematographic film *Kanthara* in Kannada and all other languages is infringement of the musical work and sound recording of *navarasam* composed by the plaintiff. For reliefs (1) and (2) declarations it is valued at Rs.1,000/- each. Whether that can be said as illegal or incorrect, prima facie, is

the point for determination. Section 12 of the Commercial Courts Act, 2015 deals with the determination of specified value. Section 12(d) is relevant in this context which reads thus:

"12. Determination of Specified Value

XXXXXXX

XXXXXXX

(d) : Where the relief sought in a suit, appeal or application relates to any other intangible right, the market value of the said rights as estimated by the plaintiff shall be taken into account for determining Specified Value."

21. In the present case, the relief sought will come within the purview of Section 12(d). So, the market value of that right as estimated by the plaintiff shall be taken into account for determining the specified value. In this context, learned counsel placed reliance on **C.K.Surendran v. Kunji Moosa : Manu/KE/2143/2021**. In paragraph 10 of the said decision, learned Single Judge has found that in order to file a suit under the jurisdiction of the Commercial Court, the following twin conditions are to be satisfied. (1) It shall be a commercial dispute

within the meaning of Section 2(1)(c) of the Act. (2) Such commercial disputes are of a specified value as per Section 2(i) of the Act. In the present case, looking at the subject matter of the suit and reliefs sought, no doubt, it may come under Section 2(c)(17) of the Act. But, as per Section 12(d) in the case of suit in relation to intangible rights, the market value of the rights as estimated by the plaintiffs shall be taken into account for determining the specified value. So, prima facie, the valuation of Rs.1,000/- for the reliefs (a) and (b) shown by the plaintiff cannot be said as illegal or incorrect. So also, in paragraph 12 of the said judgment, learned Single Judge found that the provisions of the Commercial Courts Act and the Kerala Court Fees and Suits Valuation Act should be interpreted harmoniously. Section 25(c) of the Court Fees Act deals with suit for declaration which provides that in a suit for a declaratory decree or order, whether with or without consequential relief, not falling under section 26.

25. Suits for declaration.-In a suit for a declaratory decree or order, whether with or

without consequential relief, not falling under section 26-

(a) xxxxxx

(b) xxxxxx

(c) where the prayer relates to the plaintiff's exclusive right to use, sell, print or exhibit any mark, name, book, picture, design or other thing and is based on an infringement of such exclusive right, fee shall be computed on the amount at which the relief sought is valued in the plaint or on rupees one thousand whichever is higher.

22. So, the valuation made under Section 25(c) at Rs.1,000/- each for the declaratory reliefs is in tune with Section 12(d) of the Act and Section 25(c) of the Kerala Court Fees and Suits Valuation Act i.e. market value as estimated by the plaintiff.

23. Learned counsel for the plaintiff would also contend that the District Court returned the plaint based on the counter affidavit as well as the documents produced from the side of the defendant which is illegal. In this context, learned counsel placed reliance on **Saleem Bhai and Others v. State of Maharashtra**

and Others : C.A.No.8518/2002 with C.A.No.8519/2002

dated 17.12.2002 wherein while dealing with Order VII Rule 11 of the Code, it has been held that relevant facts which need be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power under Order VII Rule 11 of the Code at any stage of the suit – before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Rule 11 of Order VII C.P.C the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage. In that case when an application under Order VII Rule 11 of the Code was filed the court directed the defendant to file written statement against which the revision petition was filed before the High Court and the High Court confirmed the direction given by the learned Trial Judge against which the aggrieved party approached the Apex Court. It was held that the direction to file written

statement without deciding the application under Order VII Rule 11 C.P.C is a procedural irregularity touching the exercise of jurisdiction by the Trial Court and accordingly the order under challenge was set aside. In **Saisons Trade and Industry Private Limited**, Delhi High Court has held that while dealing with an objection of jurisdiction raised pre-trial under Order VII Rule 10 C.P.C, the averments in the plaint and the documents annexed thereto are alone to be considered. In **M/s.RSPL Ltd.** also, the Delhi High Court had reiterated the proposition that the objection to territorial jurisdiction in an application under Order 7 Rule 10 CPC is by way of a demurrer. This means that the objection to territorial jurisdiction has to be construed after taking all the averments in the plaint to be correct. **Expnar Sa & Anr v. Eupharma Laboratories Ltd. & Anr : 2004 (3) SCC 688** has been quoted wherein it has been observed that when an objection to jurisdiction is raised by way of demurrer and not at the trial, the objection must proceed on the basis that the facts as pleaded by the initiator of the impugned proceedings are true.

It is also observed that submission in order to succeed must show that granted those facts, the Court does not have jurisdiction as a matter of law. It is also settled position that while considering the plaint from the stand point of Order VII Rule 10 C.P.C the averments in the plaint and documents attached alone are relevant. On a perusal of the impugned order would show that the District Court has also taken into account the copy of the agreement produced from the side of defendants to enter into a finding that the District Court, Kozhikode has no jurisdiction to entertain the suit. That also does not seem to be correct in view of the settled position of law discussed above. So, at any rate, the impugned order as against the 5th defendant confining to the reliefs sought against him appear to be not sustainable and hence is set aside.

24. But I have already stated after the deletion of the defendants 1 to 4 and 6 to 14, there will be drastic changes in the pleadings and reliefs. Plaintiff/petitioner has to make necessary amendments in the petition as well as in the plaint

accordingly. Thereafter, if at all the question of jurisdiction is pursued, it shall be disposed as per law above discussed. F.A.O is disposed off accordingly. No cost.

(sd/-)

M.R.ANITHA, JUDGE

jsr

APPENDIX OF FAO 147/2022

PETITIONER ANNEXURES

Annexure A1	TRUE COPY OF THE PLAINT IN O.S. NO. 14 OF 2022.
Annexure A2	A TRUE COPY OF THE APPLICATION FOR INTERIM INJUNCTION IN I.A. NO. 2 OF 2022.
Annexure A3	TRUE COPY OF THE COUNTER AFFIDAVIT IN I.A. NO. 2 OF 2022 FILED BY THE 1ST RESPONDENT.
Annexure A4	CERTIFIED COPY OF I.A. NO. 11 OF 2022 FILED BY THE 1ST RESPONDENT UNDER ORDER 7 RULE 10.
Annexure A5	A TRUE COPY OF THE OBJECTIONS TO I.A. NO. 11 OF 2022 ALONG WITH THE DOCUMENTS .
Annexure A6	THE TRUE COPY OF THE APPLICATION FILED BY THE 1ST RESPONDENT AS I.A. NO. 11/2022 UNDER ORDER 7 RULE 10
Annexure A7	THE TRUE COPY OF ORDER OF INJUNCTION DATED 28/10/2022
Annexure A8	TRUE COPY OF COMMENTS OF MUSIC LOVERS WHO FOUND SIMILARITIES BETWEEN NAVARASAM AND VARAHA ROOPAM
Annexure A9	TRUE COPY OF THE PUBLISHED ARTICLE THAT WAS SUBMITTED IN THE COURT BELOW ADMITTING THAT 5TH RESPONDENT THEN HAD ACCESS AND WAS INSPIRED BY THE SONG OF THE APPELLANT
Annexure A11	THE EVENT NEWS MARKING THE RELEASE OF THE SONG NAVARASAM BY THE BAND
Annexure A12	THE ACCOLADES AND ACCEPTANCE RECEIVED FOR THE SONG.
Annexure A13	PRAISES RECEIVED FROM MUSIC MAESTRO A.R. RAHMAN AND ACTOR KAMAL HASSAN

RESPONDENTS ' ANNEXURES

Annexure R1(A)	True copy of the Notice dated 19.10.2022 send by the 6th respondent to the 1st respondent.
Annexure R1(B)	True copy of the limited response dated 21.10.2022 send to the 6th respondent by the 1st respondent.
Annexure R1(C)	True copy of the Caveat No. 219 of 2022 filed by the 1st respondent in the Honorable District Court Kozhikode.
Annexure R1(D)	True copy of G.O.(Ms.) No. 51/2020/Home dated 24.02.2020.
Annexure R1(E)	True copy of G.O. (MS.) No. 53/2022/Home dated 18.03.2022.
Annexure R1(F)	True copy of the Assignment Deed dated 14.09.2015.
Annexure R1(B)	True copy of the 6th respondents notice dated 19.10.2022 to respondent No.1
Annexure R1(C)	True copy of the limited holding response dated 21.10.2022 issued by the respondent No.1 to the 6th respondent.
Annexure R1(D)	True copy of the caveat filed by the respondent No.1 before the honorable district court Kozhikode.
Annexure R1(A)	True copy of IA 11 of 2022 in OS 14 of 2022 filed by respondent No. 1 before the honorable District Court Kozhikode
Annexure R1(E)	True copy of G.O. (Ms.) No. 51/2020/Home dated 24.02.2020
Annexure R1(F)	True copy of G.O. (Ms.) No. 53/2022/Home dated 18.03.2022
Annexure R1(G)	True copy of Assignment Deed dated 14.09.2015
Annexure R6-B	COUNTER AFFIDAVIT IN I.A. NO. 11 OF THE 2022 FILED BY THE 6TH RESPONDENT
Annexure R6-B!	APPLICATION TO RECEIVE COUNTER AFFIDAVIT I.A. 13 OF 2022

Annexure R6-C	AFFIDAVIT AND APPLICATION FOR REVIEW I.A. NO. 12 OF 2022
Annexure R6- D	ORDER IN I.A. NO. 12 OF 2022
Annexure R6-E	ORDER IN I.A. NO. 13 OF 2022
Annexure R6-A	ORDER IN I.A. NO. 11 OF 2022 IN O.S. NO. 4 OF 2022

True copy

P.S to Judge