

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CS(OS) No.643/2006

Date of Decision: March 12, 2010

M/S MATRUMAL DHANNALAL OIL MILL Plaintiff

Through: Mr. S.K. Bansal Advocate with
Mr. Ajay Amitabh Suman, Advocate

VERSUS

M/S. ABHISHEK ENTERPRISES Defendant

Through: Mr. Shailen Bhatia Advocate with
Mrs. Amita Kapur, Advocate,
Mr. Amit Jain, Advocate.

**% CORAM:
HON'BLE MS. JUSTICE ARUNA SURESH**

- (1) Whether reporters of local paper may be allowed to see the judgment?
- (2) To be referred to the reporter or not? Yes
- (3) Whether the judgment should be reported in the Digest? Yes

J U D G M E N T

ARUNA SURESH, J.

I.A. No.9871/2006 (Order 7 Rule 11 CPC) in CS(OS) No.643/2006

1. By way of this order, I shall dispose of an application filed by the defendant under Order 7 Rule 11 read with Section 151 of Code of

Civil Procedure (hereinafter referred to as 'CPC') seeking dismissal of the suit on the ground that this Court has no territorial jurisdiction to entertain the present suit.

2. Plaintiff firm is engaged in the business of manufacturing, marketing and selling of edible oil and oil cakes etc. under the trade mark **'RADHA KRISHNA' with device of Radha Krishna Label**. Said trade mark is registered under Class 29 of the Trade Marks Act, 1999 (hereinafter referred to as 'Act') having registration No.130471. Plaintiff is also the holder of Copy Right vide Registration Nos. A-66428/04 and A-67738/04 respectively for the said trade mark. Defendant is engaged in the similar business of edible oil and oil cakes, etc. and is supplying his goods under the name and style of **'RADHA MOHAN' WITH DEVICE OF RADHA KRISHNA LABEL**. Plaintiff claims that user of trade mark 'RADHA MOHAN' by the defendant is infringement of his trade mark 'RADHA KRISHNA' and also infringement of his copy right in the said trade mark. Defendant is passing off his goods to the public as if the said goods are manufactured and sold in the market by the plaintiff.
3. Defendant contested the suit denying any violation of plaintiff's trade mark and copy right by him by selling his goods in the name

of 'RADHA MOHAN', for which he has already applied to the Registrar of Trade Marks for registration, for the goods to be supplied by him in various States except Delhi. Defendant has also disputed the territorial jurisdiction of this Court to entertain the suit alleging that both the parties to the petition are residing and working for gain outside the jurisdiction of this court; the trade mark and copy right is registered by the plaintiff at Bombay and he is not supplying his goods at Delhi.

4. Mr. Shailen Bhatia, learned counsel for the defendant has argued that both the parties are residing and working for gain in U.P. as plaintiff is residing and working for gain at Hathras, whereas defendant is carrying on his business at Agra. Suit has been filed under Sections 134 and 135 of the Trade Marks Act, 1999. However, provisions of Section 134 of the Act are not applicable to the facts and circumstances of the case. He further argued that relief claimed in the suit for infringement or for passing off is governed under Section 135 of the Act and the suit therefore, cannot be entertained by this Court. He has relied on the following judgments :-

(i) ***Surendra Kumar Maingi vs. M/s. Dodha House, AIR 1998 Allahabad 43;***

(ii) ***Haryana Milk Foods Ltd. vs. Chambel Dairy Products, 2002***

- (25) *PTC 156 (Del.)*;
- (iii) *Gupta Brothers Conduit Pipe Manufacturing Co. Pvt. Ltd. vs. Anil Gupta & Anr., 2001 (24) PTC 159 (Del.)*;
- (iv) *Dabur India Limited vs. K.R. Industries, 2006 (33) PTC 348 (Del.) (DB)*;
- (v) *Dabur India Limited vs. K.R. Industries, 2006 (33) PTC 107 (Del.)*;
- (vi) *Dharampal Premchand Ltd. vs. Golden Tobacco Products, 2007 (34) PTC 633 (Del.) (DB)*;
- (vii) *The Indian Performing Right Society Ltd. vs. Sanjay Dalai & Anr., CS(OS) No.527/2007 decided by Badar Durrez Ahmed on 31.08.2007*;
- (viii) *The Jay Engineering Works Ltd. vs. Ramesh Aggarwal, 2006 (33) PTC 561 (Del.)*;
- (ix) *M/s. Dhodha House vs. S.K. Maingi WITH M/s. Patel Field Marshal Industries & Ors. vs. M/s. P.M. Diesel Ltd., AIR 2006 SC 730.*

5. Mr. S.K. Bansal, learned counsel for the plaintiff has submitted that this court has the territorial jurisdiction to entertain the suit. In para

23 of the plaint, plaintiff has specifically pleaded that this court has territorial jurisdiction to entertain the suit. To determine territorial jurisdiction of a Civil Court, the court has to see averments contained in the Plaint and not defence raised by the defendant in the written statement. He has submitted that as per the averments contained in the Plaint, prima facie, jurisdiction of this court to entertain the suit is clearly made out.

6. He has further argued that trade mark of the plaintiff is registered in Delhi, plaintiff has applied for registration of trade mark for his other products in Delhi and the defendant has also applied for registration of his trade mark at Delhi. Therefore, Delhi Court has territorial jurisdiction to entertain the suit. He has referred to the following judgments :-

(i) *Amrutanjan Limited vs. Ashwin Fine Chemicals & Pharmaceuticals, Kashi Mira District, PTC (Suppl) (1) 27 (Mad);*

(ii) *S. Oliver Bernd Freier GmbH & Co. KG vs. Karni Enterprises & Anr., 2006 (33) PTC 574 (Del.);*

(iii) *M/s. Govardhan Motels & Restaurants vs. I. Subramanyam & Anr., 2008 (36) PTC 513 (Del);*

- (iv) *Intas Pharmaceuticals Limited vs. Allergan Inc., 2006 (32) PTC 272 (Del.) (DB);*
- (v) *Pfizer Products, Inc. vs. Rajesh Chopra & Ors., 2006 (32) PTC 301 (Del.);*
- (vi) *L.G. Corporation & Anr. vs. Intermarket Electroplasters (P) Ltd. & Anr., 2006 (32) PTC 429 (Del.) and*
- (vii) *Jagdamba Oil Agency vs. K.S. Oils Limited & Anr., 2006 (33) PTC 447 (MP).*

7. To appreciate respective submissions of the parties, I feel the necessity of reproducing para 23 of the plaint which speaks of territorial jurisdiction of this court to entertain the suit. It reads:-

“23. This Hon’ble Court has the territorial jurisdiction to try and adjudicate upon the present suit. The defendant is infringing and passing off their goods as that of the plaintiff in Delhi in a clandestine and surreptitious manner i.e. without issuing formal invoices against sales. The plaintiff registered trade mark No.130471 in Class 29 is registered with the Registrar of Trade Marks at New Delhi. The plaintiff filed application for registration of trade mark in Delhi. The defendant has also sought registration of impugned trade mark under the aforesaid impugned application on all India basis including Delhi by applying for its registration with Registrar of Trade Marks, Delhi.

The plaintiff has tremendous goodwill and reputation in its said trade mark in Delhi which is being tarnished by defendant's impugned activities in Delhi. Further this Hon'ble Court has jurisdiction in the light of Section 134 of the Trade Marks Act, 1999 and Section 62 of the Copyright Act, 1957. This Hon'ble Court has the jurisdiction to entertain and adjudicate upon the present suit.

8. Section 134 of the Act is a special forum available to the plaintiff which permits it to file a suit for infringement of its registered trade mark within the local limits of jurisdiction of the Competent Court where plaintiff is carrying on its business for gain. This provision is an additional forum available to the plaintiff, besides, Section 20 of CPC.
9. Admittedly, plaintiff firm is engaged in the business of manufacturing, marketing, selling, etc. of edible oil and oil cakes at Hathras, U.P. Address given by the plaintiff in the memo of parties is that of Hathras. It is not the case of the plaintiff that it has got any office at Delhi or that he is engaged in his business in Delhi or that he is supplying his goods in Delhi. Some of the bills placed on record by the plaintiff are issued by Yash Traders, Grain Merchants & Commission Agent, Naya Bazar, Delhi. Perusal of these credit bills make it very clear that Yash Traders had supplied raw material to the plaintiff from Delhi to Hathras and these goods were sent

through trucks, details of which are found in these credit bills. Therefore, these credit bills in no manner indicate that goods of the plaintiff firm were being marketed by it at Delhi. Plaintiff has also placed on record number of bills indicating supply of its products to various places. Goods as per these bills were supplied in U.P. and Bihar. True that, in few bills, name of the broker company/Agent is given as M/s. Laxmi Narayan and in few of the bills name of Kishan Gupta and Mahender Pal Gupta, Delhi finds mention but, from these bills it is not clear if above named agents were of the plaintiff or were of the defendant. The fact remains that goods against all these bills/invoices were sent from Hathras to different places of U.P. and Bihar, but not to Delhi.

10. A person may be said to be carrying on his business at a place through an agent or a manager or through a servant. The owner may not even visit that place. However, the person acting as an agent must be an agent in strict sense of the term. The agent must be a special agent who attends exclusively to the business of the principal and carries it on in the name of the principal and not a general agent who does business for anyone who pays him.
11. The person named as commission agent, agent in various invoices/bills, prepared by the plaintiff for supply of goods to other

traders on commission basis cannot be said to be an agent in strict sense of the term. Neither M/s. Laxmi Narayan nor Kishan Gupta or any other agent named in the bills was exclusively attending the business of the plaintiff. There is nothing on record to suggest that they or any of them was carrying on his business in the name of the plaintiff at Delhi or any other place. Therefore, in no circumstance it can be implied that plaintiff firm is carrying on its business at Delhi. Since plaintiff has not been able to show *prima facie*, from the averments contained in the plaint, that it is carrying on its business within the local limits of territorial jurisdiction of Delhi, provisions of Section 134 of the Act do not come to his rescue.

12. In '*M/s. Dhodha House vs. S.K. Maingi* WITH *M/s. Patel Field Marshal Industries & Ors. vs. M/s. P.M. Diesel Ltd.*', *AIR 2006 SC 730*, the expression 'carries on business' and the expression 'personally works for gain' appearing in Section 134 of the Act as well as Section 62 (2) of the Copy Right Act is defined in para 45 of the judgment in the following manner:-

“45. The expression 'carries on business' and the expression 'personally works for gain' connotes two different meanings. For the purpose of carrying on business only presence of a man at a place is not necessary. Such business may be carried at a place through an agent or a manager or through a servant. The

owner may not even visit that place. The phrase 'carries on business' at a certain place would, therefore, mean having an interest in a business at that place, a voice in what is done, a share in the gain or loss and some control thereover. The expression is much wider than what the expression in normal parlance connotes, because of the ambit of a civil action within the meaning of section 9 of the Code. But it is necessary that the following three conditions should be satisfied, namely:-

(1) The agent must be a special agent who attends exclusively to the business of the principal and carries it on in the name of the principal and not a general agent who does business for any one that pays him. Thus, a trader in the mufassil who habitually sends grain to Madras for sale by a firm of commission agents who have an independent business of selling goods for others on commission, cannot be said to "carry on business" in Madras. So a firm in England, carrying on business in the name of A.B. & Co., which employs upon the usual terms a Bombay firm carrying on business in the name of C.D. & Co., to act as the English firm's commission agents in Bombay, does not "carry on business" in Bombay so as to render itself liable to be sued in Bombay.

(2) The person acting as agent must be an agent in the strict sense of the term. The manager of a joint Hindu family is not an "agent" within the meaning of this condition.

(3) To constitute "carrying on business" at a certain place, the essential part of the business must take place in that place. Therefore, a retail

dealer who sells goods in the mufassil cannot be said to "carry on business" in Bombay merely because he has an agent in Bombay to import and purchase his stock for him. He cannot be said to carry on business in Bombay unless his agent made sales there on his behalf. A Calcutta firm that employs an agent at Amritsar who has no power to receive money or to enter into contracts, but only collects orders which are forwarded to and dealt with in Calcutta, cannot be said to do business in Amritsar. But a Bombay firm that has a branch office at Amritsar, where orders are received subject to confirmation by the head office at Bombay, and where money is paid and disbursed, is carrying on business at Amritsar and is liable to be sued at Amritsar. Similarly a Life Assurance Company which carries on business in Bombay and employs an agent at Madras who acts merely as a Post Office forwarding proposals and sending moneys cannot be said to do business in Madras. Where a contract of insurance was made at place A and the insurance amount was also payable there, a suit filed at place B where the insurance Co. had a branch office was held not maintainable. Where the plaintiff instituted a suit at Kozhikode alleging that its account with the defendant Bank at its Calcutta branch had been wrongly debited and it was claimed that that court had jurisdiction as the defendant had a branch there, it was held that the existence of a branch was not part of the cause of action and that the Kozhikode Court therefore had no jurisdiction. But when a company through incorporated outside India gets itself registered in India and does business in a place in India through its agent authorized to accept insurance proposals,

and to pay claims, and to do other business incidental to the work of agency, the company carries on business at the place of business in India."

13. I have already pointed out above that none of the invoices, sales bills, etc. placed by the plaintiff on record *prima facie* show that the goods of the plaintiff were being sold in Delhi. True that, names of Delhi brokers are mentioned in some of the invoices, but none of these bills indicate that they were appointed by the Plaintiff as its special Agents to exclusively attend to its business.
14. The other documents placed on record by the plaintiff are Authority Deed, Partnership Deed, Certificate of Authorization from Ministry of Agriculture and Irrigation dated 10.07.1980 issued at Nagpur, copy of Audit Report from 2002-2005, besides, invoices, sales bills, etc. Authority Deed and Partnership Deed were executed at Hathras where plaintiff is residing and carrying on its business for gain. Letter of authorization issued by the Ministry of Agriculture & Irrigation pertains to some other brand label '*Makhan Chor*' and has no direct or indirect bearing to the facts and circumstances of the case. Audit reports of the plaintiff firm, prepared by Chartered Accountant of the plaintiff, were submitted to the concerned Income Tax Authority at Hathras.
15. Plaintiff has invoked the jurisdiction of this Court by alleging that his

trademark is registered with the Registrar of Trademarks at New Delhi under Class 29 and he has also filed an application for registration of Trademark for other goods manufactured by it in Delhi. Plaintiff's trademark was initially registered on 9th August, 1947 with Registrar of Trademark at Mumbai for seven years. This trademark was renewed on 29.11.2002 for another period of seven years vide RLC-3783, from 9th August, 1990 and thereafter for another period of seven years vide RLC-3784 dated 29.11.2002 by Registrar of Trademark Mumbai. Thus, it is clear that trademark of the plaintiff was never registered at Delhi.

16. There is one application dated 3rd June, 2002 which probably was filed by the plaintiff for registration of its trademark at Delhi in Class 29, which was already registered at Mumbai. On this document there is a stamp of Trade Mark Registry. This endorsement in clear terms state that number given to the application in no manner is to be considered as acceptance of registration.
17. A cause of action will not arise when an application is filed for registration of the trademark in a given case. The reason being, in a given case, an application for grant of registration certificate may or may not be allowed. A person in whose favour a certificate has

already been issued has the right and opportunity to oppose an application filed by a person in a given case by filing an objection application and the Registrar, in that circumstance, is required to determine the said question. Therefore, cause of action would arise only when a registered trademark is used. Simply because plaintiff has applied for registration of his trademark at Delhi vide its application dated 3rd June 2002 would not confer territorial jurisdiction on this court.

18. It is submitted by learned counsel for the plaintiff that defendant has applied for registration of his trademark at Delhi. For that purpose, he has filed a copy of the advertisement appearing in the Trademark Journal. Again no cause of action for filing the suit would arise within the jurisdiction of this Court, only because advertisement has been issued in the Trademark Journal or in other journal notifying the factum of filing of such an application. The Registrar's Offices for registration of the Trademark have been divided by the Govt. in five different zones. The State of U.P. falls within the Registrar of Trademarks having its head office at Delhi. Naturally, therefore, both the parties being residents of U.P. where they are carrying on their business for gain and/or are working personally for gain had to apply for registration of their respective proposed Trademarks to the Registrar at Delhi. In '*M/s. Dhodha House's case (Supra)*' it

was observed:-

“31. A cause of action will arise only when a registered trade mark is used and not when an application is filed for registration of the trade mark. In a given case, an application for grant of registration certificate may or may not be allowed. The person in whose favour, a registration certificate has already been granted indisputably will have an opportunity to oppose the same by filing an application before the Registrar, who has the requisite jurisdiction to determine the said question. In other words, a suit may lie where an infringement of trade mark or copyright takes place but a cause of action for filing the suit would not arise within the jurisdiction of the court only because an advertisement has been issued in the Trade Marks Journal or any other journal, notifying the factum of filing of such an application.

It was further observed in para 37:-

37. *In Premier Distilleries Pvt. Ltd. v. Shashi Distilleries [2001 PTC 907 (Mad)]*, a Division Bench of the Madras High Court in a matter involving a passing off action, was of the view:

"The cause of action in a suit for passing off, on the other hand and as already observed, has nothing at all to do with the location of the Registrar's office or the factum of applying or not applying for registration. It is wholly unnecessary for the plaintiff to prove that he had applied for registration. The fact that the plaintiff had not applied for registration will not improve the case of the defendant either. Filing of an application for registration of a trade mark, therefore, does not constitute a part of

cause of action where the suit is one for passing off."

It was further observed:

"The argument advanced that registration if granted would date back to the date of application and that the plaintiff would have the right to seek amendment of the plaint to seek relief on the ground of infringement as well, is wholly irrelevant so far as the cause of action for bringing a suit for passing off is concerned. While it may be convenient to the plaintiff to institute a suit in a court where he may later on be able to bring a suit for infringement of the trade mark, that convenience of the plaintiff is in no way relevant for deciding as to whether a cause of action for filing a suit for passing off can be said to have arisen in a place where, the deceit alleged to have been practised by the defendant had in fact, not been practised within the jurisdiction of the court in which the suit is brought."

19. It is pertinent that Mr. Pawan Kumar Mittal, Proprietor of the Defendant firm made a statement in the Court on 10.10.2007. The relevant part of his statement reads as under:-

"I have applied for registration of trade mark 'Radha Mohan Brand' for sale, distribution, etc. of my goods at Haryana, Uttar Pradesh, Rajasthan and Madhya Pradesh but I have not applied for any registration of the said trade mark for sale of goods at Delhi and I shall not apply for this trademark for sale of goods at Delhi."

20. Thus, it is clear that defendant has applied for registration of

trademark 'Radha Mohan' Brand for sale, distribution, etc. of his goods at Haryana, Uttar Pradesh, Rajasthan and Madhya Pradesh but has not applied for registration of the said Trademark for sale of goods at Delhi. Rather, he has given an undertaking that he has no intention to sell, manufacture or deal in any manner with its goods in Delhi under 'Radha Mohan Brand' and that he would not apply for the said trademark for sale of goods at Delhi.

21. Under these circumstances, apprehension of the plaintiff that defendant would sell or pass off his goods as that of the plaintiff at Delhi is completely nullified.

22. In '*St. Ives Laboratories Inc. vs. Arif Perfumers & Anr., MANU/DE/0151/2009*', in similar circumstances this court observed:-

“5. Before entertaining a suit, the Court has to ensure whether any part of cause of action had arisen within the jurisdiction of this Court. The registration of a trademark in Delhi cannot be a ground to invoke jurisdiction of Delhi Courts. The Trade marks Act does not provide that registration of trademark at a particular office shall be a ground for filing a suit for infringement of trademark or passing off trademark within the limits of that Court.”

23. It is a settled principal of law that cause of action is a bundle of material facts which are necessary for the plaintiff to prove his case so as to entitle him to succeed in a given case. However, each and

every fact pleaded ipso facto does not lead to the conclusion that the facts so pleaded give rise to cause of action within the Court's territorial jurisdiction. Since plaintiff has not been able to show prime facie from the averments contained in the plaint that it is carrying on its business within the local limits of territorial jurisdiction of Delhi, the provision of Section 134 of the Act do not come to his rescue.

24. In ***Haryana Milk Foods Ltd.***'s case (*supra*), it was observed that:-

“10. Order VII Rule 1 of the Code enjoins that a plaint shall contain the particulars as to the facts constituting the cause of action and the facts showing that the Court has jurisdiction. It is, therefore, mandatory that a plaintiff must give such particulars as will enable the Court to ascertain from the plaint whether in fact and in law a cause of action did arise as alleged or not. Similarly, if a plaintiff relies on defendant's place of business as giving jurisdiction, the facts showing this must be stated in the body of the plaint. It is imperative that the plaint must aver all the facts showing how the Court has the jurisdiction.

11. It is trite law that the question of jurisdiction has to be decided, *prima facie*, by looking into the averments made in the plaint and not by the defence which may be set up by the defendant. It also does not depend upon the character of the relief prayed for by the plaintiff. [See *Jawahar Engineering Company* (Supra)]. It is equally true that 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, since Court did not find any such averment and plaintiff failed to show that defendant was carrying out its business in Delhi, plaint was rejected.

25. Similarly, in ***Gupta Brothers Conduit Pipe Manufacturing Co. Ltd.*** case (*supra*), when plaintiff failed to show that it carries on business in Delhi, this Court held that averments made in the plaint failed to confer territorial jurisdiction on this Court.
26. Provisions contained in Section 62 of the Copy Right Act when read are very similar to the provisions contained in Section 134 of the Act. By virtue of Section 62 (2) of the Copy Right Act, plaintiff is entitled to file a suit for infringement of copyright in the District Court within the local limits of whose jurisdiction at the time of the institution of the suit or other proceedings, the plaintiff actually was/is voluntarily residing or carrying on its business or personally works for gain. As discussed above, plaintiff has failed to make out a case in the plaint that it is voluntarily residing or carrying on its business or working personally for gain within the territorial jurisdiction of Delhi Courts. Therefore, plaintiff cannot invoke

provisions of Section 62 (2) of the Copy Right Act to vest territorial jurisdiction in this Court.

27. When the advantage given to the plaintiff to file a suit under Section 134(2) of the Act and under Section 62(2) of the Copy Right Act cannot be availed of by it in this case, it is to be seen if forum of Section 20 CPC is available to it to invoke territorial jurisdiction of this court. This Court can entertain the suit only if averments in the plaint substantially meet the criteria as laid down by provisions of Section 20 CPC.

28. Section 20 CPC reads as under:-

“20. Other suits to be instituted where defendants reside or cause of action arises.

Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction-

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.”

29. Essentially, this case does not fall within the criteria of Section 20 (a) and (b) of CPC. It is also not the case of the plaintiff that defendant is residing in Delhi and/or is personally working for gain at Delhi. The address of the defendant as given in the plaint is that of Agra. None of the documents placed on record by the plaintiff indicate that defendant has been passing off his goods as that of plaintiff at Delhi. Defendant is running a small business at Agra only and, therefore, it cannot be said that he is doing his business all over India including Delhi. Averments contained in the plaint also do not specifically indicate that defendant is carrying on his business and is working for gain at Delhi.
30. Next to be seen by the Court is whether this suit falls within the criteria as laid down under Section 20 (c) CPC.
31. The said provision enables the plaintiff to file a suit at all such places where the cause of action arises either wholly or in part. For that purpose, whether the defendant has been selling its products in Delhi or not becomes wholly irrelevant as the Court has to see the averments contained in the plaint to determine whether it has the territorial jurisdiction to entertain the suit.

32. As discussed above, plaintiff does not disclose if the defendant has been selling its products on a commercial scale at Delhi. Mr. Pawan Kumar Mittal, Proprietor of the Defendant firm made a statement that he never sold any goods manufactured or dealt by him in Delhi in the past nor was selling any goods in Delhi at present. He undertook not to sell, manufacture or deal with his goods in future in Delhi. The relevant part of his statement reads as under:-

“.....I have never sold any goods manufactured or dealt by me in Delhi in the past nor I am selling any goods in Delhi at present. I also undertake that I shall not sell, manufacture or deal with goods in future in Delhi. I have no intention to sell, manufacture or deal in any manner any of goods in Delhi under ‘Radha Mohan Brand.

33. Under these circumstances, it can be safely inferred that no cause of action wholly or in part arose at Delhi and therefore, plaintiff’s case does not fall within the ambit of Section 20 (c) CPC, so as to vest territorial jurisdiction in this case.

34. True, that copyright of the plaintiff as regards **“RADHA KRISHNA with device of Radha Krishna Label”** is registered at Delhi. Mere registration of the copyright at Delhi, as discussed above does not confer territorial jurisdiction on this Court. Plaintiff is absolutely silent as to how defendant has infringed his copyright specially when in his statement on oath, defendant has deposed that

he never sold his goods in Delhi or anywhere else infringing the copyright of the plaintiff, **“RADHA KRISHNA with device of Radha Krishna Label”**. Perusal of the labels used by the plaintiff on his products under the trademark “RADHA KRISHNA” and the label printed on the products sold by the defendant *prima facie* indicate that defendant has in no manner infringed the copyright of the plaintiff. To vest territorial jurisdiction in this Court, plaintiff is required to specifically plead if defendant has infringed his copyright while passing off his goods as that of plaintiff at Delhi.

35. Since in this case the jurisdiction has been invoked by the plaintiff by joining two causes of action in terms of provisions of CPC, the same would not mean that thereby the jurisdiction could be conferred upon the court which had jurisdiction to try only the suit in respect of one cause of action and not the other. Recourse to the additional forum in a given case can be adopted by the plaintiff, if both the causes of action arose within the jurisdiction of the Court which otherwise had the necessary jurisdiction to decide all the issues. Jurisdiction of this court has been invoked by the plaintiff by joining two causes of action i.e. infringement of his registered trademark and infringement of registered copyright, when, none of the causes of action arose within the jurisdiction of the Court.

36. In *Amrutanjan Limited's* case (*supra*), where jurisdiction of Madras Court was invoked by the plaintiff alleging that his trademark was registered at Madras, he was manufacturing its products at Madras and marketing the said products throughout the country and his trademark allegedly being offended by the defendant in one part of the country i.e. Madhya Pradesh and the situs of the property in the trademark of the plaintiff also being at Madras, applying provisions of Section 20 CPC, it was held that suit of the plaintiff based on infringement of its trademark filed at Madras Court was maintainable and the Court had the jurisdiction to try the case in accordance with law. In this case, plaintiff is neither manufacturing nor is supplying its goods at Delhi and essentially he is supplying goods in UP and Bihar and even the registration of the trademark is at Bombay; provisions of Section 20 CPC cannot be applied.
37. Similarly, in *S. Oliver Bernd Freir Gmbh's* case (*supra*), where trademark of the plaintiff was registered at Delhi, it was exporting goods from Delhi and defendant had applied for registration of their trademark on an all India basis for sale of goods all over India and there was no assertion from the side of the defendant that they did not intend to sell their goods in Delhi, it was held that High Court at Delhi had jurisdiction to entertain the suit. In the instant case, defendant has made a statement on oath that he has not applied for

registration of his trademark for supplying of goods at Delhi and all over India, except Haryana, UP, Bihar and Madhya Pradesh.

38. *M/s. Govardhan Motels's* case (*supra*), is not applicable to the facts and circumstances of this case. From bare reading of plaint, it is clear that no part of cause of action arose in favour of the plaintiff at Delhi. Therefore, it is not a case which needs determination of issue of cause of action after a full fledged trial.
39. In *Intas Pharmaceuticals Limited's* case (*supra*), Section 20 of CPC was invoked and not Section 134 of the Trade Marks Act. In the said case, defendant had admitted in the written statement that he was selling the offending products in Delhi and therefore, it was held that Courts at Delhi had the jurisdiction to try the suit.
40. In *Pfizer Products* case (*supra*), this Court held that if whatever stated in the plaint is correct, the Court 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 and therefore, if the threat exists then this Court has the jurisdiction to entertain the suit. In view of statement of Pawan Kumar Mittal, Proprietor of the defendant firm, the alleged threat or his intention to sell and offer for sale the offending goods in Delhi is belied. Hence, this judgment has no bearing on this case.

41. In ***L.G. Corporation & Anr.'s*** case (*supra*), plaintiff had not only averred specifically in the plaint but had also placed on record documents to show that defendants were selling their infringing goods violating trademark of the plaintiff at Delhi. Under the said circumstances, it was held that the Court at Delhi had jurisdiction to entertain the suit. On the facts of this case and the averments contained in the plaint, this judgment is of no help to the plaintiff. It is noted that in the said case, counsel for the plaintiff had conceded that filing of an application for registration of the trademark in the Trademarks Registry, Delhi, would not give jurisdiction to this Court.
42. In ***Jagdamba Oil Agency's*** case (*supra*), ***L.G. Corporation & Anr.'s*** case (*supra*) was followed.
43. Above said decisions relied upon by the plaintiff do not advance its case as in all those cases, Court found clear averments in the plaint indicating that plaintiff either had the office in Delhi or was carrying on business in Delhi and that the infringing goods of the defendants were actually sold in Delhi.
44. Therefore, under these circumstances, plaintiff has failed to show that it carries on its business at Delhi or that defendant has been selling his goods at Delhi and passing off as that of the plaintiff.

Hence, I hold that averments made in the plaint have failed to confer any territorial jurisdiction on this Court. Application is accordingly allowed.

45. Once it is held that Court has no territorial jurisdiction, it need not go into the merits of the case and deal with the matter in controversy.
46. Plaint is ordered to be returned to the plaintiff along with original documents for presentation to the proper court of jurisdiction. There are no orders as to costs. Suit and all other applications stand disposed of.

ARUNA SURESH

(JUDGE)

MARCH 12, 2010

vk/sb