
(2017) 02 DEL CK 0058

In the Delhi High Court

Case No : FAO (OS) No. 251 of 2016 and CM Nos. 30421 of 2016, 30422 of 2016 and 30423 of 2016

M/s. Allied Blenders & Distillers Pvt. Ltd.

APPELLANT

Vs

R.K. Distilleries Pvt. Ltd.

RESPONDENT

Date of Decision : 28-02-2017

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 10
Copyright Act, 1957 — Section 62(2)
Trade Marks Act, 1999 — Section 134(2)

Citation : (2017) 69 PTC 493

Hon'ble Judges : Mr. Badar Durrez Ahmed and Mr. Ashutosh Kumar, JJ.

Bench : Division Bench

Advocate : Mr. Sudhir Chandra Agarawal, Sr. Advocate with Mr. Pravin Anand, Mr. Shrawan Chopra, Ms. Abhilasha Nautiyal, Mr. Kanak Bose and Mr. Sanjay Chhabra and Ms. Vijay Laxmi Mewara, Advocates, for the Appellant; Mr. Vikramajit Banerjee, Mr. Hemant Daswani, Sumit Kumar, Mr. Harsh Vardhan and Mr. Vaibha Chadha, Advocates, for the Respondent

Final Decision : Disposed Off

Judgement

Badar Durrez Ahmed, J.—The appellant/plaintiff is aggrieved by the judgment dated 27.07.2016 delivered by a learned single Judge of this court in CS(OS) 2266/2013, whereby the learned single Judge, while considering an application (IA No. 18636/2013), which had been filed by the appellant/plaintiff under Order 39 Rules 1 and 2 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC"), thought it fit to return the plaint itself under Order 7, Rule 10 of CPC inasmuch as, according to the learned single Judge, this court did not have the territorial jurisdiction to try the suit.

2. The appellant/plaintiff had instituted the said suit for permanent injunction to restrain the defendant/respondent from infringing the trade mark of the appellant/plaintiff, for passing off, infringing the copyright of the plaintiff, unfair competition, damages and delivery up, etc.. The trade mark of the appellant/

plaintiff in respect of its whisky is "Officers Choice", whereas that of the defendant/respondent is "Regular Choice".

3. The learned single Judge was of the view that the appellant/plaintiff did not have a registered office in Delhi, its registered office being located in Mumbai. He also observed that the cause of action, if any, had accrued in Andhra Pradesh and not in Delhi. It was also observed by the learned single Judge that the present case fell under S.No.3 in the table given in para 13 of the decision of a Division Bench of this court in *Ultra Home Construction Pvt. Ltd. v. Purushottam Kumar Chaubey and Others*, 2015 (64) PTC 119 (Del), FAO(OS) 494/2015, decided on 20.01.2016 and therefore, the suit could have either been filed in Mumbai or in Andhra Pradesh, but certainly not in Delhi. The learned single Judge also observed that the argument of the appellant/plaintiff that it had a branch office in Delhi was not relevant when, according to the learned single Judge, no cause of action had arisen in Delhi. It was also observed by the learned single Judge that the injunctive relief sought by the appellant/plaintiff was not limited to the territory of Delhi, but would have its effect all over India. According to the learned single Judge, a mere apprehension that the respondent/defendant would start selling its whisky under the trade mark "Regular Choice" in Delhi was not sufficient to clothe the courts in Delhi with territorial jurisdiction.

4. The learned counsel for the appellant submitted that the appellant/plaintiff had a credible apprehension that the respondent/defendant would start selling whisky under the impugned mark and label "Regular Choice" in Delhi. It was submitted that the suit was, inter alia, a quia timet action based on the apprehension that the defendant would start selling the said whisky under the impugned mark and label "Regular Choice" in Delhi.

5. The learned counsel for the appellant/plaintiff relied on several decisions, including the following:-

1) *Teva Pharmaceutical Industries Limited v. Natco Pharma Limited*: 2014 (210) DLT 591 (DB);

2) *Pfizer Product Inc. v. Rajesh Chopra and Others*: 2006 (32) PTC 301 (Del);

3) *Win Plast Limited v. Symphony Limited*: O.J. Appeal No. 32/2015, decided on 27.07.2015 by a Division Bench of the High Court of Gujarat at Ahmedabad;

4) *Shree Nath Heritage Liquor Pvt. Ltd. v. M/s. Allied Blenders & Distillers Pvt. Ltd.*, 2015 (63) PTC 551 (Del), FAO(OS) 368/2014, decided on 06.07.2015 and the connected appeal in FAO(OS) 493/2014;

5) *Exphar SA and Another v. Eupharma Laboratories Ltd. & Another*: 2004 (3) SCC 688;

6) *M/s, RSPL Limited v. Mukesh Kumar and Another*, 2016 (66) PTC 225 (Del), FAO(OS) 145/2016, decided on 03.08.2016 by a Division Bench of this court;

7) *Ultra Home Construction Pvt. Limited v. Purushottam Kumar Chaubey and*

Others, 2015 (64) PTC 119 (Del), FAO(OS) 494/2015, decided on 20.01.2016 by a Division Bench of this court.

6. The submission of the learned counsel for the appellant/plaintiff was that there was a clear apprehension of launch of the respondent's product under the impugned mark within the jurisdiction of this court and this apprehension in itself constituted the cause of action and conferred jurisdiction upon this court. Although the respondent/defendant had already launched its product under the trade mark "Regular Choice" in Andhra Pradesh, it had not yet done so in Delhi and the threat of the same being done in Delhi also, independent of the fact that the product had already been launched in Andhra Pradesh, constituted a cause of action which was relatable to Delhi.

7. It was submitted that the view of the learned single Judge that no part of the cause of action had accrued to the appellant/plaintiff in Delhi was incorrect. It was submitted that, in any event, for the purposes of construing a suit from the standpoint of Order 7, Rule 10, CPC, it is only the averments in the plaint which have to be considered. The decision as to whether a particular court has or does not have territorial jurisdiction would have to be, for the purposes of Order 7, Rule 10 CPC, taken on the basis of the averments contained in the plaint and by treating the same to be true and correct. It is another matter that in the course of the trial, the claims of the plaintiff may be proved false through evidence.

8. It was also submitted that the respondent's/defendant's impugned trade mark "Regular Choice" was registered for the whole of India, including Delhi and therefore, there was a high likelihood of the respondent/defendant selling its whisky under the said trademark in Delhi also. This in itself constituted part of the cause of action for the present suit on the basis of the said apprehension of sale in Delhi.

9. On the other hand, the learned counsel for the respondent fully supported the decision of the learned single Judge. On behalf of the respondent, it was submitted that the plaintiff's Registered Office was in Mumbai; the respondent/defendant sold its products in Andhra Pradesh and that too, since 2011. As such, no part of the cause of action arose in Delhi. It was submitted that clever drafting should not be allowed to create jurisdiction in a court which otherwise does not have it. It was submitted that the appellant is attempting to circumvent the legal position as set out in *Indian Performing Rights Society Limited v. Sanjay Dalia and Another*: 2015 (10) SCC 161 and *Ultra Home* (supra). It was submitted that mere apprehension was not enough as there must be some basis for the said apprehension. According to the learned counsel for the respondent/defendant, no basis for the alleged apprehension has been indicated.

10. Let us now examine the cases referred to by the parties. In *Teva Pharmaceutical Industries Limited* (supra), a Division Bench of this court was considering an appeal from an order of a learned single Judge under Order 7, Rule 10, CPC directing the return of the plaint for presentation before the

appropriate court. With regard to the plea of apprehension of sale/marketing in Delhi, the Division Bench found that it would be sufficient if the plaintiff had pleaded apprehension of sale/marketing in Delhi to clothe the courts in Delhi with territorial jurisdiction to entertain the suit. The Division Bench observed as under:-

"20. We have also wondered whether owing to the statement aforesaid of the respondent/defendant, of not intending to market the product in India, the territorial jurisdiction of this Court, otherwise invoked in accordance with law, can be ousted. We are unable to find any basis for holding that though on the basis of averments in the plaint, this Court will have territorial jurisdiction, the same can be ousted on the statement of the respondent/defendant of not doing/intending to do act, to prevent which suit is filed, within the territorial jurisdiction of this Court. We are of the opinion that once the appellants/plaintiffs have pleaded apprehension of sale/marketing in Delhi, the Courts in Delhi would have jurisdiction to entertain the suit and such jurisdiction cannot be ousted by the defendant by making a statement not to do any such act in Delhi, though the defendant would be entitled to prove that there is no basis for such apprehension. If such a course of action were to be permitted, it would enable a defendant to avoid action in a particular Court by making such a statement and indulge in forum shopping. We also find that the same was not permitted by this Court in *Rana Steels v. Ran India Steels Pvt. Ltd.* (2008) 37 PTC 24 (Del); there, though the counsel for the defendant stated that the defendant had no intention to sell its products in Delhi, it was held that the plaint could not be ordered to be returned on the basis of the said statement. Though the matter was taken in appeal by way of FAO(OS) 212/2008 but was compromised."

(underlining added)

11. Pfizer Products (supra) was, of course, a decision rendered by one of us (Badar Durrez Ahmed, J) as a single Judge, wherein the following observation was made:-

"12. The other aspect of the matter is that a threat of selling the offending goods in Delhi would in itself confer jurisdiction in the courts in Delhi to entertain a suit claiming an injunction in respect thereof. Whether the threat perception is justified or not is another matter which has to be considered and decided upon in the application filed by the plaintiff under Order 39 Rules 1 and 2 or on merits when the suit is taken up for disposal. Insofar as Order 7, Rule 10 is concerned, assuming that whatever is stated in the plaint is correct, one would have to also assume that the threat or the intention of the defendants to sell and offer for sale the offending goods in Delhi is also correct. Therefore, if the threat exists then this court would certainly have jurisdiction to entertain the present suit. In these circumstances, this application is dismissed. No order as to costs."

12. These observations are clearly in line with the observations of the Division Bench in *Teva Pharmaceutical Industries Limited* (supra). What is important is

that the threat of selling the goods under the impugned trade mark in Delhi would by itself confer jurisdiction on the courts in Delhi. It is another matter that the threat perception would have to be justified, *prima facie*, when the application filed by the plaintiff under Order 39 Rules 1 & 2, CPC would be considered or later, on merits, when the suit itself is taken up for disposal. However, in a consideration under Order 7, Rule 10 CPC, the court must proceed on the assumption that whatever is stated in the plaint is correct and therefore, it would also have to assume that the threat perception or the apprehension on the part of the plaintiff as stated in the plaint is also correct. That in itself would amount to a part of the cause of action.

13. In *Win Plast Limited (supra)*, which was a Division Bench decision of the High Court of Gujarat, the following observations are notable:-

"24. In the facts of the case, admittedly, the appellant-original defendant had been marketing the product for which some vouchers or invoices are placed that it has launched the product at Bhopal and other places. Therefore, the apprehension that it is likely to be launched in Ahmedabad, Gujarat, coupled with the fact that there is a distributor appointed, sufficiently justify the apprehension for *quia-timet* action. It is well-accepted that for the purpose of *quia-timet* action it is not necessary that there should be an actual piracy or infringement. In this very judgment, referring to the Division Bench of the Bombay High Court, it has been quoted,

"..... Section 20 of the Code of Civil Procedure shows that a suit like the present can be filed wherever the cause of action wholly or partly arises. The plaintiff has prayed for an injunction regarding a threatened breach of a registered trade mark. The learned single Judge held that the Delhi Court does not have jurisdiction on the ground of any sale having been made in Delhi, but does have jurisdiction on account of the advertisement having appeared in the Trade Marks Journal. The real point which gives the court jurisdiction is not the place where the advertisement has appeared, but the fact that the trade mark is sought for sale in Delhi amongst other places. Furthermore, when an injunction is sought, it is not necessary that the threat should have become a reality before the injunction (*sic* may be granted) and it can even be sought for a threat that is still to materialize."

25. Thus, it is not the actual marketing or launching of the product or sale of the product, but reasonable apprehension for the infringement or piracy or passing off which would be sufficient."

14. This decision also discloses (and, we are in agreement with the same) that it is not necessarily the actual marketing or launching of the product under the impugned mark, but even a reasonable apprehension of infringement or passing off would be sufficient for constituting a cause of action. In *Shree Nath Heritage Limited (supra)*, which also involved the present appellant, a Division Bench of this court observed as under:-

"77. As regards the question of this court's jurisdiction for entertaining the respondent's passing off claim, the same can be decided during trial as the averments in the plaint make a case for entertaining such a claim on a quia timet basis."

15. The Supreme Court in *Exphar SA* (supra) also observed that it is only the plaint which needs to be seen when considering an application where the issue of territorial jurisdiction has been raised. Furthermore, the allegations contained in the plaint are to be taken as correct for deciding whether the court has territorial jurisdiction or not. The Supreme Court observed as under:-

"9. Besides, 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. The submission in order to succeed must show that granted those facts the court does not have jurisdiction as a matter of law. In rejecting a plaint on the ground of jurisdiction, the Division Bench should have taken the allegations contained in the plaint to be correct. However, the Division Bench examined the written statement filed by the respondents in which it was claimed that the goods were not at all sold within the territorial jurisdiction of the Delhi High Court and also that Respondent 2 did not carry on business within the jurisdiction of the Delhi High Court. Having recorded the appellants' objections to these factual statements by the respondents, surprisingly the Division Bench said:

"Admittedly, the goods are being traded outside India and not being traded in India and as such there is no question of infringement of trade mark within the territorial limits of any court in India what to say of Delhi."

(underlining added)

16. A Division Bench of this court in *RSPL Limited* (supra), while considering the case from the standpoint of Order 7, Rule 10, CPC, observed as under:-

"10. It must be stated that it is a settled proposition of law 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. In *Exphar SA and Another v. Eupharma Laboratories Limited and Another*: (2004) 3 SCC 688, the Supreme Court 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 procedure, are true. The Supreme Court further observed that the objection as to jurisdiction in order to succeed must demonstrate that granted those facts, the Court does not have jurisdiction as a matter of law. It is also a settled proposition of law that while considering a plaint from the standpoint of Order 7, Rule 10 CPC, it is only the plaint and the documents filed along with it, that need to be seen. The written statement is not to be looked into at all."

(underlining added)

It is, therefore, clear from the above decision that the objection as to jurisdiction in order to succeed must demonstrate that, granted the averments made in the plaint, the court does not have territorial jurisdiction as a matter of law.

17. Both the sides referred to Ultra Home Construction (supra) and in particular, to para 13 thereof which reads as under:-

"13. 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. All these four cases are set out in the table below for greater clarity:

S. No.

Place of Plaintiff's Principal Office (Sole office in s.no.1)

Place of Plaintiff's Subordinate/Branch Office

Place where cause of action arose

Place where Plaintiff can additionally sue under section 134(2) and section 62(2)

1

A

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C

A

2

A

B

A

A

3

A

B

B

B

4

A

B

C

A

(emphasis supplied)"

18. These observations of the Division Bench were made in the light of the decision of the Supreme Court in *Sanjay Dalia* (supra). From the above extract, it is evident that what was being considered in *Ultra Homes* (supra) and indeed, in *Sanjay Dalia* (supra), was the expression "carries on business" in the context of a defendant under Section 20 CPC, which interpretation has also been employed in the context of a plaintiff under Section 134(2) of the Trade Marks Act, 1999 and 62(2) of the Copyright Act, 1957. It is also evident that, as observed in *Sanjay Dalia* (supra), the expression "notwithstanding anything contained in the Code of Civil Procedure" appearing in Section 134(2) of the Trade Marks Act, 1999 and Section 62(2) of the Copyright Act, 1957, does not oust the applicability of the provisions of Section 20 of the Code of Civil Procedure. It is only that an additional remedy has been provided to the plaintiff under the Trade Marks Act and the Copyright Act to file a suit where he is residing or carrying on business,

etc. It is, therefore, clear that at a place where a part of the cause of action arises, the courts situated there would certainly have territorial jurisdiction dehors the provisions of Section 134(2) of the Trade Marks Act, 1999 and Section 62(2) of the Copyright Act, 1957. If one were to carefully examine the above extract from *Ultra Homes (supra)*, it will be seen that the last column in the table bears the heading "place where the plaintiff can additionally sue under Section 134(2) and Section 62(2)". In other words, a additional place of suing has been provided to the plaintiff under the said Acts, in addition to the places, which were already available to the plaintiff under Section 20 CPC. Section 20(c) of CPC clearly indicates that a suit can be instituted inter alia in a court within the local limits of whose jurisdiction the cause of action, wholly or partly, arises. Therefore, what is to be seen is whether any part of the cause of action arises in Delhi.

19. The following are the averments in the plaint in paragraphs 27 and 28 thereof:

"Cause of Action:

27. The cause of action arose for the first time in October, 2013 when the Plaintiff came across the Defendant's product being sold under the impugned label and mark "Regular Choice" in the State of Andhra Pradesh. The Plaintiff has approached this Hon'ble Court at the earliest possible opportunity. The cause of action against the Defendant is still continuing from day to day till the filing of the present suit and will continue until the Defendant is restrained by an order of injunction by this Hon'ble Court.

Jurisdiction:

28. This Hon'ble Court has the territorial jurisdiction to try and entertain the instant suit by virtue of Section 62 (2) of the Copyright Act, 1957 and Section 134(2) of the Trade Marks Act 1999 as the Plaintiff being the owner of the copyright and the registered proprietor of the trademark in issue has its office located at A-61/5, Ground floor, G.T. Kamal Road Industrial Area, Azadpur, Delhi. Moreover, the Plaintiff is also carrying on its business within the territorial limits of this Hon'ble Court in a variety of ways such as (but not limited to) sale of its products under the relevant marks in New Delhi. The scale of business and activity of the Defendant is not known at present and it is apprehended as being highly likely that the product sold under the impugned mark "Regular Choice" will be made available in New Delhi. As the scope and extent of the Defendant's business is not known at present, it is believed that they have a reasonably large scale business around India and it is therefore strongly apprehended that they will launch the impugned product in New Delhi and would be available within the jurisdiction of this Hon'ble Court. It is submitted that the threat that the Defendants will sell and/or offer for sale the impugned product within the jurisdiction of this Hon'ble Court is credible and imminent. There is a reasonable apprehension that the Defendant is likely to sell its products bearing the

impugned mark and label within the jurisdiction of this Hon'ble Court. Thus, giving rise to a substantial and integral part of the cause of action within the jurisdiction of this Hon'ble Court. This Hon'ble Court therefore has the necessary jurisdiction by virtue of Section 20 of the Code of Civil Procedure, 1908."

(underlining added)

20. In paragraph 27, the purported cause of action is with regard to the sale of the respondent's product in the State of Andhra Pradesh. In paragraph 28, however, while making the averments with regard to territorial jurisdiction, the plea of Section 134(2) and Section 62(2) of the Trade Marks Act and the Copyrights Act, respectively, has also been taken. It is, however, stated that the scale of the business activity of the defendant is not known and that "it is apprehended as being highly likely that the product sold under the impugned mark "Regular Choice" will be made available in New Delhi". It is further alleged that there is a strong apprehension that the respondents will launch the impugned product in New Delhi and would be available within the jurisdiction of this court. Furthermore, it is averred that the threat that the respondent/defendant would sell and or offer for sale the impugned product within the jurisdiction of this court is both credible and imminent. It is clearly stated that this apprehension on the part of the plaintiff constituted a substantial and integral part of the cause of action which, according to the appellant/plaintiff, accrued within the jurisdiction of this court. And, therefore, it was pleaded that this court would have territorial jurisdiction by virtue of Section 20 CPC also.

21. Now, if all these averments in the plaint are taken to be correct, it would mean that there is a reasonable and credible apprehension that the impugned product would be launched and sold in New Delhi. These are the ingredients for a quia timet action. In other words, they constitute the cause of action for instituting a suit in the nature of a quia timet action. It is in this backdrop that we feel that the learned single Judge has fallen into error when he has prima facie taken the view that no part of the cause of action has occurred in Delhi. Just because the respondent/defendant had been selling the product under the impugned mark in Andhra Pradesh does not mean that when there is an imminent threat of the respondent/defendant launching and selling the same product under the same mark in Delhi, no cause of action, based on such apprehension, could arise. Clearly, the apprehension of the respondent launching its product under the impugned trade mark in Delhi, on a demurrer, would constitute cause of action or at least a part of the cause of action. Therefore, independent of the fact that as to where the appellant's/plaintiff's registered office or subordinate office was located, under section 20(c) of the CPC itself, this court would have territorial jurisdiction because part of the cause of action had arisen in Delhi as per the plaint.

22. We must make it clear that the considerations with regard to territorial jurisdiction in the context of Order 7, Rule 10 , CPC are entirely different from those in the context of an application under Order 39 Rules 1 & 2, CPC or in the

context of an issue framed in the suit with regard to territorial jurisdiction. While in the backdrop of Order 7, Rule 10 , it is only the averments contained in the plaint that have to be seen in the case of an application for the grant of interim relief under Order 39 Rules 1 & 2, the contentions of the defendant in the reply to this application as also those contained in the written statement are required to be examined to arrive at a prima facie view. So, while in the case of an Order 7, Rule 10 CPC application, the issue of jurisdiction is decided on the basis of what is stated in the plaint and that too, after assuming the statements to be correct, an application under Order 39 Rules 1 & 2, CPC requires the examination of the contentions of the defendants that may be contained in the written statement and/or the reply to the application as also the other material which may be placed by the defendant before the court. Here, there is no question of considering the pleas of the plaintiff by way of a demurrer. Furthermore, the standards would be higher when an issue with regard to territorial jurisdiction is to be finally decided in the course of trial of the suit. Thus, while for the purposes of an examination under Order 7, Rule 10 , CPC, the court may come to the conclusion that it has territorial jurisdiction, this would not come in the way of the defendant in raising a question as to territorial jurisdiction, both when the issue of temporary injunction under Order 39 Rules 1 & 2, CPC is being considered and when an issue as to territorial jurisdiction is being decided in the course of trial of the suit. To put it differently, while a plaintiff may succeed in demonstrating, for the purposes of Order 7, Rule 10 CPC that this court has territorial jurisdiction and that the plaint ought not to be returned, he may fail in obtaining an order of interim injunction on the ground that the plaintiff's entitlement is itself shaky because the issue of territorial jurisdiction is highly debatable and prima facie not tenable. Therefore, the decision of the court in putting down an objection of the defendant and in rejecting the defendant's prayer for return of the plaint under Order 7, Rule 10 , CPC, would not come in the way of the defendant raising the question of territorial jurisdiction, both as an objection to the grant of an interim injunction as also at the time of decision of the issue of territorial jurisdiction, if framed, at the time of trial of the suit.

23. With these clarificatory words, in sum, we are of the view that the provisions of Order 7, Rule 10 CPC are not attracted and the learned single Judge fell into error in holding that this court, in the context of Order 7, Rule 10 CPC, did not have territorial jurisdiction and in directing the return of the plaint. The impugned order is, therefore, set aside. The suit being CS(OS) No. 2266/2013 is restored to its original number and it shall be placed before the learned single Judge for further proceedings on 17.03.2017.

24. IA No. 18636/2013 also stands restored and shall be disposed of afresh after hearing the parties. The parties are left to bear their own costs.