

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R. No.4949 of 2015

Date of Decision.06.08.2015

M/s Raj Son Agro Engineers (Regd)

.....Petitioner

Versus

M/s Kalsi Metal Works Private Limited

.....Respondent

Present: Mr. Amit Jhanji, Advocate
for the petitioner.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

-. -

K. KANNAN J. (ORAL)

1. There is no merit in the revision petition against an order rejecting an objection taken by the defendant through a petition contending that the Court had no jurisdiction. The plaintiff's suit is for an injunction restraining the defendant from selling goods in the name of "Kalsi", which according to the plaintiff, was a registered trademark for various categories of goods. The defendant moved an application for rejection of the plaint and also applied for interrogatories to elicit information of whether there was any agricultural spray which was registered under the trademark "Kalsi" and the plaintiff has given an answer that there is no such category of good registered under trademark Kalsi. The plaint sets out the different categories of goods which include centrifugal pumps, cocks, wheels, valves, reflex valves, hand tools, cutlery shovels, pipe fittings of gun metal vices, bends, unions, valves, swivel joints, cast building materials etc. as registered

under the brand name “Kalsi”.

2. The plaint is laid on an averment in para 36 that the defendant is selling goods in a clandestine manner under the impugned mark to persons at Jalandhar without issuing any invoice/cash memo within the territorial jurisdiction of this Hon'ble Court. There is also reference to the fact that the suit is being filed under the provisions of Section 134 of the Trade Marks Act where the plaintiff is having his office.

3. The contention is that if the particular category of good which is alleged to be sold by the defendant is not registered trademark of the plaintiff, the plaintiff cannot invoke Section 134(2)(a)(b) which allows for institution of suit where the plaintiff's office is situate, if only it is a registered trademark. If the plaintiff's own showing in response to the interrogatory that the particular category which is alleged to be sold by the defendant is not included in the plaintiff's registered trademark, the suit can only a 'passing off action' and the jurisdiction will be decided by resort to Section 20 CPC. Section 20 CPC, according to the contentions of the petitioner, could be invoked only at the place of business of the defendant and since the place of business is not stated to be within the jurisdiction of Jalandhar, the suit is not competent.

4. The counsel for the petitioner who has challenged the order of the Court below rejecting the application points out to me the decision of the Supreme Court in *Dhodha House vs. S.K. Maingi (2006) 9 SCC 41.* The reference to decision is not appropriate, for, the Supreme Court was dealing with an objection relating to registration of trademark and the Court of jurisdiction and did not advert to a situation

of a plaint by plaintiff that the defendant was doing a particular clandestine act which infringed the plaintiff's trademark. Yet another judgment of the Karnataka High Court in *Presteege Property Developers Vs. Prestige Estates Projects Pvt. Ltd. 2010 (42) PTC 480 (Karn)* was with reference to plaintiff's averment that it was unregistered trademark and the action of the defendant complained of was invoked in the court where the plaintiff was carrying on business. I will find no use for this decision as well, for, in the instant case there is a specific averment which I have already extracted that the defendant was carrying the business of selling goods in a clandestine manner within the jurisdiction of Jalandhar, an aspect of the case which was not adverted to in the Karnataka case. I may state in the passing that if the plaintiff seeks for an injunction on the basis that it is a violation of the registered trademark, the suit could be instituted in the place where the plaintiff was carrying on business only if the violation is of registered trademark. If the plaintiff has admitted that the trademark in the particular category of good is not registered, then the suit can only be taken as a 'passing off action' for an unregistered trademark. For a 'passing off action', if Section 20 CPC should be invoked in the manner which even the petitioner is prepared to admit, it is wide enough to admit of acts that may be relevant and which may constitute an infringement of the plaintiff's right. The infringement complained of is, though in inartistic fashion, stated a 'passing off action' and the expression cause of action shall always be understood as a bundle of causes. It must include a particular cause of the defendant's selling the goods in clandestine manner at Jalandhar. There are sufficient

averments in the plaint to sustain the suit at the Court before which it is instituted and I reject an argument made on behalf of the petitioner that the suit was not competent in the Court. The decision of the Court below ought to be supported apart from the reasons which are set forth on additional reasons which I have given in this order. That suit if it were to be treated as injunctive relief for passing off action, there should be no tenable objection for the jurisdiction invoked in the Court where the case is instituted.

5. The revision petition is dismissed.

(K. KANNAN)
JUDGE

August 06, 2015
Pankaj*