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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF MARCH, 2024

BEFORE

THE HON'BLE MR JUSTICE ANANT RAMANATH HEGDE

REGULAR FIRST APPEAL NO. 1735 OF 2023 (IPR)

BETWEEN:

1 . VARUN CHOPRA

2 . JAGDAMAN KUMAR CHOPRA



...APPELLANTS

(BY SRI PUNEET YADAV, ADVOCATE FOR
MS. DEEPA J, ADVOCATE)

AND:

1 . SHYAM SUNDER CHOPRA AND SONS HUF,



2 . SAMPAN CHOPRA ,

3 . VAIBHAV CHOPRA AN INDIAN, HINDU,
~~.....~~

4 . SAMVITEE FOODS PVT. LTD.,

5 . VAIBHAV CHOPRA, AN INDIAN, HINDU,

...RESPONDENTS
(BY SRI VENKATESH R BHAGAT, ADV. FOR R1, R2 & C/R3 TO R5)

THIS RFA IS FILED UNDER SECTION 96 R/W ORDER 41 RULE 1 OF CPC, AGAINST THE JUDGMENT AND DECREE DATED 28.08.2023 PASSED ON IA No.4 IN OS No.6788/2022 ON THE FILE OF THE XVIII ADDITIONAL CITY CIVIL JUDGE, BANGALORE, ALLOWING THE IA No. 4 FILED UNDER ORDER VII RULE 11 (a) AND (d) FOR REJECTION OF PLAINT.



THIS APPEAL COMING ON FOR DICTATING JUDGMENT
THIS DAY THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

Whether a suit falling under Section 134 of the Trade Marks Act, 1999, (for short Act of 1999) can be instituted in a Court, where neither the plaintiff nor the defendant resides or carries on business or personally works for gain within the territorial jurisdiction of the Court where the cause of action has arisen is the question that has come up for consideration.

2. The plaintiffs filed a suit for injunction alleging infringement of trade mark and also restraint orders to restrain the defendants from passing off.

3. Admittedly, the plaintiffs are residing in Uttar Pradesh. Defendants No.1, 2, and 5 are residing in Uttar Pradesh and the rest of the defendants are in Haryana. None of them is having any branch office within the territorial jurisdiction of the City Civil Court, Bengaluru where the suit is instituted.

4. In this background, the defendants invoked Order VII Rule 11 of the Code of Civil Procedure (for short 'Code') to reject the plaint on the premise that the City Civil Court in



Bengaluru has no territorial jurisdiction to entertain the suit. The plaintiffs opposed the said application. The Trial Court allowed the application to reject the plaint on the premise that it has no territorial jurisdiction to entertain the suit.

5. Sri. Puneeth Yadav, the learned counsel appearing for the plaintiffs/appellants, would submit that the impugned order ignores Section 20(c) of the Code. It is urged that the cause of action to file the suit arose in Bengaluru as the plaintiffs' registered trade mark is infringed in Bengaluru and the defendants are passing off the plaintiffs' trade mark in Bengaluru.

6. Learned counsel appearing for the appellants would place reliance on the following judgments:

- (i) *Patel Roadways Limited, Bombay vs. Prasad Trading Company (1991) 4 SCC 270*
- (ii) *Dashrath Rupsingh Rathod vs. State of Maharashtra and Another (2014) 9 SCC 129*
- (iii) *Burger King Corporation vs. Techchand Shewakrawani & Ors. 2018 SCC online Del 10881*



(iv) *Machinenfabrik Reiter AG and Another vs. Tex Tech Industries (India) Private Limited and Another 2021 SCC online Del 1825*

(v) *Copenhagen Hospitality and Retails and Others vs. A.R. Impex and Others 2021 SCC online Del 3899*

7. Sri. Venkatesh R. Bhagath, the learned counsel appearing for the defendants/respondents would contend that the suit is governed by Section 134 of the Act of 1999. Admittedly none of the defendants resides or carries on business or works for gain within the jurisdiction of the Court where the suit is filed. Since the suit is filed invoking Section 134 of the Act of 1999, a suit can be filed only in any of the three places namely,

(a) where the plaintiff has a principal office;

or

(b) where any one of the defendants resides, carries on business, or works for gain;

or



(c) any one of the defendants has a subordinate office and the cause of action has also arisen in the place where any one of the defendants is having a subordinate office.

8. Learned counsel for the respondents has relied upon the following judgments:

- (i) *Indian Performing Rights Society Limited vs. Sanjay Dalia and Another (2015) 10 SCC 161*
- (ii) *Ultra Home Construction Private Limited vs. Purushottam Kumar Chaubey and others 2016 SCC Online Delhi 376*
- (iii) *M/s Unilever Australasia vs. M/s Shingar Cosmetics Private Limited and others 2010 SCC Online Kar 222*
- (iv) *Manugraph India Ltd vs Simarq Technologies Pvt. Ltd. and others 2016 SCC Online Bom 5334*

9. The contentions raised call for an examination of the scope of Section 20 of the Code and Section 134 of the Act of 1999.

10. Section 20 of the Code reads as under:-

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 works 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.

Illustrations

- (a) xxxx
- (b) xxxx



11. On careful consideration of the provision, the following can be deduced.

- (i) Under clauses (a) and (b) of Section 20 of the Code, the jurisdiction of the Court is linked to the residence or the place of business or work of the defendant or each of the defendants at the time of the commencement of the suit.
- (ii) Under clause-(c) of Section 20 of the Code, the jurisdiction of the Court is linked to the cause of action. The cause of action may be either the whole or part. This clause is not linked to the location of the defendant. It is only a "cause of action centric" clause.

12. In case, the plaintiff is to file a suit, at a particular place invoking Section 20(a) of the Code, the plaintiff is required to satisfy that the defendant resides or carries on business or personally works for gain in that particular place and nothing else. That is the only requirement in clause (a) of Section 20 of the Code. In case the suit falls under Section 134 of the Act of 1999 the plaintiff can also file a suit in a place where the plaintiff resides, carries on business, or works for gain in that place.



13. Under clause (b), of Section 20 of the Code, the plaintiff with the leave of the Court may institute the suit at a place where any one of the defendants resides.

14. In both cases falling under clauses (a) and (b), there is no need to establish the cause of action to confer the territorial jurisdiction on the Court. All that required is the defendant's residence, or place of business, or work.

15. It is to be noticed that each of the clauses (a) to (c) of Section 20 of the Code is separated by a disjunctive word "or" preceded by a semicolon (;). Thus, it is obvious that the said clauses are independent of each other. There is nothing to indicate that they have to be read conjunctively. If clause (c) of Section 20 of the Code is read independently, then the jurisdiction of the Court to try the suit under Section 20 (c) of the Code is dependent *only* on the "cause of action" and nothing else. The place of residence or business or work of the defendant is irrelevant.

16. To give an illustration, if the plaintiff resides, carries on business, or works for gain in place "A" and the defendant resides, carries on business, or works for gain at place "B" and the cause of action has arisen at place "C", then the plaintiff



has a choice of instituting the suit in place "B" where the defendant is located at the time of suing or at place "C" where the cause of action has arisen. In a suit falling under Section 134 of the Act of 1999, the plaintiff will also have a choice of one more place i.e. place "A" where he is residing or carrying on business or works for gain.

17. Sri Venkatesh Bhagat referring to the explanation to Section 20 of the Code urged that since "cause of action" is also linked to the place of the defendant's office or business in explanation to Section 20 of the Code, unless the cause of action has arisen in a place where the defendant is having a subordinate office, the suit cannot be instituted in a place-based only on cause of action.

18. Sri Venkatesh Bhagat would rely upon the judgments of the Hon'ble Apex Court in ***Indian Performing Rights Society Limited vs. Sanjay Dalia and another*** (for short Sanjay Dalia) and the judgment of Bombay High Court in ***Manugraph India Ltd vs Simarq Technologies Pvt. Ltd. and others.***

19. The Hon'ble Apex Court in ***SANJAY DALIA*** supra was dealing with the question whether the suit complaining



infringement of trade mark can be filed in a place where the plaintiff has a subordinate office even if the cause of action does not arise in the said place. The Apex Court answered the question in the negative.

20. The Bombay High Court in ***Manugraph India Ltd vs Simarq Technologies Pvt. Ltd. and others*** was dealing with the question of whether post-Sanjay **Dalia** *supra*, the right to institute a suit complaining about trade mark and copyright violation in a place where the plaintiff is residing or having a principal office is taken away. The Bombay High Court has held that the plaintiff can always file a suit complaining about trademark and copyright violation, in a Court within the local jurisdiction of which the plaintiffs' *registered office or principal office* is located.

21. Sri Venkatesh Bhagat laid much emphasis on paragraphs No.14 and 22 in ***SANJAY DALIA*** *supra* to support his contentions. The relevant portion of paragraphs No.14 and 22 are extracted below in addition to paragraph No.15 which is also relevant for the discussion.

14. xxxxxxxxx. 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 CPC 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.

15. The learned author Mulla in *Code of Civil Procedure*, 18th Edn., has observed that under clauses (a) to (c) of Section 20, the plaintiff has a choice of forum to institute a suit. The intention of the Explanation to Section 20 of the Code of Civil Procedure is that once the corporation has a subordinate office in the place where the cause of action arises wholly or in part, it cannot be heard to say that it cannot be sued there because it did not carry on business at that place. xxxxxxxxxxxx.

22. There is no doubt 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 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. xxxxxxxx

22. The paragraphs No. 14 and 15 referred to above certainly do not support the contention of the respondents. The analysis in the aforementioned paragraphs clearly speaks that Section 20 of the Code is not diluted in view of Section 134 of the Act of 1999 and Section 62 of the Copyright Act 1957 ('Act of 1957' for short). On the other hand, it only says that an additional forum is provided to the plaintiff if the suit is filed invoking Section 62 of the Act of 1957 or the Act of 1999.

23. Referring to Mulla's Commentary on the Code, in paragraph no. 15 of the judgment extracted above, the choice of the plaintiff to file a suit in different places under Section 20 of the Code is reiterated.

24. Paragraph No.22 referred to above explains that the plaintiff in the suit coming under the Act of 1957 and the Act of 1999 cannot be permitted to file a suit in a place where the plaintiff has a subordinate office, by invoking Section 62 of the Act of 1957 and Section 134 of the Act of 1999. The said paragraph cannot be interpreted to say that the plaintiff can file



a suit complaining infringement of trade mark invoking Section 20 (c) of the Code only if the cause of action arises in a place where the defendant is having a subordinate or branch office. The said judgment does not dilute Section 20(c) of the Code. The choices available under clauses (a), (b), and (c) of Section 20 of the Code are still available to the plaintiff and not taken away under Section 134 of the Act of 1999. In **SANJAY DHALIA** *supra* the Apex Court has held that the plaintiff cannot maintain a suit in a place where the plaintiff has a subordinate office by resorting to the explanation to Section 20 (c) of the Code.

25. It is well settled position of law that a judgment cannot be read like a statute. It has to be understood in the context. If this principle is borne in mind, the law laid down in **SANJAY DHALIA** *supra* cannot be interpreted to say that to file a suit invoking Section 134 of the Act of 1999, in a place where the cause of action has arisen, the plaintiff is also required to establish that the defendant resides or carries on business in the same place where the cause of action has arisen.



26. In the case of **M/s Unilever Australasia** supra, the co ordinate bench of this Court was dealing with a question as to whether the suit under Section 134 of the Act of 1999 can be filed in a place where the plaintiff is having a registered office. Said case does not deal with question raised in this appeal.

27. Section 20 of the Code has two distinct parts. The first part deals with the place of the principal office. The second part deals with the cause of action arising in a place where the subordinate office of the defendant is located. This is apparent from the distinctive word "or" appearing in the explanation.

28. It is also evident that the explanation seeks to clarify the position if the defendant happens to be a corporation having branches at various places (Corporation includes Company as held in various judgments).

29. The first part clarifies the position that if the defendant is a corporation (or a company) then it shall be deemed to be carrying the business at a place where it is having the principal office. It is also relevant to note that the first part is not linked to the cause of action. The location of the principal office of the defendant company within the



territorial jurisdiction of the Court is sufficient to confer the jurisdiction on the Court.

30. The second part deals with a situation where the defendant - the company is having branches. If the suit is filed in a place where the defendant company has a subordinate office, then the plaintiff must also establish that the cause of action has also arisen in the place where the subordinate office is located. This is evident from the expression, "***in respect of any cause of action arising at any place where it has also a subordinate office, at such place***". The said expression links the "cause of action" with the "place of subordinate office".

31. Thus, merely because the defendant has a subordinate office at a place other than the place where it has a principal office, the Court in such place where the subordinate office is located will not automatically get the jurisdiction to entertain the suit. The place where the subordinate office of the defendant corporation is located will get the jurisdiction to try the suit only if the cause of action arises in that place where the subordinate office of the defendant is located.



32. The expression "cause of action" appearing in the *explanation to Section 20 of the Code* has a limited purpose. Its only purpose is to confer the jurisdiction on the Court where the defendant is having a subordinate office provided the cause of action also arises in such place where the defendant is having a subordinate office and nothing more. The expression "cause of action" appearing in explanation to Section 20 of the Code has nothing to do with the jurisdiction conferred on the Court based on the cause of action under Section 20(c) of the Code. Hence, the contention of the respondents that the defendants' subordinate office is not located in Bengaluru and the Court in Bengaluru does not have the jurisdiction to entertain the suit has to be rejected as the plaintiffs' case falls under Section 20 (c) of the Code.

33. The illustrations provided in Section 20 of the Code extracted below also clarify the position.

Illustrations

(a) *A is a tradesman in Calcutta, and B carries on business in Delhi. B, by his agent in Calcutta, buys goods of A and requests A to deliver them to the East Indian Railway Company. A delivers the goods accordingly in Calcutta. A may sue B for the price of*



the goods either in Calcutta, where the cause of action has arisen or in Delhi, where B carries on business.

(b) A resides at Simla, B at Calcutta, and C at Delhi. A, B, and C being together at Benaras, B and C make a joint promissory note payable on demand, and deliver it to A. A may sue B and C at Benaras, where the cause of action arose. He may also sue them at Calcutta, where B resides, or at Delhi where C resides; but in each of these cases, if the non-resident defendant objects, the suit cannot proceed without the leave of the Court.

34. In illustration (a) referred to above which is in the Code even before Section 134 of the Act of 1999, it may be noticed that the defendant does not reside at Calcutta. However, the Court in Calcutta gets the jurisdiction as part of the transaction took place in Calcutta where the defendant through his agent purchased the goods.

35. In the illustration (b) referred to above, A, B, and C are residing at Simla, Calcutta, and Delhi respectively. The transaction takes place at Benaras. The illustration specifically states that A may either sue B and C at Benaras, Calcutta, or Delhi. It is relevant to note that none of the parties reside at



Benaras. However, the Court in Benaras gets the jurisdiction as the transaction took place in Benaras which is a place of cause of action. Thus, the place of cause of action need not be a place of location of the defendant under Section 20(c) of the Code.

36. Moreover, the defendants in the suit are individuals and not corporations coming under explanation to Section 20 of the Code. Hence, the defense available to the Corporation is not available to the defendants. As this Court has already held that Section 20(c) of the Code is independent of clauses (a) and (b) of Section 20 of the Code, the right of the plaintiff to institute a suit in a place where the cause of action has arisen is not taken away even if the plaintiff or the defendant is not residing in the said place.

37. The Trial Court has not considered the implication of Section 20(c) of the Code in the correct perspective.

38. It is averred in the plaint that the defendants have sold certain products infringing the plaintiffs' registered trade mark and the alleged transaction has taken place in Bengaluru. It is also alleged that the defendants are passing off the plaintiffs' products in Bengaluru. Merely because the plaintiffs



could have filed a suit in Uttar Pradesh where the principal office of the plaintiffs is located or the plaintiffs could have filed a suit in a place where the defendants are carrying on the business, it does not mean that the Court within whose jurisdiction the "*cause of action*" has arisen does not have a jurisdiction to try the suit. This being the position, the Court in Bengaluru has the jurisdiction to entertain the suit under Section 20(c) of the Code.

39. Hence, the following:

ORDER

- (i) The appeal is ***allowed***.
- (ii) Impugned judgment and decree are set aside.
- (iii) The suit in O.S.No.6788/2022 on the file of XVIII Additional City Civil Judge, Bengaluru is restored to file.
- (iv) Parties shall appear before the Trial Court on **06.04.2024** without waiting for any further notice
- (v) Registry to send the Trial Court Records forthwith.

**Sd/-
JUDGE**

GVP/CHS/ List No.: 1 SI No.: 22