

(2018) 03 DEL CK 0086

In the Delhi High Court

Case No : CS(COMM) 566 Of 2016 & I.A.No.13349 Of 2015

Ashoka Distillers & Chemicals Pvt Ltd

APPELLANT

Vs

Ads Spirits Pvt Ltd

RESPONDENT

Date of Decision : 15-03-2018

Acts Referred:

Trade Marks Act, 1999 — Section 134
Copyright Act, 1957 — Section 62(2)
Code Of Civil Procedure, 1908 — Section 20

Citation : (2018) 03 DEL CK 0086

Hon'ble Judges : MANMOHAN

Bench : Single Bench

Advocate : Mr.Sushant Singh, Mr.Tajinder Singh, Mr.S.K.Sharma, Mr.Prayas Aneja, Mr.Rahul Sharma

Final Decision : Disposed Of

Judgement

1.Present suit has been filed for permanent injunction, infringement of trademark, copyright, passing off, delivery up and damages.

2.Learned counsel for the defendant states that the plaintiff has wrongly invoked the jurisdiction of this Court. He states that the impugned product in

the present suit i.e. MATWALA country liquor is a restricted product which is not available within the jurisdiction of this Court.

3.He states that the plaintiff has no reason to file the present suit in Delhi as the plaintiff admittedly has its registered office in Haryana and is carrying

on its business activities pertaining to the impugned trademark in Haryana only. Hence, according to the learned counsel for the defendant, this Court

has no territorial jurisdiction to try and entertain the present suit. In support of his submissions, he relies upon the judgment passed by this Court in

Piccadily Agro Industries Ltd. Vs. Ashok Jain and Ors. 2017 SCC OnLine Del 8736.

4. Per contra, learned counsel for the plaintiff states that the present suit is a quia timet action based upon apprehended usage and is intended to

prevent apprehended wrongs and anticipated mischief. According to him, the fact that the defendants were not selling their products in Delhi, as of

today, would not take away part of the cause of action which was preventive of a future course of conduct on the part of the defendant.

5. Learned counsel for the plaintiff also refers to para 24 of the plaint wherein it is stated that this Court has territorial jurisdiction under Section 134 of

the Trade Marks Act, 1999, Section 62(2) of the Copyright Act and Section 20 of the CPC.

6. Having heard learned counsel for the parties, this Court finds that the impugned products of the contesting parties are available and sold within the

State of Haryana only as approved by the Excise Department, Haryana. The label on both the plaintiff and defendant's bottles also bear a sale

warning/ restriction written diagonally across the picture "For Sale in Haryana Only".

7. A perusal of para 24 of the plaint reveals that it is primarily based on Sections 134 of the Trade Marks Act and 62(2) of the Copyright Act. The

plaintiff's registered office is situated in Haryana and the defendant is also carrying on its business in Haryana. As both the plaintiff and defendant

carry on their business in Haryana, this Court is of the opinion that in view of the judgments passed in Indian Performing Rights Society Vs. Sanjay

Dalia & Anr., (2015) 10 SCC 161 and Ultra Home Construction Pvt. Ltd. Vs. Purushottam Kumar Chaubey & Ors., 2016 SCC Online Del.376, the

Court in Haryana would have the territorial jurisdiction. The relevant portion of the judgment in Indian Performing Rights Society (supra) is

reproduced hereinbelow:-

"20. In our opinion, in a case where the 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.

21. 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 that the impediment imposed under Section 20 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 the 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 the plaintiff is having branch offices, etc.â??

8. Consequently, this Court is of the view that it has no territorial jurisdiction to entertain the present suit.

9. This Court is further of the opinion that the present suit is not a quia timet action as there is no averment in the plaint that the defendant intends to launch their product in Delhi.

10. This Court is of the view that the present controversy is covered by the judgment of this Court in Piccadily Agro Industries Ltd. (supra).

11. Accordingly, present plaint and application are directed to be returned under Order VII Rule 10 CPC. The plaintiff may, if it so desire, move appropriate application under Order VII Rule 10A CPC.

12. However, to facilitate filing of the present plaint in a court having territorial jurisdiction, this Court directs that the interim order dated 08th July, 2015 shall continue to operate for a period of eight weeks. The plaint as well as the documents filed by the plaintiff are directed to be returned to the plaintiff by the Registry of this Court within a period of one week. For this purpose, list the matter before the Joint Registrar on 22nd March, 2018.

13. It is made clear that in the event either the plaint is not filed in the court of competent jurisdiction within the aforesaid stipulated period or if no interim order is passed by the competent court within the said time, the interim order passed by this Court shall cease to operate.

14. With the aforesaid directions, the present suit and pending application stand disposed of.