
(2016) 03 DEL CK 0133

In the Delhi High Court

Case No : CS (OS) 2550/2015 and I.A. No. 17736/2015

Piccadily Agro Industries Ltd.

APPELLANT

Vs

Ashok Narwal and Others

RESPONDENT

Date of Decision : 14-03-2016

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 14
Civil Procedure Code, 1908 (CPC) — Order 7 Rule 1, Order 7 Rule 10, Order 7 Rule 10A, Section 115, Section 20, Section 20(a), Section 20(b), Section 20(c)
Constitution of India, 1950

Citation : (2016) 6 ADDelhi 236 : (2016) 229 DLT 604 : (2016) 66 PTC 209

Hon'ble Judges : Vipin Sanghi, J.

Bench : Single Bench

Advocate : Ajay Sahni, Siddharth Bambha, Ayiala and Kanika Bajaj, Advocates, for the Appellant;

Final Decision : Disposed Off

Judgement

Vipin Sanghi, J.—1. By this order, I proceed to deal with the submission of the defendant that this Court does not have the territorial jurisdiction to entertain or deal with the present suit.

2. The case of the plaintiff is that the plaintiff and the defendants are engaged in the common field of manufacturing and marketing of liquor, including country liquor. The plaintiff claims to be an old and established player in the field since 2007. The plaintiff claims to be occupying number one position having more than 35% market share in the country liquor segment in the State of Haryana.

3. The plaintiff states that in the year 2007, it applied for an excise license for manufacturing and marketing country liquor under the trademark/artistic label "MALTA" prefixed with the expression "Masti". Since then, the plaintiff claims to be continuously and extensively selling the said product throughout the State of Haryana. The plaintiff claims to have made a total sale of Rs. 1130 crores for the said product alone.

4. The plaintiff states that recently it learnt that defendant no. 1, an authorized dealer of the plaintiffs product - who is situated in the State of Haryana, has in active connivance with the other defendant i.e. defendant no. 2, illegally and unlawfully adopted a deceptively trademark/artistic label to that of the plaintiff. In para 25 of the plaint, the plaintiff, inter alia avers, that "the plaintiff.... is one of the largest selling country liquor in the State of Haryana and the defendants are also selling their liquor products in the said territory". The cause of action pleaded in the plaint in para 35 is that the same arose for the first time in the third week of August 2015 when the plaintiff for the first time came across the product of the defendant.

5. The territorial jurisdiction of this Court is pleaded in para 36 of the plaint, which reads as follows:

"36. That this Hon'ble Court has the jurisdiction to try and entertain the present suit as the registered office of the manufacturer i.e. defendant no. 2 is also situated within the jurisdiction of this Hon'ble Court. That apart all business decisions regarding the manufacture and marketing of the impugned product by the defendant no. 2 is taken within the jurisdiction of this Hon'ble Court and all books of accounts and other business administration/decisions of the defendant no. 2 are taken by it's management within the jurisdiction of this Hon'ble Court and therefore this Hon'ble Court has the territorial jurisdiction to entertain and try the present suit".

6. Since the issue of lack of jurisdiction has been raised by the defendants, I proceed to first take notice of the submissions of learned counsel for the defendants. The submission of Mr. Kirpal, learned counsel for the defendants is that even on a plain reading of the plaint, it would be seen that the defendants are selling their country liquor in the State of Haryana. It is not even the plaintiffs case that the defendants are selling their country liquor with the impugned mark/label within the jurisdiction of this Court. The cause of action has entirely arisen within the State of Haryana, where the defendants products are being sold.

7. Mr. Kirpal submits that the plaintiff is claiming jurisdiction in this Court to try and entertain the suit merely on the premise that the registered office of defendant no. 2 is situated in Delhi, i.e. within the jurisdiction of this Court. He submits that merely because some business decisions regarding manufacture and marketing of the impugned product by defendant no. 2 may have been taken by defendant no. 2 at its registered office, i.e. within the jurisdiction of this Court, and the books of account are maintained at the registered office of defendant no. 2 in Delhi, the same would not confer territorial jurisdiction on this Court to entertain and try the present suit.

8. In support of his plea, Mr. Kirpal has placed reliance on Section 20 CPC, which has been interpreted by the Supreme Court in *Patel Roadways Limited, Bombay v. Prasad Trading Company*, , (1991) 3 SCR 391. He submits that the explanation

to Section 20 - which provides that "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", has been interpreted by the Supreme Court in *Patel Roadways* (supra) to mean that where a corporation has a subordinate office at a place - other than the place where the principal office of the corporation is situated, and the cause of action has arisen at that other place (and not at the place where the Registered Office of the Corporation is situated), then only the Court where the cause of action arises and the corporation has a subordinate office, would have jurisdiction, and not the Court within whose jurisdiction the Registered Office of the Corporation is situated.

9. Mr. Kirpal submits that it is not even the plaintiffs case that any part of the cause of action has arisen in Delhi. He submits that mere making of an application for registration of the defendants mark in Delhi would not give cause of action to the defendant as the trademark registry, even in respect of the State of Haryana, is in Delhi. Thus, the application - though made at the trademark registry in Delhi, has to be construed as one made in Haryana, where the mark is being used by the defendant.

10. Mr. Kirpal has also placed reliance on *Haryana Milk Foods Ltd. v. Chambel Dairy Products*, 98 (2002) DLT 359. In this case, the Court held that a cause of action is a bundle of facts, which taken with the law applicable, gives the plaintiff a right to relief against the defendant. The Court held: "It must, however, include some acts done by the defendant, since in the absence of such an act, no cause of action can possibly accrue. Similarly the expression "carries on business", relevant for the present case, is intended to relate to business in which a person may contract debts and is liable to be sued by persons having business transactions with him". The Court further held that the question of jurisdiction is to be decided, *prima facie*, by looking to the averment made in the plaint and not by the defence which may be set up by the defendant. To determine the question of jurisdiction of the Court on the basis of bundle of facts, it is not enough to look only at a paragraph of the plaint; the entire plaint must be taken into consideration to ascertain the bundle of facts which give rise to the cause of action, and to determine whether any one or more of such facts occurred within the territorial jurisdiction of the Court. In the said case, in its plaint the plaintiff had made a positive averment that the defendant works for gain in Delhi as the defendant is also selling and marketing its impugned goods under the impugned mark in Delhi. However, the Court did not accept the said averment as there were no particulars in relation to the said averment contained in the plaint, as enjoined by Order 7 Rule 1 CPC. The Court observed that "The plaintiff does not allege even a single transaction of sale of his product by the defendant either by himself or through any one else on his behalf, within the territorial jurisdiction of this Court. Though it is not relevant to look at the defence put up by the defendant to determine the question of jurisdiction but as a passing reference, it is pertinent to note that in the written statement the defendant has specifically

pleaded that he has never sold his product within the jurisdiction of this Court at any point of time, which fact goes unrebutted in the replication ". The Court rejected the plaint on account of lack of territorial jurisdiction.

11. On the other hand, the submission of Mr. Sahni, learned counsel for the plaintiff that Section 135 of the Trademarks Act enumerates the reliefs that a plaintiff may seek in a suit for infringement and for passing off. He submits that the present is a suit for passing off, as the plaintiffs mark is not yet registered. The reliefs that a plaintiff may seek, at his option, are "either damages or account of profits, together with or without any order for the delivery up of the infringement labels and mark for destruction or erasure".

12. Mr. Sahni submits that the plaintiff has consciously sought the account of profits i.e. rendition of accounts by the defendant and has not prayed for damages in the present suit in prayer (iv) of the plaint. He submits that for the said relief, what is relevant is, that the defendant no. 2 company has its registered office at New Delhi, where the defendant's accounts are maintained. He places reliance on Section 128 of the Companies Act which, inter alia, provides that a company shall maintain its books of account at its registered office. He further submits that the submission of the defendant is misconceived, inasmuch, as, the plaintiff has filed the present suit within the jurisdiction of this Court on the strength of the fact that the registered office of the defendant is situated within the jurisdiction of this Court. He submits that the present suit has been filed by placing reliance on clause (a) of Section 20 CPC.

13. He also places reliance on *Indian Performing Rights Society Ltd. v. Sanjay Dalia & Ors.*, , (2015) 10 SCC 161, wherein the Supreme Court, inter alia, observed:

"12. 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 Code of Civil Procedure 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".

14. Mr. Sahni submits that the defendant does not have any subordinate office in Haryana. The plaintiff has not made any averment in the plaint to this effect. He has also referred to the application made by defendant no. 2 for registration of its mark with the Registrar of Trademarks at Delhi, where the defendant itself has disclosed its registered office at 16, Community Centre, New Friends Colony, New Delhi.

15. Insofar as the decision in Patel Roadways (supra) is concerned, learned counsel for the plaintiff submits that the decision was rendered in an entirely different factual matrix. In that case, Patel Roadways had been sued by the plaintiff Prasad Trading Company by filing a suit in Tamil Nadu, where the plaintiff had booked the consignment with Patel Roadways to be delivered at Delhi. The said consignment was not delivered as the same got destroyed and damaged in fire. Patel Roadways raised an objection that the jurisdiction of the courts in Tamil Nadu was ousted as, under the agreement, the exclusive jurisdiction vested in the courts at Bombay. The Trial Court rejected the said objection of the Patel Roadways, and the revision preferred under Section 115 CPC was also dismissed.

16. Learned counsel submits that it was in this background that the Supreme Court held that the plaintiff could maintain a suit in Tamil Nadu where the consignment had been booked, and the plaintiff was not obliged to travel to Bombay to sue the transporter Patel Roadways.

17. Mr. Sahni submits that the judgment of the Court has to be read in the context of the facts of a particular case. He submits that even a minor difference in the facts between the decided case and the case in hand could render the earlier decision inapplicable. In this regard, he places reliance on Bank of India & Anr. v. K. Mohandas & Ors., , (2009) 5 SCC 313.

18. Mr. Sahni submits that the suit is at a preliminary stage and the issue with regard to the territorial jurisdiction is a mixed question of fact and law. He submits that the said issue cannot be decided without going to trial as it needs to be examined whether the defendant company took any decisions in relation to the impugned mark and label in Delhi at the registered office of the defendant company. In this regard, he places reliance on Ramesh B Desai & Ors. v. Bipin Vadilal Mehta & Ors., , (2006) 5 SCC 638. In this decision, the Supreme Court observed that the Code confers no jurisdiction upon the Court to try a mixed issue of law and fact as a preliminary issue. The Supreme Court also observed - by referring to the decision in Eupharma Sa & Anr. v. Eupharma Laboratories Ltd. & Anr., , 2004 (28) PTC 251 (SC), that "where 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".

19. In his rejoinder, Mr. Kirpal submits that the plaintiff is confusing between "cause of action" and the relief of "rendition of accounts". He submits that, if and when the relief of rendition of accounts is granted by a competent Court of jurisdiction, at the execution stage, the location of the statutory record/accounts of the defendant company would be relevant to determine as to which Court could execute the decree. He submits that merely because one of the reliefs sought by the plaintiff is for rendition of accounts, and the account books are required to be maintained at the registered office of the defendant company in New Delhi, the same does not give cause of action to the plaintiff.

20. Mr. Kirpal further submits that if this submission of the plaintiff were to be accepted, then the explanation to Section 20 CPC would be rendered otiose, as in every case of rendition of account, the record would be maintained at the registered office of the defendant company. Similarly, in every case, it could be argued that at the registered office of the defendant company some decisions have been taken, leading to the eventual arising of cause of action in favour of the plaintiff, and thus the Court where the registered office of the defendant company is located, would be claimed to have jurisdiction. He submits that this would go contrary to the clear language of Section 20 as interpreted by the Supreme Court in Patel Roadways (supra).

21. Para 36 of the plaint as extracted above shows that the plaintiff claims jurisdiction in this Court on the premise that defendant No. 2 has its registered office in Delhi, it takes all its business decisions regarding manufacture and marketing of the impugned product in Delhi; and defendant No. 2 maintains all its books of accounts in Delhi. Pertinently, it is not the plaintiff's case that any part of cause of action arisen in Delhi on account of the sale of the impugned products of the defendant at Delhi, or the use of the impugned mark by the defendant, in the course of its trade or business in Delhi. The case of the plaintiff is that the defendant is selling its country liquor with the impugned trademark and label in the State of Haryana. Section 20 CPC reads as follows:

"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 work 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."

22. Therefore, on a plain reading of the explanation it would appear that if defendant No. 2 has a subordinate office within the jurisdiction of the area where the cause of action has arisen, defendant No. 2 - by force of the explanation to Section 20, would have to be sued at such place where the cause of action arises, and it cannot be sued at the place where the registered office of defendant No. 2 is situated, unless it can be shown that a part of the cause of action has also arisen where the registered office of defendant no. 2 is situated.

23. In *Ariba India Pvt. Ltd. Vs. Ispat Industries Ltd.*, , 2011(3) Arbitration Law Reporter 163, I had occasion to consider Section 20(c) CPC in the light of the judgments of the Supreme Court in *Patel Roadways (supra)* and *New Moga Transport Co. v. United India Insurance Co. Ltd.*, , (2004) 4 SCC 677.

24. In *Ariba (supra)*, the petitioner company entered into a contract with the respondent to provide e-sourcing software and services. The respondent company - which was engaged in the business of manufacture of steel, had its works at Dolvi, Distt. Raigarh, Maharashtra. The registered office of the respondent was situated at Kolkata. The contract between the parties provided that all disputes arising out of or in relation to the contract shall be subject to sole jurisdiction of the courts in Mumbai only. The respondent disputed the jurisdiction of this Court to deal with the petition preferred by the petitioner under Section 14 of the Arbitration & Conciliation Act. The respondent contended that no part of cause of action had arisen at Delhi. It was further contended that even if a part of cause of action had arisen at Delhi, that itself was not sufficient to clothe this Court with jurisdiction, as the courts in Mumbai also had jurisdiction. The respondent claimed that part of cause of action had arisen in Mumbai where the respondent had its principal place of business. In answer, the petitioner relied on *Patel Roadways Ltd. (supra)* and *New Moga Transport (supra)*.

25. On the basis of the material placed before the Court, the Court accepted that the respondent had its principal office at Mumbai, though its registered office was situated at Kolkata. The Court found that money was payable under the contract to the petitioner at Delhi. Consequently, a part of cause of action had arisen in Delhi. The respondent also had its subordinate office in Delhi. The decision in *Patel Roadways (supra)* and *New Moga Transport (supra)* were considered in detail and it was observed as follows:

"10. In *Patel Roadways Ltd. (supra)*, the Supreme Court considered the

explanation to section 20 CPC. The appellant before the Supreme Court-Patel Roadways Ltd. was carrying on business as a carrier and transporter of goods on hire. It had its principal office in Bombay. The agreement between the appellant, Patel Roadways Ltd. and its customers provided that the jurisdiction to decide any dispute between the appellant/transporter and the customer would be only with the Courts at Bombay. In the two appeals before the Supreme Court, the customers had instituted suits at the Courts in Madras, as the goods had been entrusted by the two respondents for transportation to the appellant, within the jurisdiction of the Courts at Madras. The appellant, Patel Roadways Ltd. had its subordinate office within the jurisdiction of the Courts at Madras. The appellant took the plea in its defence that, contractually, the parties had agreed that jurisdiction to decide any dispute with the customers would be only with the Courts at Bombay, and consequently the Courts at Madras had no jurisdiction. The plea of the appellant was rejected by the Trial Court as also by the Madras High Court.

11. Before the Supreme Court, the plea of the appellant was that apart from the courts within whose territorial jurisdiction the goods were delivered to the appellant for transportation, the Courts at Bombay also had jurisdiction to entertain the suit arising out of the contract between the parties, inasmuch as, the principal office of the appellant was situated in Bombay. As two places had jurisdiction, contractually, the jurisdiction of the Courts at Madras was ousted and only the Courts at Bombay had jurisdiction.

12. The Supreme Court, after considering the decision in *Hakkam Singh v. Gammon (India) Ltd.*, , (1971) 1 SCC 286, and other decisions cited before it, rejected the plea of the appellant. The Supreme Court held that if it could be held that the Courts at Bombay also had jurisdiction to entertain the two suits in question, the judgments appealed against will have to be set aside on the basis of the decision in *Hakkam Singh (supra)*; and *Globe Transport Corporation v. Triveni Engineering Works*, , (1983) 4 SCC 707.

13. The Supreme Court then posed a question, whether in respect of any of the two suits before it, the Courts at Bombay also had jurisdiction, in addition to the Courts within whose jurisdiction the goods were entrusted to the appellant for purposes of transport. The Supreme Court held that the Courts at Bombay, in the two cases before it, did not at all have jurisdiction, and consequently the agreements between the parties conferring exclusive jurisdiction on Courts at Bombay were of no avail. The Supreme Court also considered and rejected the plea of the appellant that the Courts at Bombay alone had jurisdiction, as its principal office was situated at Bombay.

14. I may refer to the following extract from paras 9, 12 and 13 of the judgment of the Supreme Court, wherein the Supreme Court considered the said plea by analyzing the Explanation to section 20 CPC:

"9. What has been urged with the aid of the Explanation to Section 20 of the

Code is that since the appellant has its principal office in Bombay it shall be deemed to carry on business at Bombay and consequently the courts at Bombay will also have jurisdiction. On a plain reading of the Explanation to Section 20 of the Code we find an apparent fallacy in the aforesaid argument. The Explanation is in two parts, one before the word "or" occurring between the words "office in India" and the words "in respect of" and the other thereafter. The Explanation applies to a defendant which is a corporation which term, as seen above, would include even a company such as the appellant in the instant case. The first part of the Explanation applies only to such a corporation which has its sole or principal office at a particular place. In that event the courts within whose jurisdiction the sole or principal office of the defendant is situate will also have jurisdiction inasmuch as even if the defendant may not be actually carrying on business at that place, it will "be deemed to carry on business" at that place because of the fiction created by the Explanation. The latter part of the Explanation takes care of a case where the defendant does not have a sole office but has a principal office at one place and has also a subordinate office at another place. The words "at such place" occurring at the end of the Explanation and the word "or" referred to above which is disjunctive clearly suggest that if the case falls within the latter part of the Explanation it is not the Court within whose jurisdiction the principal office of the defendant is situate but the court within whose jurisdiction it has a subordinate office which alone shall have jurisdiction "in respect of any cause of action arising at any place where it has also a subordinate office".

12. We would also like to add that the interpretation sought to be placed by the appellant on the provision in question renders the explanation totally redundant. If the intention of the legislature was, as is said on their behalf, that a suit against a corporation could be instituted either at the place of its sole or principal office (whether or not the corporation carries on business at that place) or at any other place where the cause of action arises, the provisions of Clauses (a), (b) and (c) together with the first part of the explanation would have completely achieved the purpose. Indeed the effect would have been wider. The suit could have been instituted at the place of the principal office because of the situation of such office (whether or not any actual business was carried on there). Alternatively, a suit could have been instituted at the place where the cause of action arose under Clause (c) (irrespective of whether the corporation had a subordinate office in such place or not). This was, therefore, not the purpose of the explanation. The explanation is really an explanation to Clause (a). It is in the nature of a clarification on the scope of Clause (a) viz. as to where the corporation can be said to carry on business. This, it is clarified, will be the place where the principal office is situated (whether or not any business actually is carried on there) or the place where a business is carried on giving rise to a cause of action (even though the principal office of the corporation is not located there) so long as there is a subordinate office of the corporation situated at such place. The linking together of the place where the cause of action arises with the

place where a subordinate office is located clearly shows that the intention of the legislature was that, in the case of a corporation, for the purposes of Clause (a), the location of the subordinate office, within the local limits of which a cause of action arises, is to be the relevant place for the filing of a suit and not the principal place of business. If the intention was that the location of the sole or principal office as well as the location of the subordinate office (within the limits of which a cause of action arises) are to be deemed to be places where the corporation is deemed to be carrying on business, the disjunctive "or" will not be there. Instead, the second part of the explanation, would have read " and, in respect of any cause of action arising at any place where it has a subordinate office, also at such place".

13. As far as we can see the interpretation which we have placed on this section does not create any practical or undue difficulties or disadvantage either to the plaintiff or a defendant corporation. It is true that, normally, under Clauses (a) to (c), the plaintiff has a choice of forum and cannot be compelled to go to the place of residence or business of the corporation and can file a suit at a place where the cause of action arises. If a corporation desires to be protected from being dragged into litigation at some place merely because a cause of action arises there it can save itself from such a situation by an exclusion clause as has been done in the present case. The clear intendment of the Explanation, however, is that, where the corporation has a subordinate office in the place where the cause of action arises, it cannot be heard to say that it cannot be sued there because it does not carry on business at that place. It would be a great hardship if, in spite of the corporation having a subordinate office at the place where the cause of action arises (with which in all probability the plaintiff has had dealings), such plaintiff is to be compelled to travel to the place where the corporation has its principal place. That place should be convenient to the plaintiff; and since the corporation has an office at such place, it will also be under no disadvantage. Thus the Explanation provides an alternative locus for the corporation's place of business, not an additional one."

(emphasis supplied)

15. In *New Moga Transport Co.*(supra), the Supreme Court by relying upon its earlier decision in *Patel Roadways Ltd.* (supra) reiterated the same legal position. In paras 9 and 10, the Supreme Court held as follows:

"9. Normally, under clauses (a) to (c) plaintiff had a choice of forum and cannot be compelled to go to the place of residence or business of the defendant and can file a suit at a place where the cause of action arises. If the defendant desires to be protected from being dragged into a litigation at some place merely because the cause of action arises there it can save itself from such a situation by an exclusion clause. The clear intendment of the Explanation, however, is that where the Corporation has a subordinate office in the place where the cause of action arises it cannot be heard to say that it cannot be sued there because it does not carry on business at that place. Clauses (a) and (b) of Section 20 inter

alia refer to a Court within local limits of whose jurisdiction the defendant inter alia "carries on business". Clause (c) on the other hand refers to a Court within local limits of whose jurisdiction the cause of action wholly or in part arises.

10. On a plain reading of the Explanation to Section 20 CPC it is clear that Explanation consists of two parts, (i) before the word "or" appearing between the words "office in India" and the word "in respect of" and the other thereafter. The Explanation applies to a defendant which is a Corporation which term would include even a company. The first part of the Explanation applies only to such Corporation which has its sole or principal office at a particular place. In that event, the Court within whose jurisdiction the sole or principal office of the company is situate will also have jurisdiction inasmuch as even if the defendant may not actually be carrying on business at that place, it will be deemed to carry on business at that place because of the fiction created by the Explanation. The latter part of the Explanation takes care of a case where the defendant does not have a sole office but has a principal office at one place and has also a subordinate office at another place. The expression "at such place" appearing in the Explanation and the word "or" which is disjunctive clearly suggest that if the case falls within the latter part of the Explanation it is not the Court within whose jurisdiction the principal office of the defendant is situate but the Court within whose jurisdiction it has a subordinate office which alone have the jurisdiction "in respect of any cause of action arising at any place where it has also a subordinate office."

(emphasis supplied) "

26. In the light of the aforesaid, it is clear that if on a reading of the plaint and the documents filed by the plaintiff, it appears that defendant no. 2 has a subordinate office within the jurisdiction of the courts in the State of Haryana - where the cause of action has arisen, then the suit could be brought by the plaintiff against the defendants only in the State of Haryana where the cause of action arises, and not at Delhi where the registered office of defendant no. 2 is situated, unless, of course, the plaintiff is able to establish that a part of cause of action has arisen within the jurisdiction of this Court.

27. The plaintiff has placed on record copy of the draft print out of the current status of the trademark application filed by defendant no. 2. A perusal of the said print out shows that in its application, defendant no. 2 has given its address as "21-M, Industrial Area, Yamuna Nagar-135001, Haryana". Thus, the submission of learned counsel for the plaintiff that on a perusal of the plaint and the documents, it cannot be said that the defendant has a subordinate office in the State of Haryana - where the cause of action has arisen, is not correct. It is well settled that while examining the issue of territorial jurisdiction of the Court on demurrer, the Court is entitled to proceed on the basis of the case disclosed by the plaintiff in its plaint and the documents filed on record by the plaintiff.

28. I now proceed to examine whether any part of cause of action can be said to

have arisen within the jurisdiction of this Court merely because defendant no. 2 takes its business decisions regarding manufacture and marketing of the impugned product at its registered office in Delhi and it maintains its books of account in Delhi, and takes its administrative decisions in Delhi at its registered office.

29. In *Ariba* (supra), this Court also considered the issue whether any part of cause of action had arisen at Mumbai, and concluded that no part of cause of action had arisen within the jurisdiction of the courts at Mumbai. While holding so, this Court observed:

"21. I cannot agree with this submission of learned counsel for the respondent. The mere drawing of the cheques at Mumbai does not constitute any part of cause of action. "Cause of action" means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. It is not even necessary for the plaintiff to plead, much less to prove, that the respondent has failed to draw the cheques at Mumbai. All that the petitioner needs to plead and prove is that the petitioner has not received the payment due under the agreement at Delhi, where it was so payable. The Supreme Court in *Union of India v. Adani Exports Limited*, , (2002) 1 SCC 567, while considering the issue of territorial jurisdiction of the High Court to entertain a writ petition under Article 226 of the Constitution of India, relied upon its earlier decision in *ONGC v. Utpal Kumar Basu*, , (1994) 4 SCC 711, and while referring to it, held that " It is clear from the above judgment that each and every fact pleaded by the respondents in their application does not ipso facto lead to the conclusion that those facts give rise to a cause of action within the court"s territorial jurisdiction unless those facts pleaded are such which have a nexus or relevance with the lis that is involved in the case. Facts which have no bearing with the lis or the dispute involved in the case, do not give rise to a cause of action so as to confer territorial jurisdiction on the court concerned."

22. It is wholly irrelevant and not necessary, in the facts of the present case, for the petitioner to even plead that the cheques had to be drawn on a bank at Mumbai. Even if such a pleading were to be made, that by itself would not confer jurisdiction on the Courts at Mumbai."

(Emphasis supplied)

30. In my view, neither of the aforesaid aspects can be described as facts forming part of the cause of action on which the suit is premised. As noticed above, in *ONGC* (supra), the Supreme Court observed that each and every fact pleaded does not ipso facto lead to the conclusion that those facts give rise to a cause of action within the territorial jurisdiction of the Court concerned. The pleaded facts have to be such, which have a nexus or relevance with the lis that is involved in the case. The facts which have no bearing with the lis or the dispute involved in the case, do not give rise to a cause of action so as to confer territorial jurisdiction on the Court concerned.

31. In the present case, the fact that defendant no. 2 may have taken certain decisions qua manufacture and sale of its country liquor with the impugned brand in Delhi, certainly cannot be said to form part of the bundle of facts constituting a cause of action. It is not necessary either for the plaintiff to plead that such decisions were taken at Delhi, or for the defendant to traverse such pleading. The plaintiff has filed the suit alleging passing off its trademark "Malta". It is wholly irrelevant as to when and where the decision to manufacture and sell its country liquor was taken by the defendant under the impugned brand. Similarly, the submission that because the statutory records and accounts of defendant no. 2 are maintained at its registered office in Delhi, this Court would have territorial jurisdiction as the plaintiff have sought rendition of accounts, also has no merit. It is neither necessary for the plaintiff to plead that the defendant No. 2 maintains its account at its Registered Office at Delhi, nor is it necessary for the defendants to traverse the said averment, if made. The said fact has no bearing on the lis between the parties.

32. I agree with the submission of Mr. Kirpal that if the excuses given by the plaintiff for invoking the jurisdiction of this Court were to be accepted on the ground that defendant no. 2 has taken its business decisions in Delhi at its registered office, and on the ground that defendant no. 2 is obliged to maintain its record and accounts at its registered office in Delhi, then in every case it would be possible to file the suit against a defendant corporation at the place where its registered office is situated - even when no cause of action has arisen within the jurisdiction of the Court, where the Registered Office is situated, and the Corporation has a subordinate office where the cause of action has arisen, thereby completely nullifying the scheme contained in Section 20(c) read with its explanation.

33. I agree with Mr. Kirpal that the plaintiff is seeking to confuse between territorial jurisdiction of the Court which can try the cause, and the territorial jurisdiction of the court which can eventually execute the decree for rendition of accounts. I cannot agree with the submission of Mr. Sahni that the decision of the Supreme Court in Patel Roadways (supra) cannot be applied in the context of the facts of this case. This is for the reason that in Patel Roadways (supra), the Court examined and interpreted the explanation following Section 20(c) of CPC, and on the interpretation of the said provision arrived at its conclusion. It is the ratio contained in Patel Roadways (supra) which is binding as a precedent before this Court and Mr. Sahni has not been able to distinguish the present case on its facts to persuade this Court not to follow the binding precedent in Patel Roadways (supra). Therefore, the decision of the Supreme Court in K. Mohandas (supra) relied upon by Mr. Sahni is of no avail.

34. The submission of Mr. Sahni that a part of cause of action had arisen within the jurisdiction of this Court since defendant no. 2 has filed its application for registration of trademark at Delhi also has no merit. In Pfizer Products Inc. v. Rajesh Chopra & Ors., , 127 (2006) DLT 783, this Court concluded that an

advertisement in a trademark journal, by itself, would not confer jurisdiction upon a Court within whose territorial limits the advertisement is published or is seen. A similar plea was rejected by the Court by placing reliance upon Pfizer Products Inc. (supra) in Archie Comic Publications Inc. v. Purple Creations Pvt. Ltd. & Ors. in C.S.(O.S.) No. 1420/2005 decided on 22.04.2008.

35. Reliance placed on Indian Performing Rights Society Ltd. (supra) is also misplaced as, even in the said decision, the Supreme Court has reiterated its earlier decision in Patel Roadways (supra). The observation made by the Supreme Court in Indian Performing Rights Society Ltd. (supra) that "'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", cannot be understood to mean that a suit would be maintainable at either of the two places. It is clear that the observation made by the Supreme Court in para 12 of Indian Performing Rights Society Ltd. (supra), as extracted above, is a mere recapitulation of, inter alia, what was held in Patel Roadways (supra), and Patel Roadways (supra) has not been dissented from or diluted in Indian Performing Rights Society Ltd. (supra).

36. In my view, the decision in Ramesh B Desai (supra) has no application in the facts of the present case, as I have proceeded to consider the objection to the territorial jurisdiction of this Court on the basis that the facts pleaded in the plaint are true.

37. Consequently, I am of the view that this Court has no territorial jurisdiction to entertain the present suit. Accordingly, the plaint is liable to be returned under Order 7 Rule 10 CPC. The plaintiff may, if it so desire, move an appropriate application under Order 7 Rule 10A CPC.