

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 10TH DAY OF MARCH 2015/19TH PHALGUNA, 1936

Tr.P(C).No. 20 of 2014 ()

**TRANSFER OF OS 5/2013 FROM DISTRICT COURT,KOZHIKODE TO DISTRICT COURT,
ERNAKULAM**

PETITIONER(S)/DEFENDANT:

**A.EBRAHIM, AGED 53 YEARS
S/O.M.K.KUNJIPAKKY (LATE), PROPRIETOR
M/S.OJEEN RESTAURATEUR, SHANMUGHAM ROAD, BEHIND SBI
ERNAKULAM, KERALA.**

**BY ADVS.SRI.I.DINESH MENON
SRI.L.RAJESH NARAYAN**

RESPONDENT(S)/PLAINTIFF:

**M/S OJIN FOODS PVT. LTD.,
11/491 A, MELEKANDY BUILDING, CONVENT ROAD
CALICUT 673001, A PRIVATE LIMITED COMPANY
REPRESENTED BY ITS DIRECTOR MR.A.K.JUNAISE, AGED 40 YEARS,
S/O.KUTTY HASSAN, 'HAPPY', CHELAVOOR P.O.
TALIPARAMBA, KANNUR.**

**BY ADV. SRI.JOHN MATHEW
BY ADV. SRI.V.P.MUHAMMED SUNEER**

**THIS TRANSFER PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
10-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

ds

P.BHAVADASAN, J.

Tr.P.(C) No. 20 of 2014

Dated this the 10th day of March, 2015

ORDER

Alleging that the relief regarding passing off which forms a part of the relief sought for by the plaintiff in the suit in O.S.No. 5/2013 falls outside the jurisdiction of the Calicut Court, the defendant in the suit has approached this Court for transfer of the suit to the District Court, Ernakulam.

2. It is not in dispute that the respondent before this Court is the registered trade mark holder of M/S. Ojin Foods Pvt. Ltd. The trade mark number is 1130250 and 1358741. They deal in food products. It so happened that a few people who came over to Ernakulam found that the business being run in the name "Ojeen" which according to the plaintiff in the present suit, is deceptively similar to the name for which they obtained registration of trade mark and that is not permissible. They therefore sought reliefs against the defendant in the suit who is the petitioner herein.

3. Along with the suit, I.A.No. 2144/2013 was filed. When the suit thus stood for consideration of interim injunction, the petitioner has approached this Court complaining of lack of jurisdiction for the District Court at Kozhikode to entertain the suit. The petitioner thereafter seeks transfer of the case from the District Court, Kozhikode to District Court, Ernakulam.

4. The petitioner places his arguments on Section 134 of the Trade Marks Act, 1999 which reads as follows:

“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 plaintiffs 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 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.”

5. According to the learned counsel, the benefit of Sub-section 2 of Section 134 of the Trade Marks Act is available to the plaintiff only in the case of Section 134 (1) (a) and (b) and not in the case of Section 134(c) of the Trade Marks Act. According to the learned counsel, a reading of plaint would show that it is the complaint of passing off and not actually infringement of trade mark. If that be so, the suit cannot be governed by Sub-section 2 of Section 134 of the Trade Marks Act and it has to be govern by the ordinary rules of jurisdiction contained in Section 16 to 20 of the Code

of Civil Procedure.

6. The learned counsel appearing for the respondent on the other hand contended that a reading of the plaint as a whole and the reliefs would clearly show that it is a combined action both for infringement of registered trade mark as well as passing off in which case they cannot be de-linked and the plaintiff cannot be asked to go to two different courts for those reliefs and in law it is permissible for the plaintiff to lay the suit in the place where he resides.

7. In short, the contention of the petitioner is that the Courts at Calicut have no jurisdiction. If that be so, it is for the petitioner to urge that ground before the said court and convince that court about lack of jurisdiction in which case it has to return the plaint for presentation before the proper court. Again, if that be the case, the question of transfer does not arise because the court cannot transfer a case from a court which has no jurisdiction to a court which may have jurisdiction.

8. These aspects stand in the way of the petitioner getting any relief from this Court.

Leaving open the right of the petitioner to agitate the issue before the appropriate forum, this petition is disposed of.

Sd/-
P.BHAVADASAN
JUDGE

ds

//True copy//

P.A. to Judge