

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL APPEAL NO.124 OF 2017
FROM
LEAVE PETITION NO.38 OF 2017
IN
COMMERCIAL SUIT NO.499 OF 2017

Sri Kalpatharu Housing Pvt. Ltd. ... Appellant
Vs.
Kalpataru Properties Pvt. Ltd. ... Respondent

Mr. Hiren Kamod a/w. Mr. M. A. Mhadgut for Appellant.
Dr. Abhinav Chandrachud a/w. Ms Smriti Yadav, Ms Aditi Chavan and
Mr. Hiren Karia i/b. Khaitan & Co. for Respondent.

**CORAM : NARESH H. PATIL &
R. G. KETKAR, JJ.**

**Reserved on : NOVEMBER 16, 2017
Pronounced on: NOVEMBER 28, 2017**

ORDER: (PER R. G. KETKAR, J.)

Heard Mr. Hiren Kamod, learned Counsel for the appellant and
Dr. Abhinav Chandrachud, learned Counsel for the respondent at length.

2. By this Appeal under Section 13 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (for short 'Act'), the appellant, hereinafter referred to as 'defendant', has challenged the judgment and order dated 05.07.2017 passed by the learned Single Judge in Leave Petition No.38 of 2017 in Commercial Suit (L) No.44 of 2017. By that order, the learned Single Judge overruled the objections raised by the defendant, namely, that this Court does not have jurisdiction to entertain and try the Suit as the respondent, hereinafter referred to as the 'plaintiff', has its office in Andhra Pradesh.

3. Dr. Chandrachud raised preliminary objection as regards maintainability of this Appeal on the ground that by the impugned order, the learned Single Judge, after framing issue under Section 9-A of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), has held that this Court has jurisdiction to entertain and try the Suit. The said order does not amount to a decree or does not fall under any of the orders in Order XLIII of C.P.C. as amended by the Act and also does not fall in any of the appealable orders under Section 37 of the Arbitration and Conciliation Act, 1996 (for short 'Arbitration Act'). He submitted that even otherwise, in view of Section 134(2) of the Trade Marks Act, 1999 (for short 'Trade Marks Act'), this Court has jurisdiction to entertain and try the Suit. He invited our attention to paragraph 39 of the plaint. In paragraph 39, plaintiff has asserted that it has its registered office in Mumbai and its products and services are sold / offered within the local limits of the Ordinary Original Civil Jurisdiction of this Court. The plaintiff's trademark is registered at the office of the Registrar of the Trade Marks at Mumbai. It is further contended that the services of the defendant impugned in the Suit bearing the mark impugned in the present Suit are an "instrument of fraud" and it is apprehended that such services may be offered from or in Mumbai by way of 'online booking' feature subsisting in the Impugned Domain Name page.

4. Dr. Chandrachud invited our attention to paragraph 34 of affidavit-in-reply dated 06.03.2017 filed by Shridhar Andukury on behalf of the defendant. In paragraph 34, defendant did not deny the assertions made in paragraph 39 of the plaint. In other words, the defendant admitted that plaintiff has its registered office in Mumbai and its products / services are sold / offered within the local limits of Ordinary Original Civil Jurisdiction of this Court. Defendant also did not deny that the plaintiff's trademark is registered at the office of the

Registrar of Trade Marks at Mumbai. Defendant simply contended that this Court does not have jurisdiction to entertain and try the Suit and that defendant does not carry on business within the territorial jurisdiction of this Court. The defendant alleged that the entire cause of action in respect of infringement and passing-off has arisen only in Andhra Pradesh. Merely because the impugned services may be offered by way of 'online booking', does not confer jurisdiction of this Court to entertain and try the Suit.

5. Dr. Chandrachud relied upon the decision of the learned Single Judge of this Court in ***Manugraph India Limited and another Vs. Simarq Technologies Pvt. Ltd.***, 2016 (67) PTC 254 (Bom), which decision was upheld by the Division Bench in ***Sigmarq Technologies Pvt. Ltd. and others Vs. Manugraph India Limited and others***, Commercial Appeal No.40 of 2016 with Commercial Appeal No.41 of 2016 with Commercial Appeal No.49 of 2016 decided on 14.09.2017 by the Division Bench of this Court (Coram: S. C. Dharmadhikari and P. D. Naik, JJ.). He submitted that the learned Single Judge considered in depth the decision of the Apex Court in ***Indian Performing Rights Society Limited Vs. Sanjay Dalia***, 2015 (10) SCC 161 as also the decision of the learned Single Judge of Delhi High Court in ***RSPL Limited Vs. Mukesh Sharma***, 2016 (68) PTC 178 (Del) and in particular paragraph 34. The learned Single Judge extracted paragraph 22 of ***RSPL Limited*** (*supra*) and summarized the position of law in paragraph 36.

6. On the other hand, Mr. Kamod relied upon the following decisions:

- (1) ***Hubtown Limited Vs. IDBI Trusteeship Service Limited***, 2017 (4) Bom.C.R. 310;

- (2) ***Sushila Singhania Vs. Bharat Hari Singhania, 2017 (4) Bom.C.R.348***; and
- (3) ***Sigmarq Technologies Pvt. Ltd. (supra)***.

7. Mr. Kamod submitted that in paragraph 16 of ***Midnapore People's Co-operative Bank Limited Vs. Chunilal Nanda, AIR 2006 SC 2190***, the Apex Court held that interim orders / interlocutor orders passed during the pendency of the case fall under one or the other of the following categories:

- (i) Orders which finally decide a question or issue in controversy in the main case.**
- (ii) Orders which finally decide an issue which materially and directly affects the final decision in the main case.**
- (iii) Orders which finally decide a collateral issue or question which is not the subject matter of the main case.**
- (iv) Routine orders which are passed to facilitate the progress of the case till its culmination in the final judgment.
- (v) Orders which may cause some inconvenience or some prejudice to a party, but which do not finally determine the rights and obligations of the parties.

The term 'judgment' occurring in clause 15 of the Letters Patent will take into its fold not only the judgments as defined in section 2(9) CPC and orders enumerated in Order 43 Rule 1 of CPC, but also other orders which, though may not finally and conclusively determine the rights of parties with regard to all or any matters in controversy, may have finality in regard to some collateral matter, which will affect the vital and valuable rights and obligations of the parties. **Interlocutory orders which fall under categories (i) to (iii) above, are, therefore, 'judgments' for the purpose of filing appeals under the Letters Patent. On the other hand, orders falling under categories (iv) and (v) are not 'judgments' for purpose of filing appeals provided under the Letters Patent.**

(emphasis supplied)

8. Mr. Kamod submitted that Section 13(1) of the Act uses the expressions “decision”, “judgment”, and “order”. The ambit of this part

of sub-section (1) is quite broader when it comes to appeals arising out of orders other than the category of orders falling under Order XLIII of C.P.C. and Section 37 of the Arbitration Act. If the order which has a tinge or colour of judgment as laid down by the Apex Court in ***Shah Babulal Khimji Vs. Jayaben D. Kania***, AIR 2006 SC 2190 and ***Midnapore Peoples' Co-operative Bank Limited*** (*supra*), the appeal under Section 13 against the said order, being a judgment within the meaning of C.P.C., is maintainable. The provisions of C.P.C. (amended and unamended) are applicable to the proceedings under the Act. He submitted that proviso to Section 13(1) cannot restrict the scope of orders against which appeal lies. In other words, it cannot be countenanced that appeal under Section 13 lies only against - (i) decree and (ii) orders enumerated under Order XLIII of C.P.C. and Section 37 of the Arbitration Act. In support of these submissions, he relied upon the decision in ***Hubtown Limited*** (*supra*)

9. Mr. Kamod invited our attention to paragraphs 33, 34, 45, 49 and 55 of ***Sushila Singhania*** (*supra*), which read thus,

“33. ... If we dissect these four parts, it can be noticed that appeals are provided under subsection (1) against any decision. **In our view, since subsection (1) has combined the right of appeal against decree or order, the word “decision” has been used and the proviso provides for orders which are appealable. The contention of Mr. Tulzapurkar, the learned Senior Counsel for the Appellants, that the word “decision” also includes such orders, which have attained finality cannot be accepted.** This can be gathered from the Scheme of the Commercial Courts Act and the Objects and Reasons. ...

34. The proviso to subsection (1) therefore cannot be said to be an additional enactment provided for appeal against the orders but it restricts the orders against which appeals can be filed. In the present case, Section 37 of the Arbitration Act has restricted the orders against which appeals can be filed. If interpretation which is sought to be given by the learned Senior Counsel Mr. Tulzapurkar appearing for the Appellants, is to be

accepted then it would not only be contrary to Section 37 but would also be contrary to the provisions of the Commercial Courts Act. It is a well settled principle of interpretation that while interpreting a particular provision, it is not open for the Court to add or subtract anything from the said provision. **It is therefore not possible to read something more in the word “decision” to mean that it also includes orders which are not otherwise appealable.** Sub-section (2) of section 2 of the Commercial Courts Act enumerates that the words and expressions used and not defined in this Act but defined in the Code of Civil Procedure, 1908 and the Evidence Act 1872, shall have the same meaning assigned to them in that Code and the Act. The word “judgment” is defined in Section 2(9) of the CPC. **Therefore, the said restricted meaning has to be assigned to the word “judgment” found in sub-section (1) of Section 13 of the Commercial Courts Act and it will not be possible to expand the meaning of the word “judgment” as has been done in the Letters Patent by virtue of the judgment of the Supreme Court in Shah Babulal Khimji (supra) [paras 112, 1113]. The submission of Mr. Tulzapurkar, the learned Senior Counsel appearing for the Appellants that the expanded meaning has to be given to the word “judgment” or “decision” therefore cannot be accepted.**

45. The vexed question is whether similar meaning should be given to the word 'decision' as is found in sub-section (1) of Section 13.

49. ... Therefore the submissions made by the learned Senior Counsel Mr. Tulzapurkar and Mr. Milind Sathe and the learned Counsel Mr. Andhyarujina appearing on behalf of the appellants are without any substance **and “decision” therefore being a final decision of the suit is a decree** and not an order passed in execution proceedings.

(emphasis supplied)”

10. Mr. Kamod submitted that a perusal of the decision in **Sushila Singhania** (*supra*) shows that in paragraph 13(VIII) though decision of **Hubtown Limited** (*supra*) was specifically referred to, however, during the course of the judgment, the Division Bench did not deal with the said decision. The decision in **Sushila Singhania** (*supra*) is clearly contrary to the earlier decision of Co-ordinate Bench in **Hubtown**

Limited (*supra*).

11. He invited our attention to the decision in **Sigmarq Technologies Private Limited** (*supra*). He submitted that the Division Bench held that there was no divergence of opinion between **Hubtown Limited** (*supra*) and **Sushila Singhania** (*supra*). He submitted that the Division Bench deciding **Sigmarq Technologies** (*supra*), with respect, should have adopted approach laid down in **CCE Vs. Grasim Industries Limited**, (2016) 6 SCC 391, and in particular paragraph 11. In paragraph 11, the Apex Court held that another co-ordinate Bench should not venture into the issues raised and rather the questions referred should receive consideration of a larger Bench. In short, in **Sigmarq Technologies** (*supra*), the Division Bench ought to have referred the matter to the larger Bench. He, therefore, submitted that this Court may refer the issue of maintainability of appeal to the larger Bench.

12. On merits, Mr. Kamod heavily relied upon the decision in **Indian Performing Rights Society Limited Vs. Sanjay Dalia**, 2015 (63) PTC 1 (SC) to contend that as cause of action accrued in Andhra Pradesh where the plaintiff has branch office, plaintiff ought to have instituted the Suit in Andhra Pradesh and not in this Court. He relied upon Section 134(2) of the Trade Marks Act as also Section 20 of C.P.C. Mr. Kamod invited our attention to the decision of Division Bench of Delhi High Court in **Ultra Home Construction Pvt. Ltd. Vs. Purushottam Kumar Chaubey**, 2016 (65) PTC 469 (Del), and in particular paragraph 13 thereof. He submitted that the present case clearly falls under Sr. No.3 in the table extracted in paragraph 13 of that decision. The said decision was challenged before the Apex Court by filing Special Leave Petition, which was summarily dismissed on 08.04.2016.

13. Mr. Kamod submitted that the learned Single Judge committed serious error in not allowing the defendant to lead evidence while deciding issue under Section 9-A of C.P.C. The learned Single Judge was dealing with Leave Petition and without giving any opportunity to lead evidence, straightway, the learned Single Judge held that this Court has jurisdiction to entertain and try the Suit. He invited our attention to the written statement filed on behalf of the defendant and in particular paragraph 41. In paragraph 41, defendant denied the contentions raised in paragraph 39 of the plaint. The defendant denied that plaintiffs has its registered office in Mumbai or that its products / services are sold / offered within the local limits of Ordinary Original Civil Jurisdiction of this Court. The defendant denied that trademarks of the plaintiff are registered at Mumbai office of the Registry of Trademarks. He, therefore, submitted that the learned Single Judge should have given opportunity to the defendant to lead evidence to prove these facts. For all these reasons, he submitted that the impugned order deserves to be set aside or in any case matter may be remitted giving opportunity to the parties to lead evidence.

14. On the other hand, Dr. Chandrachud relied upon the decision of **Shah Babulal Khimji** (*supra*) and contended that the expression “judgment” is not defined in the Letters Patent Appeal. As against this, the said expression is defined in Section 2(9) of C.P.C. to mean the statement given by the Judge on the grounds of a decree or order. The expression “decree” is defined in Section 2(2) and the expression “order” is defined under Section 2(14) of C.P.C. He submitted that the Apex Court held that the intention of the givers of the Letters Patent was that the word 'judgment' should receive a much wider and more liberal interpretation than the word 'judgment' used in the C.P.C. He also relied upon the decision of **Prakash Gobindram Ahuja Vs. Ganesh**

Pandharinath Dhonde, (2016) 6 BOM CR 262.

15. We have considered the rival submissions advanced by the learned Counsel appearing for the parties. We have also perused the material on record. The learned Counsel have addressed us at length on the question of maintainability of appeal as also whether the matter should be referred to the larger Bench or not. We have also heard them on merits of the case. We will assume in favour of the defendant that the appeal is maintainable. We, therefore, propose to decide the appeal on merits as in our opinion this is not a fit case for referring it to the larger Bench. In our opinion, this is not an appropriate case for referring it to the larger Bench. As noted earlier, the present Appeal challenges the order overruling the objection raised by the defendant as regards jurisdiction of this Court to entertain and try the Suit instituted by the plaintiff.

16. The plaintiff has inter alia prayed - (i) for perpetual injunction restricting the defendant from using the impugned Mark or any work identical with or similar to the said registered Trade Mark “KALPATARU” by itself or in combination with any other word/s or mark/s in connection with said goods and services for which the plaintiff's Trade Mark is registered or in relation to impugned services or any goods or services similar thereto and upon or in relation to the defendant's trade name, business, real estate project names, corporate name and trading style, sign boards, signage's, banners, hoardings, invoices, carry bags, goods, labels, cartons, packing material, stationery, literature and / or on any other material or as a part of its domain name, in any manner from marketing or offering for sale, advertising or dealing in any products / rendering any services under or bearing the said registered Trade Mark of the plaintiff or any other mark which is

identical or similar to the plaintiff's registered Trade Mark, so as to infringe the plaintiff's registered Trade Mark;

(ii) for perpetual injunction restraining the defendant from passing-off business, real estate projects and / or impugned services of the defendant as those of the plaintiff by using the impugned Mark "KALPATHARU" by itself or in combination with any other word/s or mark/s; for order and decree against the defendant to pay a sum of Rs.200 crore to the plaintiff or such other sum as this Court deems fit and proper as and by way of damages suffered by the plaintiff due to the acts of passing off and infringement committed by the defendant or in the alternate, order or decree to render true and faithful account of the profits made by the defendant by using the impugned Mark in connection with its business or goods or services and to pay the plaintiff the sum found due on taking of such accounts;

(iii) for mandatory order directing the defendant to deliver up to the plaintiff for destruction, any and all printed / visual materials, all the goods, stationery, labels, stickers, sign boards, signage's banners, hoardings, invoices, carry bags and other incriminating materials bearing the impugned Mark or any other Mark identical and /or similar to the plaintiff's Trade Mark and delete, obliterate or otherwise remove all references to the impugned Mark or any other mark identical and / or similar to the plaintiff's registered Trade Mark;

(iv) for mandatory order directing the defendant to forthwith withdraw any trade mark / service mark applications that may have been filed either for the impugned Mark and / or for any other marks which are identical or confusingly and / or similar to the said Trade Mark at the relevant office/s of the Trade Marks Registry, Copyright Office and / or any such offices;

(v) for mandatory order directing the defendant to forthwith

cancel or transfer the registration of the impugned Domain Name and any other domain name registered / used by the defendant similar to the Trade Mark or the Domain Name of the plaintiff, among other prayers.

17. In paragraph 39, plaintiff contended that this Court has jurisdiction to entertain and try the Suit. The relevant portion of paragraph 39 reads thus,

“39. The plaintiff has its registered office in Mumbai and its products / services are sold / offered, within the local limits of the Ordinary Original Civil Jurisdiction of this Hon'ble Court. The plaintiff's said Trade Mark is registered at the office of the Registrar of Trade Marks at Mumbai. Therefore, this Hon'ble Court has the jurisdiction to try and entertain the suit as regards trade mark infringement under the provisions of Section 134 of the Act. The Impugned Services of the defendant bearing the Impugned Mark are an “instrument of fraud” and it is apprehended that such Impugned Services may be offered from or in Mmbai by way of 'online booking' feature subsisting in the Impugned Domain Name page. ...”

18. Defendant filed affidavit-in-reply dated 06.03.2017. In paragraph 34, defendant dealt with the assertions made in paragraph 39 of the plaint. The relevant portion of paragraph 34 of the reply reads thus,

“34. With reference to paragraph 39 of the plaint, I say that this Hon'ble Court does not have jurisdiction to try and entertain the present suit. The defendant does not carry on business within the territorial jurisdiction of this Hon'ble Court. The entire cause of action in respect of infringement and passing off has arisen only in Andhra Pradesh. Merely because the impugned services may be offered by way of online booking does not confer jurisdiction on this Hon'ble Court to try and entertain the present dispute.”

19. A perusal of reply filed by the defendant clearly shows that defendant did not deny the following assertions:

(I) The plaintiff has registered office in Mumbai and its products / services are sold / offered within the local limits of Ordinary Original Civil Jurisdiction of this Court;

(II) The plaintiff's said Trade Mark is registered at the office of the Registrar of Trade Marks at Mumbai;

(III) Therefore, this Hon'ble Court has jurisdiction to try and entertain the Suit as regards trade mark infringement under Section 134 of the Trade Marks Act;

(IV) The impugned services of the defendant bearing the impugned Mark are an 'instrument of fraud' and it is apprehended that such impugned services may be offered from or in Mumbai by way of 'online booking' feature subsisting in the impugned Domain Name page.

In other words, the defendant did not deny that the plaintiff has its registered office in Mumbai.

20. Section 134 of the Trade Marks Act reads thus,

“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 plaintiff's 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 (5 of 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 person any of them, actually and voluntarily resides or carries on business or personally works for gain.

Explanation.- For the purposes of sub-section (2), “person” includes the registered proprietor and the registered user.”

21. Section 20 of C.P.C. reads thus,

“20. Other suits to be instituted where defendants reside or cause of action arises.- Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction-

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case, either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.

Explanation. - A corporation shall be deemed to carry on business at its sole or principal office in India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.”

22. A perusal of Section 134(2) shows that for the purpose of clauses (a) and (b) of sub-section (1), a District Court having jurisdiction shall, notwithstanding anything contained in the C.P.C. 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 once such persons any of them, actually and voluntarily resides or carries on business or personally works for gain.**

23. A perusal of Section 134(2) shows that the said provision gives additional forum to the plaintiff company to maintain a Suit at the place where its registered office is situate irrespective of the fact that, whether or not cause of action has arisen within the jurisdiction of the Court within whose jurisdiction the registered office of the company is situate.

This is also regardless of clauses (a) and (b) of Section 20 of C.P.C. Clause (a) of Section 20 lays down that every suit shall be instituted in a Court within the local limits of whose jurisdiction the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain. Clause (b) of Section 20 lays down that every Suit shall be instituted in a Court within the local limits of whose jurisdiction any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case, either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution. In other words, clauses (a) and (b) of Section 20 recognize *dominus situs* of the defendant. Clause (c) of Section 20 provides that the Suit may be instituted within the local limits of whose jurisdiction the cause of action, wholly or in part, arises. This is independent of the fact as regards residence of the defendant as also carrying on his business, etc. by the defendant. As against this, Section 134 recognizes plaintiff's right to institute Suit where he actually and voluntarily resides or carries on business or personally works for gain. Thus, the convenience of the plaintiff is considered. The *dominus situs* for instituting the Suit is the plaintiff. This is regardless of where the defendant resides or carries on business, etc. in terms of clauses (a) and (b) of Section 20 of C.P.C. as also regardless as to whether the cause of action, wholly or in part, arises in terms of Section 20(c) of C.P.C.

24. In the case of **Indian Performing Rights Society Limited** (*supra*), the Apex Court considered the provisions of Section 62 of the Copyright Act, 1957 and Section 134(2) of the Trade Marks Act.

Paragraphs 16 to 19 of that report read thus,

16. On a due and anxious consideration of the provisions contained in section 20 of the CPC, section 62 of the Copyright Act and section 134 of the Trade Marks Act, and the object with which the latter provisions have been enacted, it is clear that if a cause of action has arisen wholly or in part, where the plaintiff is residing or having its principal office/carries on business or personally works for gain, the suit can be filed at such place/s. Plaintiff(s) can also institute a suit at a place where he is residing, carrying on business or personally works for gain de hors the fact that the cause of action has not arisen at a place where he/they are residing or any one of them is residing, carries on business or personally works for gain. However, this right to institute suit at such a place has to be read subject to certain restrictions, such as in case plaintiff is residing or carrying on business at a particular place/having its head office and at such place cause of action has also arisen wholly or in part, plaintiff cannot ignore such a place under the guise that he is carrying on business at other far flung places also. The very intendment of the insertion of provision in the Copyright Act and Trade Marks Act is the convenience of the plaintiff. The rule of convenience of the parties has been given a statutory expression in section 20 of the CPC as well. The interpretation of provisions has to be such which prevents the mischief of causing inconvenience to parties.

17. The intendment of the aforesaid provisions inserted in the Copyright Act and the Trade Marks Act is to provide a forum to the plaintiff where he is residing, carrying on business or personally works for gain. The object is to ensure that the plaintiff is not deterred from instituting infringement proceedings "because the court in which proceedings are to be instituted is at a considerable distance from the place of their ordinary residence". The impediment created to the plaintiff by section 20 C.P.C. of going to a place where it was not having ordinary residence or principal place of business was sought to be removed by virtue of the aforesaid provisions of the Copyright Act and the Trade Marks Act. Where the Corporation is having ordinary residence/principal place of business and cause of action has also arisen at that place, it has to institute a suit at the said place and not at other places. The provisions of section 62 of the Copyright Act and section 134 of the Trade Marks Act never intended to operate in the field where the plaintiff is having its principal place of business at a particular place and the cause of action has also arisen at that place so as to enable it to file a suit at a distant place where its subordinate office is situated though at such place no cause of action has

arisen. Such interpretation would cause great harm and would be juxtaposed to the very legislative intendment of the provisions so enacted.

18. In our opinion, in a case where cause of action has arisen at a place where the plaintiff is residing or where there are more than one such persons, any of them actually or voluntarily resides or carries on business or personally works for gain would oust the jurisdiction of other place where the cause of action has not arisen though at such a place, by virtue of having subordinate office, the plaintiff instituting a suit or other proceedings might be carrying on business or personally works for gain.

19. At the same time, the provisions of section 62 of the Copyright Act and section 134 of the Trade Marks Act have removed the embargo of suing at place of accrual of cause of action wholly or in part, with regard to a place where the plaintiff or any of them ordinarily resides, carries on business or personally works for gain. We agree to the aforesaid extent the impediment imposed under section 20 of the CPC to a plaintiff to institute a suit in a court where the defendant resides or carries on business or where the cause of action wholly or in part arises, has been removed. But the right is subject to the rider in case plaintiff resides or has its principal place of business/carries on business or personally works for gain at a place where cause of action has also arisen, suit should be filed at that place not at other places where plaintiff is having branch offices etc.”

25. In the present case, the plaintiff has specifically asserted that its registered office is at Mumbai. Explanation to Section 20 lays down that a corporation shall be deemed to carry on business at its sole or principal office in India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

26. In the light of the decision in **Indian Performing Rights Society Limited** (*supra*), we have no hesitation to hold that as the plaintiff has its registered office in Mumbai, it can maintain the Suit at Mumbai *de hors* the fact that the cause of action has not arisen at a place where he/they are residing or any one of them is residing, carries on business

or personally works for gain. The impediment imposed under Section 20 of C.P.C. to the plaintiff to institute a Suit in a Court where the defendant resides or carries on business or where the cause of action wholly or in part arises, has been removed by Section 134 of the Trade Marks Act.

27. Mr. Kamod submitted that the decision of the Apex Court in **Indian Performing Rights Society Limited** (*supra*) was considered by the Division Bench of the Delhi High Court in **Ultra Home Construction Private Limited** (*supra*). In paragraph 13, the Division Bench held that if the plaintiffs principal office is at 'A' and the plaintiff's subordinate branch / office is at 'B' and the cause of action arises at place 'B', plaintiff can additionally sue under Section 134(2) at place 'B'. In other words, the Division Bench does not lay down that plaintiff cannot sue under Section 134(2) where its principal office is situate. As noted earlier, the decision of the Apex Court was considered by the learned Single of this Court in **Manugraph India Limited** (*supra*) and the said decision was upheld by the Division Bench of this Court in **Sigmarq Technologies Private Limited** (*supra*). We respectfully agree with the view taken by the learned Single Judge in **Manugraph India Limited** (*supra*).

28. Mr. Kamod submitted that the learned Single Judge did not give opportunity to the defendant to lead evidence. We do not find any merit in this submission for more than one reason. In the first place, defendant did not deny the material averments in paragraph 39 of the plaint. Secondly, defendant also did not seek permission to lead evidence before the learned Single Judge. Mr. Kamod submitted that in paragraph 41 of the written statement, defendant specifically denied that the plaintiff has its registered office in Mumbai or that its products /

services are sold / offered within the local limits of the Ordinary Original Civil Jurisdiction of this Court. The defendant denied that the trademarks of the plaintiff are registered at Mumbai office of the Registrar of Trade Marks. The impugned order was passed on 05.07.2017 and the written statement is dated 31.07.2017. In other words, at the time of passing of the impugned order, only affidavit-in-reply dated 06.03.2017 filed on behalf of the defendant was on record. We, therefore, do not find any merit in the submission of Mr. Kamod.

29. Mr. Kamod submitted that the matter requires to be referred to the larger Bench in view of the conflicting opinions of the co-ordinate Benches of this Court. As we have examined merits of the case, we cannot accede to the request made by Mr. Kamod. We, however, clarify that the said contentions are not dealt with by us in this order and they are expressly kept open for considering them in appropriate case. Before parting, we place on record the valuable assistance rendered by the learned Counsel appearing for the parties.

30. In view thereof, we do not find that the learned Single Judge has committed any error in overruling the objection raised by the defendant. In view thereof, Appeal fails and the same is dismissed. Pending Motions, if any, stand disposed of accordingly.

(R. G. KETKAR, J.)

(NARESH H. PATIL, J.)