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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ C.R.P. 209/2016 & CM Nos.46824-46825/2016
MADAN TRADING CORPORATION Petitioner
Through Mr.Ayush Sharma, Advocate
versus
LARSEN AND TOUBRO LIMITED & ORS Respondent
Through
CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER
% **19.12.2016**

By the present petition under section 115 of the CPC the petitioner seeks to impugn the order dated 23.08.2016 by which the application filed by the petitioner under Order 7 Rule 11 CPC for rejection of the plaint was dismissed. The case of the petitioner is that the petitioner has never sold any product within the jurisdiction of this Court. It is stated that hence the present plaint is liable to be rejected.

The trial court referred to the plaint specially paragraphs 27 and 28 of the plaint where averments are made that the petitioner is supplying the impugned goods bearing the impugned trademark to the dealers/retailers/distributors in markets in New Delhi viz. Parliament Street, Barakhamba, Chanakya Puri, Gole Market, Khan Market Bengali Market and Connaught place etc.

The relevant paragraphs reads as follows:-

“27. That apart from the sales to the direct customer from their respective shop/premises defendants are supplying the impugned goods bearing the impugned trademark to the

dealers/retailers/distributors in the markets of New Delhi viz. Parliament Street, Barakhamba, Chanakyapuri, Gole Market, Khan Market, Bengali Market, Connaught Place etc. who then supply the impugned goods bearing the impugned trademark/label to the various unscrupulous traders and manufactures of the counterfeit products of the plaintiff which eventually causes confusion and deception to the consumers at large.

28. That the plaintiff learnt about the defendants' impugned trade mark in the last week of June, 2015 when the plaintiff came across the impugned goods of the defendants in New Delhi markets. Being aggrieved thereby, plaintiff caused an inquiry in the market, which revealed that the defendants had just about in the third week of June, 2015, adopted and started using the impugned trade mark/label in relation to their impugned goods. The plaintiff also learnt that the defendants are carrying on its impugned activities under the impugned trade mark in a clandestine and surreptitious manner from their premises and that too without issuing formal sale bills. Defendants are not only making the retail sales but are also supplying the impugned goods bearing the impugned trade marks to various other dealers/shopkeepers/retailers in New Delhi, who is making the clandestine and surreptitious sales thereof to the unscrupulous traders and manufactures of the counterfeit products of the plaintiff under the said trademark/label in the markets of New Delhi viz. Parliament Street, Barakahamba, Chanakyapuri, Gole Market, Bengali Market, Connaught Place etc.”

Based on the above, the trial court held that the question of territorial jurisdiction is a disputed question of fact requiring trial before the decision of the issue of territorial jurisdiction.

In my opinion, the only ground on which a plaint can be rejected under Order 7 Rule 11 CPC is where it does not disclose a cause of action, where the relief claimed is undervalued, where the stamp duty is not paid or

whether the suit appears from the statement in the plaint to be barred by any law.

What is sought to be urged is the procedure for return of the plaint to be filed in an appropriate court, i.e. Order 7 Rule 10 CPC.

In any case averments have been made in the plaint about sale of the goods with the impugned trademark in various areas in Delhi, it is manifest that there is no infirmity in the impugned order and the issue will have to be adjudicated upon by trial.

Learned counsel appearing for the petitioner has relied upon judgment of the High Court in *Haryana Milk Foods Ltd. vs. Chambel Dairy Products, 98 (2002) DLT 359* to contend that under similar circumstances the court had dismissed the plaint under Order 7 Rule 11 CPC. In that case, this court had noted that the only averment made was that the defendant is selling and marketing the impugned goods with the impugned trademark in Delhi. In those facts, the court held that the plaint contains only a bald averment and the application was allowed. In the present case it cannot be said that the averments in the plaint are bald.

Present petition is without merits and is dismissed. All pending applications, if any, also stand dismissed.

JAYANT NATH, J

DECEMBER 19, 2016

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