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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 03.11.2017

+ FAO (OS) (COMM) 45/2017& CM Nos. 5642/2017,
5644/2017 & 12362/2017, 37924-37925/2017

HSIL LTD. Appellant

versus

MARVEL CERAMICS & ORS. Respondents

Advocates who appeared in this case:

For the Appellant : Mr. Manav Gupta, Advocate with
Ms. Prabhsahay Kaur and
Mr. Sahil Garg, Advs.

For the Respondents : Ms. Meera Kaura Patel, Adv.

CORAM:-

HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE SANJEEV SACHDEVA

SANJEEV SACHDEVA, J.

1. The appellant (plaintiff in the suit) is aggrieved by the order dated 30.01.2017 whereby the applications filed by the respondents (defendants in the suit) under Order 7 Rule 10 and Order 7 Rule 11 of the Civil Procedure Code, 1908 ("CPC") have been allowed and the Single Judge has returned/ rejected the plaint by holding that this Court does not have territorial jurisdiction.

2. The appellant had filed the suit seeking permanent injunction, thereby restraining the defendants from infringing the trademark, and copyright of the plaintiff. The appellant had claimed territorial jurisdiction on the basis of Section 134 of the Trademarks Act, 1999 (hereinafter referred to as the Act) contending that the plaintiff has an office located at Delhi.

3. Though the respondents are located at Ahmedabad, Gujarat and cause of action had arisen at Gujarat, the plaintiff had instituted the subject Suit in Delhi on the ground that the plaintiff was also carrying on business at Delhi. To show that the Appellant has a regional office at Ahmedabad, Gujarat reliance was placed on the Annual Report of the Appellant wherein the address of regional office is shown at Ahmedabad, Gujarat.

4. The respondents had filed the applications under Order 7 Rule 10 and 11 *inter alia* contending that no part of cause of action had arisen at Delhi. The cause of action was alleged to have arisen outside Delhi, *inter alia*, at Gujarat where the appellant had a regional office. It was also contended that since the head office of the appellant was situated at Kolkata, alternatively, the suit could be filed at Kolkata. Reliance was placed on the judgment of the Division Bench of this Court in *Ultra Home Construction Pvt. Ltd. vs. Purushottam Kumar Chaubey & Ors.*, 2016 (227) DLT 320.

5. The appellant had contested the application, contending that the appellant did not have any office or presence at Gujarat and the address of Gujarat stated in the annual report was only a help line number.

6. By the impugned judgment learned Single Judge noted the contentions of the appellant that it disputed that it had a regional office at Ahmedabad or anywhere in Gujarat. Learned Single Judge, however, relying on the *Ultra Home Construction Pvt. Ltd. (supra)* held that even if the appellant did not have a regional office at Gujarat, since the cause of action had arisen at Gujarat, the appellant could either sue where the cause of action had arisen and where the appellant had a branch office, or could sue where the appellant had a principal office i.e. Kolkata. Without returning the finding as to whether the appellant had a regional office in Gujarat or not, the learned Single Judge returned/ rejected the plaint on the ground that Courts at Delhi did not have territorial jurisdiction.

7. Learned counsel for the appellant has tried to distinguish the judgment in *Ultra Home Construction Pvt. Ltd. (supra)* by contending that the said judgment relied on the decision of the Supreme Court in *Indian Performing Rights Society Ltd. vs. Sanjay Dalia & Anr.*, (2015) 10 SCC 161. It is contended that the Division Bench in *Ultra Home Construction Private Ltd. (supra)* misread the decision of the Supreme Court in *Sanjay Dalia (supra)* inasmuch as the Supreme Court in *Sanjay Dalia (supra)* did not lay down the principle that the plaintiff

was obliged to sue at a place where the cause of action had arisen or could alternatively sue only in the jurisdiction where it had a principal place of business and not a mere branch office. It is contended that Section 134 of the Act gave an additional right to sue at any place where the plaintiff was residing or carrying on business even through a branch office.

8. Reference may be had to the decision of the Supreme Court in *Sanjay Dalia (supra)*, relevant portion of which is reproduced as under:-

“18. 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 dehors 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.

19. 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.

20. 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.

21. 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.

22. There is no doubt about it that the words used in Section 62 of the Copyright Act and Section 134 of the Trade Marks Act, “notwithstanding anything contained in CPC or any other law for the time being in force”, emphasise that the requirement of Section 20 CPC would not have to be complied with by the plaintiff if he resides or carries on business in the local limits of the court where he has filed the suit but, in our view, at the same time, as the provision providing for an additional forum, cannot be interpreted in the manner that it has authorised the plaintiff to institute a suit at a different place other than the place where he is ordinarily residing or having principal office and incidentally where the

cause of action wholly or in part has also arisen. The impugned judgments, in our considered view, do not take away the additional forum and fundamental basis of conferring the right and advantage to the authors of the Copyright Act and the Trade Marks Act provided under the aforesaid provisions.

23. *The provisions of Section 62(2) of the Copyright Act and Section 134 of the Trade Marks Act are in pari materia. Section 134(2) of the Trade Marks Act is applicable to clauses (a) and (b) of Section 134(1) of the Trade Marks Act. Thus, a procedure to institute suit with respect to Section 134(1)(c) in respect of “passing off” continues to be governed by Section 20 CPC.*

24. *If the interpretation suggested by the appellant is accepted, several mischiefs may result, intention is that the plaintiff should not go to far-flung places than that of residence or where he carries on business or works for gain in order to deprive the defendant a remedy and harass him by dragging to distant place. It is settled proposition of law that the interpretation of the provisions has to be such which prevents mischief. The said principle was explained in Heydon's case [Heydon's case, (1584) 3 Co Rep 7a : 76 ER 637] . According to the mischief rule, four points are required to be taken into consideration. While interpreting a statute, the problem or mischief that the statute was designed to remedy should first be identified and then a construction that suppresses the problem and advances the remedy should be adopted. Heydon's [Heydon's case, (1584) 3 Co Rep 7a : 76 ER 637] mischief rule has been referred to in Interpretation of Statutes by Justice G.P. Singh, 12th Edn., at pp. 124-25 thus:*

“(b) Rule in Heydon's case [Heydon's case, (1584) 3 Co Rep 7a : 76 ER 637] ; purposive construction: mischief rule

When the material words are capable of bearing two or more constructions the most firmly established rule for construction of such words 'of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law)' is the rule laid down in Heydon's case [Heydon's case, (1584) 3 Co Rep 7a : 76 ER 637] which has now attained the status of a classic (Kanai Lal Sur v. Paramnidhi Sadhukhan [AIR 1957 SC 907]). The rule which is also known as "purposive construction" or "mischief rule" (Anderton v. Ryan [1985 AC 560 : (1985) 2 WLR 968 : (1985) 2 All ER 355 (HL)]), enables consideration of four matters in construing an Act: (i) What was the law before the making of the Act; (ii) What was the mischief or defect for which the law did not provide; (iii) What is the remedy that the Act has provided; and (iv) What is the reason of the remedy. The rule then directs that the courts must adopt that construction which "shall suppress the mischief and advance the remedy". The rule was explained in Bengal Immunity Co. Ltd. v. State of Bihar [AIR 1955 SC 661] by S.R. Das, C.J. as follows: (AIR p. 674, para 22)

'22. It is a sound rule of construction of a statute firmly established in England as far back as in 1584 when Heydon's case [Heydon's case, (1584) 3 Co Rep 7a : 76 ER 637] was decided that: (ER p. 638)

"... for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered:

1st: What was the common law before the making of the Act.

2nd: What was the mischief and defect for which the common law did not provide.

3rd: What remedy Parliament hath resolved and appointed to cure the disease of the commonwealth, and

4th: The true reason of the remedy;

and then the office of all the Judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and pro private commodo, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, pro bono publico.’ (Bengal Immunity Co. Ltd. v. State of Bihar [AIR 1955 SC 661]).”

25. *Considering the first aspect of aforesaid principle, the common law which was existing before the provisions of law were passed was section 20 of the CPC. It did not provide for the plaintiff to institute a suit except in accordance with the provisions contained in section 20. The defect in existing law was inconvenience/deterrence caused to the authors suffering from financial constraints on account of having to vindicate their intellectual property rights at a place far away from their residence or the place of their business. The said mischief or defect in the existing law which did not provide for the plaintiff to sue at a place where he ordinarily resides or carries on business or personally works for gain, was sought to be removed. Hence, the remedy was provided incorporating the provisions of section 62 of the Copyright Act. The provisions enabled the plaintiff or any of them to file a suit at the aforesaid places. But if they were residing or carrying on business or personally*

worked for gain already at such place, where cause of action has arisen, wholly or in part, the said provisions have not provided additional remedy to them to file a suit at a different place. The said provisions never intended to operate in that field. The operation of the provisions was limited and their objective was clearly to enable the plaintiff to file a suit at the place where he is ordinarily residing or carrying on business etc., as enumerated above, not to go away from such places. The Legislature has never intended that the plaintiff should not institute the suit where he ordinarily resides or at its Head Office or registered office or where he otherwise carries on business or personally works for gain where the cause of action too has arisen and should drag the defendant to a subordinate office or other place of business which is at a far distant place under the guise of the fact that the plaintiff/corporation is carrying on business through branch or otherwise at such other place also. If such an interpretation is permitted, as rightly submitted on behalf of the respondents, the abuse of the provision will take place. Corporations and big conglomerates etc. might be having several subordinate offices throughout the country. Interpretation otherwise would permit them to institute infringement proceedings at a far flung place and at unconnected place as compared to a place where plaintiff is carrying on their business, and at such place, cause of action too has arisen. In the instant cases, the principal place of business is, admittedly, in Mumbai and the cause of action has also arisen in Mumbai. Thus, the provisions of section 62 of the Copyright Act and section 134 of the Trade Marks Act cannot be interpreted in a manner so as to confer jurisdiction on the Delhi court in the aforesaid circumstances to entertain such suits. The Delhi court would have no territorial jurisdiction to entertain it.

26. *The avoidance of counter-mischief to the defendant is also necessary while giving the remedy to the plaintiff under the provisions in question. It was never visualised by the lawmakers that both the parties would be made to travel to a distant place in spite of the fact that the plaintiff has a remedy of suing at the place where the cause of action has arisen where he is having head office/carrying on business, etc. The provisions of the Copyright Act and the Trade Marks Act provide for the authors/trade mark holders to sue at their ordinary residence or where they carry on their business. The said provisions of law never intended to be oppressive to the defendant. The Parliamentary debate quoted above has to be understood in the manner that suit can be filed where the plaintiff ordinarily resides or carries on business or personally works for gain. Discussion was to provide remedy to the plaintiff at convenient place; he is not to travel away. Debate was not to enable the plaintiff to take the defendant to farther place, leaving behind his place of residence/business, etc. The right to remedy given is not unbridled and is subject to the prevention of abuse of the aforesaid provisions, as discussed above. Parliament never intended that the subject provisions be abused by the plaintiff by instituting suit in wholly unconnected jurisdiction. In the instant cases, as the principal place of business is at Mumbai the cause of action is also at Mumbai but still the place for suing has been chosen at Delhi. There may be a case where the plaintiff is carrying on the business at Mumbai and cause of action has arisen in Mumbai. The plaintiff is having branch offices at Kanyakumari and also at Port Blair, if interpretation suggested by the appellants is acceptable, mischief may be caused by such plaintiff to drag a defendant to Port Blair or Kanyakumari. The provisions cannot be interpreted in the said manner devoid of the object of the Act.*

27. It was also submitted that Heydon's [Heydon's case, (1584) 3 Co Rep 7a : 76 ER 637] rule is not applicable where the words of the statute are clear. Reliance has been placed on *Hiralal Rattanlal v. State of U.P.* [(1973) 1 SCC 216] in which it has been observed that when the provision is unambiguous and if from the provision legislative intent is clear, the court need not call into aid the other rule of construction of statutes such as that of "mischief". However, we opine, when two interpretations are possible, the court has to adopt the one which furthers the object as provided in the statute itself."

9. The Division Bench in *Ultra Home Construction Pvt. Ltd.* (supra) *inter alia* held as under:-

"13. It is evident from the above observations that the interpretation given to the expression "carries on business" in the context of a defendant under section 20 of the Code has also been employed in the context of a plaintiff under the said sections 134(2) and 62(2). Thus, in addition to the places where suits could be filed under section 20 of the Code, the plaintiff can also institute a suit under the Trade Marks Act, 1999 and the Copyright Act, 1957, as the case may be, by taking advantage of the provisions of section 134(2) or section 62(2), respectively. Both the latter provisions are in *pari materia*. Under these provisions four situations can be contemplated in the context of the plaintiff being a corporation (which includes a company). First of all, is the case where the plaintiff has a sole office. In such a case, even if the cause of action has arisen at a different place, the plaintiff can institute a suit at the place of the sole office. Next is the case where the plaintiff has a principal office at one place and a subordinate or branch office at another place and the cause of action has arisen

at the place of the principal office. In such a case, the plaintiff may sue at the place of the principal office but cannot sue at the place of the subordinate office. The third case is where the plaintiff has a principal office at one place and the cause of action has arisen at the place where its subordinate office is located. In this eventuality, the plaintiff would be deemed to carry on business at the place of his subordinate office and not at the place of the principal office. Thus, the plaintiff could sue at the place of the subordinate office and cannot sue (under the scheme of the provisions of section 134(2) and 62(2)) at the place of the principal office. The fourth case is where the cause of action neither arises at the place of the principal office nor at the place of the subordinate office but at some other place. In this case, the plaintiff would be deemed to carry on business at the place of its principal office and not at the place of the subordinate office. And, consequently, it could institute a suit at the place of its principal office but not at the place of its subordinate office. All these four cases are set out in the table below for greater clarity:

S.No.	Place of Plaintiff's Principal Office (Sole office in s.no.1)	Place of Plaintiff's Subordinate/Branch Office	Place where cause of action arose	Place where Plaintiff can additionally sue under section 134(2) and section 62(2)
1	A	---	C	A
2	A	B	A	A
3	A	B	B	B
4	A	B	C	A

14. The present case falls under S. No. 3 in the above table. The appellant / plaintiff has its principal office in Delhi (place A). Its subordinate office is at Deogarh, Jharkhand (place B) where it runs one of its hotels (Amrapali Clarks Inn), albeit in collaboration with

Clarks Inn hotels. The alleged cause of action has accrued at Deogarh, Jharkhand (place B). Therefore, the appellant/plaintiff could, in respect of the alleged cause of action in this suit, institute a suit against the defendants at Deogarh, Jharkhand (place B) but not in Delhi. Thus, the conclusion arrived at by the learned single judge that this court did not have the territorial jurisdiction to entertain the suit cannot be faulted.

15. We may point out that the learned counsel for the appellant/plaintiff had also urged that there was some conflict between the decisions of the Supreme Court in *Dhodha House* (supra) and *Sanjay Dalia* (supra). But, that argument is not available to the learned counsel for multiple reasons. The first and only reason that we may allude to is that in *Sanjay Dalia* (supra) itself, the Supreme Court, considered its decision in *Dhodha House* (supra) and held that there was nothing in the interpretation put forth in *Sanjay Dalia* (supra) which militated against the observations / conclusions in *Dhodha House*. The exact language used by the Supreme Court on this aspect is as under:-

"42. In Dhodha House [Dhodha House v. S.K. Maingi, (2006) 9 SCC 41] , the question which is posed before us did not come up for consideration and it has been observed that the Act provides for an additional forum. Such additional forum was provided so as to enable a plaintiff who may not be otherwise in a position to file a suit at different places where the copyright was violated. We have anxiously considered the aforesaid observations made and the object of the Act, we find that the interpretation made by us does not militate against the observations made by this Court in Dhodha House [Dhodha House v. S.K. Maingi, (2006) 9 SCC 41] , the precise question which is before us,

was not involved in the aforesaid case. A decision is not to be construed like a statute nor by inferential process can it be assumed that this Court has decided the question also which is before this Court in the instant cases."

16. Interestingly, in the present case, even if the deeming fiction of the Explanation in section 20 of the Code is not imported into either of the said sections 134(2) or 62(2), on the basis of the averments made in the plaint itself it becomes clear that the plaintiff carries on business at, inter alia, Deogarh. In *Dhodha House (supra)* itself it was observed as follows:

"46. The expression "carries on business" and the expression "personally works for gain" connote two different meanings. For the purpose of carrying on business only presence of a man at a place is not necessary. Such business may be carried on at a place through an agent or a manager or through a servant. The owner may not even visit that place. The phrase "carries on business" at a certain place would, therefore, mean having an interest in a business at that place, a voice in what is done, a share in the gain or loss and some control thereover....."

(underlining added)

17. The appellant / plaintiff has a clear and admitted interest in the business of its hotel - Amrapali Clarks Inn - at Deogarh. On the basis of the averments in the plaint, the plaintiff carries on business through the said hotel at Deogarh. To recapitulate, the plaintiff had stated the following in paragraph 39 of the plaint:

"The plaintiff's has long back presence in the town of Deogarh (Jharkhand) where the defendants have

launched the impugned project AMBAPALI GREEN. The plaintiff has its hotel in Deogarh which is operational and running in profit and plaintiff's trademark has been known to the local residents and tourists who throng to that place for worship."
(underlining added)

18. Clearly, on the basis of the averments in the plaint itself and in the backdrop of the observations in *Dhodha House* (supra), the appellant / plaintiff carries on business in Deogarh, Jharkhand. It may also carry on business at Delhi. But, because the cause of action has allegedly arisen in Deogarh, Jharkhand, and not in Delhi, the appellant/plaintiff cannot sue the defendants/respondents in Delhi in view of the decision in *Sanjay Dalia* (supra). Thus, this court does not have the territorial jurisdiction to entertain the suit. And, on this count, the decision of the learned single judge cannot be faulted. But, the suit ought not to have been dismissed. As this court did not have jurisdiction, the plaint ought to have been returned under order 7 rule 10 CPC. Only to that extent, the learned single judge had erred."

10. We find no reason to disagree with the decision of the Division Bench of this Court in *Ultra Home Construction Pvt. Ltd.* (supra). We do not agree with the contention of learned counsel for the Appellant that the Division Bench has misread the decision of the Supreme Court in *Sanjay Dalia* (supra). It may also be noticed that the Special Leave Petition filed impugning the decision of the Division bench in *Ultra Home Construction Pvt. Ltd.* (supra) has been dismissed.¹

¹ SLP (C) 7551/2016 *Ultra Home Construction Pvt. Ltd. Versus Purushottam Kumar Chaubey & Ors.* dismissed on 08.04.2016

11. Admittedly, in the present case no part of cause of action has arisen within the territorial limits of this Court. The cause of action is alleged to have arisen outside Delhi *inter alia* in Ahmedabad, Gujarat. The respondents are situated in Ahmedabad, Gujarat. The appellant has its principal place of business at Kolkata, where their head office is situated. The appellant contends that it has a branch office at Delhi. There is also a dispute as to whether the appellants have a branch office in Ahmedabad, Gujarat. Respondents rely on the Annual Report of the Appellant, wherein it has stated that it has a regional office in Ahmedabad, Gujarat. This is disputed by the Appellant contending that the said statement is not correct and it only has a helpline number in Ahmedabad, Gujarat.

12. As noticed above, the Single Judge applying the ratio in *Ultra Home Construction Pvt. Ltd. (supra)* held that this court would not have territorial jurisdiction over the dispute. We find no reason to differ with the view taken by the Single Judge. The cause of action is alleged to have arisen in Gujarat. Whether there is a regional office in Gujarat or not, since cause of action has arisen in Gujarat and the Respondents are situated in Gujarat, the Appellant under Section 20 of the CPC can institute the Suit in Gujarat. If the appellant seeks to rely on the provision of Section 134 of the Act or Section 62 of the Copyright Act, then the Appellant would have to sue where the Appellant has the principal place of business i.e. Kolkata. If the Appellant seeks to sue where it has regional/branch office, then it

would be additionally obliged to show that cause of action has arisen in the said jurisdiction. In the present case, no part of the cause of action is stated to have arisen in Delhi and the only ground stated for conferring jurisdiction is that the branch office is situated in Delhi. Without getting into the controversy as to whether the appellant has a regional office in Ahmedabad, Gujarat or not, since no part of cause of action has arisen in Delhi and the principal place of business is also not in Delhi, the courts at Delhi would not have territorial jurisdiction to entertain the Suit.

13. In view of the above, we find no merit in the appeal. The same is accordingly dismissed. There shall be no orders as to costs.

14. Order Dasti under signatures of Court Master.

SANJEEV SACHDEVA
(JUDGE)

S. RAVINDRA BHAT
(JUDGE)

NOVEMBER 03, 2017/‘km’