

**(2023) 02 DEL CK 0173**

**In the Delhi High Court**

**Case No :** First Appeal From Order (OS) (COMM) No. 286 Of 2019, Civil  
Miscellaneous No. 18896 Of 2017

Radico Khaitan Ltd.

APPELLANT

Vs

Nakshatra Distilleries & Breweries Ltd. & Anr.

RESPONDENT

**Date of Decision :** 28-02-2023

**Acts Referred:**

Code Of Civil Procedure, 1908 — Section 20, 20(c), Order 7 Rule 11, Order 6 Rule 17  
Trade Marks Act, 1999 — Section 134, 134(2)  
Copyright Act, 1957 — Section 62(2)

**Citation :** (2023) 02 DEL CK 0173

**Hon'ble Judges :** Sanjeev Sachdeva, J;Tushar Rao Gedela, J

**Bench :** Division Bench

**Advocate :** Sagar Chandra, Srijan Uppal, Abhishek Bhati, Natasha, K., Sachin Gupta, Rohish Arora, Jasleen Kaur, Swati Meena, Yashi Agrawal, Kanika Marwaha

**Final Decision :** Dismissed

## Judgement

Sanjeev Sachdeva, J

1. Appellant impugns order dated 28.03.2017 whereby the application under Order VII Rule 11 Code of Civil Procedure (CPC for short) filed by the respondent has been allowed holding that the Court does not have the territorial jurisdiction to entertain the suit.

2. Subject Suit for permanent injunction, for restraining the respondents from infringing the trademark of the appellant/plaintiff, passing off, delivery of, rendition of accounts, etc., was filed by the appellant alleging that the respondents had adopted the trademark "GOA" and "GO4" of the appellant and that the respondent had also applied for excise approvals of the labels of alcoholic products.

3. It is contended that the excise application was objected to by the Appellants, however on 28.04.2015 the office of the Commissioner State Excise,

Maharashtra, Mumbai approved the labels of respondent of no. 1. Thereafter the subject suit for injunction has been filed.

4. Respondents filed an application under Order VII Rule 11 CPC seeking dismissal of the Suit for lack of territorial jurisdiction. It is contended in the application that the Courts at Delhi do not have the territorial jurisdiction as neither the respondents are residing in Delhi nor carrying on their business within the territorial jurisdiction of Delhi and further that no cause of action has arisen within the territorial jurisdiction of the Courts at Delhi.

5. It was contended that the registered office of respondent no. 1 and respondent no. 2 was at Mumbai and Pune, respectively and the manufacturing by respondent no. 1 and the marketing by respondent no. 2 was in the State of Maharashtra.

6. It was further contended that the mark in issue was in respect of alcoholic beverages which is a State excisable product and could not be sold/ marketed unless necessary label approvals are obtained from the respective State Excise Departments. It is contended that the approvals were sought from the Maharashtra State Excise Department and no approval has been sought from the Delhi State Excise Department.

7. It is further contended that the appellant/plaintiff had an office at Mumbai and a bottling unit at Aurangabad; both within the State of Maharashtra and as such the Courts at Delhi had no territorial jurisdiction.

8. In response to the application, appellant contended that the registered office of respondent no. 1 was at Solapur, Maharashtra and that plaintiff had no office in Aurangabad and the bottling unit at Aurangabad was that of a separate legal entity i.e. a private limited company in which appellant had a 36% shareholding.

9. It was further contended that the Mumbai office of the appellant was a subordinate sale office and not the principal place of business. Further the principal place of business was stated to be at the corporate office at Delhi though the registered office of the appellant/plaintiff was at Rampur, Uttar Pradesh.

10. It was further contended that the dynamic effects of respondents' action in obtaining an excise clearance was felt in Delhi as there was likelihood that the respondent could launch their products in Delhi. Consequently the Courts at Delhi would have the territorial jurisdiction to entertain the suit.

11. Learned Single Judge by the impugned order, referring to the decision of a Division Bench of this Court in Ultra Home Construction Pvt. Ltd. vs. Purushottam Kumar Chaubey; 2016 (65) PTC 469 (Del) (DB) (of which one of us, Sanjeev Sachdeva J., was also a member), held that as part of the cause of action had arisen at a place where the plaintiff had a subordinate branch office, the suit would lie only at the subordinate office and not at the principal office.

12. The Division Bench of this Court in *Ultra Home Construction Pvt. Ltd. (Supra)*, after considering the judgment of the Supreme Court in *Indian Performing Rights Society Ltd. vs. Sanjay Dalia* (2015) 10 SCC 161 held 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) (Trade Marks Act, 1999) and 62(2) (Copyright Act, 1957). 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

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

S.No. 1)

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

13. In the present case, the case of the Plaintiff falls in Category 3. As per the Appellant/Plaintiff its principal place of business is in Delhi. Plaintiff also has a subordinate office at Mumbai. The Respondent applied for excise approval of its labels at Mumbai. Appellant opposed the approvals at Mumbai, however the opposition was rejected and approvals were granted at Mumbai.

14. Cause of action is a bundle of facts which the plaintiff needs to prove in support of its case in order to succeed.

15. In this context reference may be had to the plaint particularly the paragraph relating to jurisdiction and cause of action which read as under:-

#### "CAUSE OF ACTION

The cause of action in the present suit first arose in the month of February, 2015 when the Plaintiff first became aware of the activities of Defendant No. 1. The

cause of action further arose in the month of May, 2015 against the Defendants when the Plaintiff addressed a cease and desist notice to the Defendants. The cause of action further arose in May, 2015, when the Defendant No. 1 pleaded in their plaint before the Hon'ble District Court, Solapur, Maharashtra that they propose to launch the product in question in the present suit. The cause of action further arose in June, 2015 when the Defendant No. 1 launched their products bearing the mark 'GOA'. The cause of action further arose in June, 2015 when the Plaintiff got the information that Defendant No. 1 is also in the process of launching 'Gin' bearing the mark 'G04'. The cause of action in the present case is a continuous and recurring one and continues till such time the Defendants are restrained by an order of injunction of this Hon'ble Court.

## JURISDICTION

This Hon'ble Court has the necessary territorial jurisdiction to entertain and try the present suit by virtue of Section 134(2) of the Trade Marks Act, 1999, as the Plaintiff carries on business, works for gain and has its principal place of business within the territorial limits of this Hon'ble Court. This Hon'ble Court also has the necessary territorial jurisdiction under Section 20 (c) of the Code of Civil Procedure, 1908 as a part of the cause of action in the present suit has arisen within the territorial limit of this Hon'ble Court as the dynamic effects of the Defendants' actions are being felt by the Plaintiff at Delhi. This Hon'ble Court also has the necessary territorial Jurisdiction under Section 20 (c) of the Code of Civil Procedure, 1908 as the Defendants have launched their product bearing the marks 'GOA' as well as 'G04' in the market and therefore there is a credible and imminent threat that the Defendants will also launch the impugned products nationally, including within the territorial jurisdiction of this Hon'ble Court.

16. In the cause of action paragraph of the plaint, it is alleged that cause of action arose when a cease and desist notice was issued; when Defendant No. 1 pleaded in its plaint before the District Court at Solapur, Maharashtra, that they proposed to launch the product in question; when the Defendant No. 1 launched their products bearing the mark 'GOA'; when the Plaintiff got the information that Defendant No. 1 was also in the process of launching 'Gin' bearing the mark 'G04'.

17. Nowhere has it been stated that any part of cause of action arose in Delhi. The Defendants do not have their office in Delhi; the Suit was filed in Solapur, Maharashtra, the launch of the product and the proposed launch was also in Maharashtra.

18. With regard to Delhi, it is alleged in the Jurisdiction paragraph that "a part of the cause of action in the present suit has arisen within the territorial limit of this Hon'ble Court as the dynamic effects of the Defendants' actions are being felt by the Plaintiff at Delhi."

19. As per the appellants the dynamic effect of the approval of labels by the Excise department was felt in Delhi and as such the courts at Delhi would have

jurisdiction. If the dynamic effect of an approval of excise labels by the Excise Department at Mumbai is felt at Delhi then its dynamic effect would also be felt at Mumbai, where admittedly the appellants have their branch office. If a part of cause of action has arisen in Mumbai, then applying the ratio of the judgment in Ultra Home Construction Pvt. Ltd. (Supra), the jurisdiction would only lie with the courts at Mumbai and the appellants/plaintiff would be precluded from suing in Delhi.

20. It may further be noticed that the learned Single Judge has also noticed that an application under Order VI Rule 17 CPC had been filed by the plaintiff contending that the respondents had started its commercial operation.

21. Learned Single Judge noticed that the Label of the product which was relied on by the appellant specifically stated "for sale in Maharashtra State only", which established that the respondents were affecting sales only in Mumbai and the cause of action would accrue to the plaintiff at Mumbai and the Courts at Mumbai alone would have jurisdiction to entertain the suit.

22. Learned Single Judge has rightly held that the averments of the appellant that the dynamic effects of obtaining an excise clearance at Mumbai was being felt at Delhi would imply that if dynamic effects is felt in Delhi then it would also be felt in Mumbai as the sales are to be effected in the State of Maharashtra.

23. Accordingly, there is no infirmity in the finding returned by the learned single judge that the courts at Delhi would have no jurisdiction and the Suit would lie only in the courts at Mumbai.

24. While holding that the Courts at Delhi had no jurisdiction, the learned single judge has gone on to consider, what he called as an ancillary issue: "whether the subordinate office should be the exact place of cause of action or it is sufficient if there is subordinate office of the plaintiff in the State in which cause of action has accrued."

25. Learned Single Judge has held as under:

"15. An ancillary issue also arises for consideration whether the subordinate office should be the exact place of cause of action or it is sufficient if there is subordinate office of the plaintiff in the State in which cause of action has accrued.

16. The said aspect does not appear to have been considered in Indian Performing Rights Society Ltd. or in Ultra Home Construction Pvt. Ltd. or in subsequent judgment in RSPL Limited Vs. Mukesh Sharma 2016 SCC OnLine Del 4285 (DB).

17. Having given consideration to the matter, I am of the view that to read Indian Performing Rights Society Ltd. supra and the other judgments as requiring the subordinate office of the plaintiff to be exactly in the same district in which the State may have been divided for the purposes of territorial jurisdiction of the

Court would negate the purpose of the judgment. Supreme Court, in *Indian Performing Rights Society Ltd. supra* held that the object of Section 134 of the Trade Marks Act is 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. It was further held that the right under Section 134 to institute suit at a place where plaintiff is residing, carrying on business is subject to "certain restrictions, such as in case plaintiff is residing or carrying on business at a particular place/having its head office and at such place cause of action has also arisen wholly or in part, plaintiff cannot ignore such a place under the guise that he is carrying on business at other far flung places also." It was further held "The interpretation of provisions has to be such which prevents mischief of causing inconvenience to parties". The Supreme Court thus, introduced an element of 'forum conveniens' in interpretation of Section 134.

18. Reference to the word "place" in the judgments, in my opinion has to be construed as the "State". The judiciary of the State is one and the division of the territorial jurisdiction into districts is a matter of administrative convenience and exigency. All the State districts would come under the supervision of the High Court of the State and thus the words "place" has to be read as the "State" within which cause of action has arisen, even if cause of action may have been arisen in any particular district of the State and not in the district or the city where the subordinate office of the plaintiff is situated."

26. Learned Single Judge has held that a reference to the word 'place' in *Indian Performing Rights Society Ltd. Vs. Sanjay Dalia*; 2015 (10) SCC 161; has to be construed as the "State". Learned Single Judge has held that the judiciary of the State is one and the division of the territorial jurisdiction into districts is a matter of administrative convenience and exigency and all the said districts given under the supervision of the High Court of the State and within the word 'place' has to be read as 'State' within which the cause of action has arisen and even if cause of action may have arisen in any particular district of the State and not in the district or the city where the subordinate office of the plaintiff is situated.

27. We are of the view that after holding that the cause of action had arisen in Mumbai and that the Appellant/Plaintiff had a subordinate office in Mumbai, there was no necessity for the learned single judge to have opined upon the so called ancillary issue.

28. We are also in respectful disagreement with the observations of the learned single judge that 'place' has to be read as 'State' for the reason that judiciary of a State is not divided into districts as a matter of mere administrative convenience or exigency for the reason that division of a State into Districts has a historical background and statutory significance.

29. Such an interpretation would also fall foul of Section 134 of the Trade marks Act, 1999, which reads as under:

"134. Suit for infringement, etc., to be instituted before District Court.—(1) No

suit—

(a) for the infringement of a registered trade mark; or

(b) relating to any right in a registered trade mark; or

(c) for passing off arising out of the use by the defendant of any trade mark which is identical with or deceptively similar to the plaintiff's trade mark, whether registered or unregistered,

shall be instituted in any court inferior to a District Court having jurisdiction to try the suit.

(2) For the purpose of clauses (a) and (b) of sub-section (1), a 'District Court having jurisdiction shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908) or any other law for the time being in force, include a District Court within the local limits of whose jurisdiction, at the time of the institution of the suit or other proceeding, the person instituting the suit or proceeding, or, where there are more than one such persons any of them, actually and voluntarily resides or carries on business or personally works for gain.

Explanation.—For the purposes of sub-section (2), 'person includes the registered proprietor and the registered user."

30. Further, we may note that jurisdiction is conferred on Districts and District Judges not only by the Constitution of India, Code of Civil Procedure, Criminal Procedure Code, but also several Statutes inter alia, Arbitration and Conciliation Act, 1925, Commercial Courts Act, 2016, Companies Act, 2013, Consumer Protection Act, Patents Act, 1970, Copyright Act, 1957, Trade Marks Act 1999, Indian Succession Act, 1925 etc.

31. However, this discussion need not detain us any further for the reason that in the facts of the present case, this ancillary issue does not arise for consideration, Furthermore part of the cause of action has admittedly arisen in Mumbai, where the Appellant/Plaintiff has its branch office.

32. We accordingly hold that the observations of the learned single judge in paragraphs 15 to 18 of the impugned judgment, extracted hereinabove, in so far as they hold that 'Place' has to be read as 'State' are obiter dicta and not to be taken as a binding principle of law.

33. In view of the above, we find no infirmity in the impugned order holding that the Courts at Delhi have no jurisdiction. The appeal is accordingly dismissed. There shall be no orders as to costs.