

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****NOTICE OF MOTION NO. 724 OF 2013****IN****SUIT NO. 2846 OF 2011**

Sabmiller India Ltd.,
(formerly known as SKOL Breweries Ltd.)

...Plaintiff

vs.

M.P. Beer Products Pvt.Ltd.

...Defendant / Applicant

Mr.Himanshu Kane i/b. M/s.W.S. Kane & Co. for Plaintiff.

Mr.S.J. Khera for Defendant.

Ms.Tanmayee Gadre i/b. Mr.S.J. Khera for Applicant in NMS 894/2013.

CORAM : S.C. GUPTE, J.

03 FEBRUARY 2015

P.C. :

This is the Defendant's application for framing and deciding a preliminary issue of jurisdiction. That issue concerns territorial jurisdiction of this court to entertain the cause of action pertaining to passing off claimed by the Plaintiff in the present suit. By an order passed by this Court dated 13 February 2014, the Plaintiff has been granted leave under Clause 14 of the Letters Patent to combine the cause of action of passing off with that of infringement. That order records a statement made on behalf of the Defendant that this Court has jurisdiction to try and entertain the suit for infringement of the Plaintiff's registered trade marks.

2 The question is, whether this court has jurisdiction to entertain the cause of action of passing off. The very basis of an order passed under Clause 14 of the Letters Patent is that this court, but for the leave under Clause 14, would not have jurisdiction to entertain the suit insofar as the cause of action which is to be combined under the leave is concerned, namely, in this case, the cause of action for passing off; and that such jurisdiction is conferred on the court

simply on account of such leave being granted. Once such a leave is granted, it is not open to the Defendant to question the jurisdiction of the court to entertain the cause of action for passing off. It is axiomatic that once the leave is granted, the jurisdiction is obtained by reason of that leave. It is no longer necessary for the Plaintiff thereafter to show that this Court has jurisdiction to decide the case of passing off otherwise than in accordance with such leave. Besides, all the objections of the learned Counsel for the Defendant have already been considered by this Court when such leave was granted on 13 February 2014. The Defendant's appeal from this order has been dismissed by a Division Bench of this Court.

3 It is submitted by the learned Counsel for the Defendant that the Defendant has now carried that matter before the Supreme Court by way of an SLP. Be that as it may, as far as this Court is concerned, the issue stands concluded. Hence, there is no merit in the Notice of Motion.

4 The Notice of Motion is dismissed. The Defendant shall pay costs of Rs.50,000/- to the Plaintiff in the Notice of Motion.

(S.C. Gupte, J.)