

*Atul*

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**ORDINARY ORIGINAL CIVIL JURISDICTION**  
**LEAVE PETITION NO. 188 OF 2014**  
**IN**  
**SUIT (L) NO. 606 OF 2014**

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|-------------------------------------|---------------|
| Asian Paints Limited                | ...Plaintiffs |
| <i>Versus</i>                       |               |
| Ganesh Enterprises Pvt. Ltd. & Ors. | ...Defendants |

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**Dr. V. V. Tulzapurkar, Senior Advocate, with Mr. Vinod Bhagat & Mr. Punit Jani, i/b G.S. Hegde & V.A. Bhagat, for the Plaintiffs.**  
**Mr. Mahesh A. Mahadgut, for Defendants Nos. 1 & 2.**

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**CORAM: G.S. PATEL, J**  
**DATED: 19th August 2015**

**PC:-**

1. Heard. This is the Plaintiffs' application for leave under Clause XIV of the Letters Patent to combine a cause of action in passing off with a cause of action in copyright and trade mark infringement. I may only briefly note that at least in respect of the cause of action in infringement, certain ad-interim reliefs have been previously granted. Without the leave sought by the Plaintiffs in this Petition being granted, they are unable to apply for further reliefs on their cause of action in passing off.

2. The Plaintiffs' case is that the offending products are being sold by the Defendants in Tamil Nadu. Pirated artworks are being made available for sale in Tamil Nadu. The Plaintiffs have obtained the address in the cause title of the Suit for the Defendants from the packaging material. According to the Plaintiffs, this address is outside the city of Chennai.

3. Dr. Tulzapurkar, learned Senior Advocate for the Plaintiffs, also points out that at least so far as the cause of action in infringement is concerned, in view of the provisions of Section 134 of the Trade Marks Act, 1999, this Court has jurisdiction and this Suit is properly brought in this Court on that cause of action. He is careful to point out that the decision of the Supreme Court in *Indian Performing Rights Society Limited v Sanjay Dalia & Anr.*<sup>1</sup> would not apply to the facts of this case. In that case, the suit was brought in Delhi although neither had any cause of action arisen there nor did the plaintiffs have their registered office in Delhi. The registered office of the plaintiffs in that case was in Mumbai. It was in those circumstances that the Supreme Court held that the Delhi Court did not have jurisdiction.

4. It does not seem to be in dispute that the address given by the Plaintiffs for the 1st and 2nd Defendants, and said to have been obtained from their packaging materials, is actually incorrect. In paragraph 3 of the Affidavit in Rejoinder, the Plaintiffs have pointed out that the address is not actually in the city of Chennai but is in District Tiruvallur about two and half hours away by road from Chennai city. This appears to be the 1st and 2nd Defendants'

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<sup>1</sup> 2015 (63) PTC 1

address. The infringing goods *prima facie* are sold from this address which is outside Chennai limits. It is difficult to accept the submission of Mr. Mahadgut, learned Advocate for the Defendants, that the entire cause of action has arisen within the local limits of the Courts in Chennai.

5. For these reasons, and further to avoid multiplicity of proceedings and keeping in mind that ad-interim reliefs after notice have been granted and that these proceedings are being contested in this Court, the Petition is made absolute in terms of prayer clause (a).

**(G. S. PATEL, J.)**