

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

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Decided on: 17.07.2017

+ **CS(COMM) 681/2016 & CCP (O) 102/2015, CCP (O) 13/2016,
I.A. 5909/2015, I.A 17404/2015**

SHREE NATH HERITAGE LIQUOR PVT LTD & ANR.....Plaintiffs

Through: Mr. Kirti Uppal, Sr. Advocate with
Mr. Sumit Rajput and Mr. Sidharth
Chopra, Advocates.

versus

OCTAGA GREEN POWER & SUGAR CO LTD. & ORS

..... Defendants

Through: Mr. Pradeep Dewan, Sr. Advocate
with Mr. Anupam Dhingra, Mr. Sunil
Goyal, Mr. Deepak, Mr. Adbhut
Pathak and Mr. Rohit Khurana,
Advocates.

CORAM:

HON'BLE MS. JUSTICE DEEPA SHARMA

JUDGMENT

1. The present suit has been filed by the plaintiffs for permanent injunction restraining the defendants from the infringement of the design and from passing off their goods as that of the plaintiffs and for damages. On the basis of pleadings of the parties, the issues were framed on 19.07.2016. Issue no. 2 relates to the territorial jurisdiction of this Court.

Issue no. 2 is reproduced as under:-

*“2. Whether this Court is not vested with the territorial jurisdiction to try and entertain the present suit instituted against the defendants?
(OPD)*

2. Subsequently, this issue was treated as a preliminary issue and the arguments of the parties were heard on this issue.

3. In brief the contentions of the plaintiffs are that the cause of action had arisen in their favour when they came across to an article on the internet wherein the defendants have clearly reflected their intention to enter the Delhi market with its “GRENADE XXX RESERVE BOTTLE” rum product and also arisen on search of the website of the defendants’ and their brochure wherein the defendants product is clearly visible. The plaintiffs alleged that the said product is fraudulent imitation of the plaintiff’s product. As regards the jurisdiction of this Court, the plaintiffs have contended in their plaint that defendants are offering to supply and sell the infringing goods within the jurisdiction of this Court. The website of the defendants as well as information in the newspaper reveals that the defendants are about to launch their product in Delhi and so the plaintiffs have a reasonable apprehension that the defendants are likely to sell their product within the jurisdiction of this Court.

4. It is averred that the plaintiff no. 1 is the registered company having its registered office at Rajasthan and that the plaintiff no. 1 is the licensee of plaintiff no. 2 which is settled in British West Indies. It is a bottling company running its industry in Rajasthan and one of the most reputed products of the plaintiffs is “GRENADE DARK RUM BOTTLE” which is marketed under the trade mark “GRENADE DARK RUM” and has its novelty in every feature as detailed in the plaint. It is further submitted that the plaintiffs and the licensee have been selling the said product in the State of Rajasthan where it is very popular and that the plaintiffs as part of their expansion plan, will soon launch its product in all major cities including Delhi. It is contended that the defendant no. 1 is having its registered office in Mumbai. The defendant no. 2 appears to be a partnership firm also having its office in Mumbai. They run their websites. The defendant no. 3 is also having its corporate office in Mumbai. While the defendant nos. 1 and 2 appear to be engaged in the business of manufacturing and selling alcoholic beverages, the defendant no. 3 is engaged in printing and packaging products. The plaintiffs have the belief that they are engaged in manufacturing and selling alcoholic beverages under the identical and deceptively same trade mark as those of the plaintiffs and thereby the

defendants are infringing its trademark. No samples, however, are found in the market for verification but their websites clearly show their products. They are producing, manufacturing their product in Kolhapur and the websites show that it will soon be available in all parts of India. There was also a publication in the newspaper dated 16.12.2014 wherein the spokesperson of defendants disclosed the plans of defendants to launch the product on PAN India basis. It is submitted that the defendants are thus copying their design and thereby infringing their trademark and it is going to create confusion in the mind of purchasing public. In para 33 of the plaint, the plaintiffs have disclosed that this Court has the jurisdiction.

5. Defendants, however, in their written statement, had taken the preliminary objection as regards the jurisdiction of the Court stating that no part of cause of action has arisen in Delhi. It is contended that plaintiffs are indulging in the forum shopping. It is submitted that admittedly the business operations of the plaintiffs are confined to Rajasthan and those of the defendants in the State of Maharashtra and also in Goa. It is submitted that the plaintiffs have suppressed the fact that the defendant no. 2 is the owner of the registered design bearing registration certificate No. 260116 dated 21.07.2014. The defendant no. 2 is, therefore, *prima facie* proprietor of the

said design and is therefore entitled to use the same. Also, the plaintiffs do not enjoy any goodwill in Delhi since its offices are confined to Rajasthan.

6. It is submitted that the defendants are neither having its registered office in Delhi nor they are doing their business in Delhi or indulging into commercial activities in Delhi. It is submitted that the defendants are just talking about the plans to explore other parts of the country. The plaintiffs also do not have any persons/business in Delhi and hence, this Court has no jurisdiction.

7. The case of the plaintiffs is premised upon their contention that defendants are likely to sell its products in Delhi. It is argued by learned counsel of the plaintiffs that it gives rise to a cause of action in their favour and the plaintiffs have filed this suit to take a *quia timet* action in order to prevent the injury which they are likely to suffer. Learned counsel for the plaintiffs has relied on the findings in the case of **Pfizer Products, Inc. vs. Rajesh Chopra & Others, 2006 (1) R.A.J. 536 (Del)** more particularly on para 12 of the judgment and argued that mere threat to sell the product which would infringe its trade mark in Delhi is sufficient to confer jurisdiction to this Court.

“12. The other aspect of the matter is that a threat of selling the offending goods in Delhi would in itself confer jurisdiction in the courts in Delhi to entertain a suit claiming an injunction in respect thereof. Whether the threat perception is justified or not is another matter which has to be considered and decided upon in the application filed by the plaintiff under Order 39 Rules 1 and 2 or on merits when the suit is taken up for disposal. Insofar as Order 7 Rule 10 is concerned, assuming that whatever is stated in the plaint is correct, one would have to also assume that the threat or the intention of the defendants to sell and offer for sale the offending goods in Delhi is also correct. Therefore, if the threat exists then this court would certainly have jurisdiction to entertain the present suit.

In these circumstances, this application is dismissed. No order as to costs.”

8. Learned counsel for the plaintiffs has also placed reliance on the findings in para 23 onwards in the case of **Bristol Myers Squibb Company and Anr. Vs. V.C. Bhatuda & Ors, 2014 (1) R.A.J. 274 (Del)** from para 23 onwards. Reliance is also placed on the case laws discussed in para 24 and para 25 of the *Bristol Myers Squibb Company (supra)*, which are **M/s Jawahar Engineering Company vs. Jawahar Engineers Pvt. Ltd., (1983) PTC 207** and **Mars Incorporated vs. Kumar Krishna Mukherjee, 2003 (26) PTC 60; 2003 (2) R.A.J. 321 (Del)**. It is argued that in *M/s Jawahar Engineering Company (supra)*, this Court has clearly held that “when an injunction is sought, it is not necessary that the threat should have become a reality before the injunction and it can even be sought for a threat that is

still to materialize. An injunction being prohibitive in nature is intended to prevent something that is likely to happen.” It is further argued that in *Mars Incorporated (supra)*, this Court has also held in para 21 of the said judgment that the plaintiff need not wait and watch for opening of the business etc by the defendant and take recourse under the principle of *Quia Timet* Action. It is also argued that in **State Trading Corporation of India Limited vs. Government of the Peoples Republic of Bangladesh, 63 (1996) DLT 971**, the Court has clearly observed that “*If the determination of jurisdiction of the Court is a question of fact or mixed question of fact and law requiring evidence to be adduced before recording a finding, the determination of the question may in appropriate, cases be liable to be postponed till after the determination of all or several other issues if the evidence to be adduced by the parties may be common on the issue of jurisdiction and such other issues.*”

9. It is also argued that there is no doubt that the burden to prove its case upon the plaintiff is more severe wherein there is a threat to the infringement of its trade mark than where the trademarks are actually infringed and since it is a mixed question of law and fact, the plaint cannot be rejected at this stage and has relied on the findings of Single Judge of this Court in **L.G.**

Electronics India Pvt. Ltd. vs. Bharat Bhogilal Patel, 2012(6) R.A.J. 234.

It is argued that learned Single Judge has also relied on the decision in the case *M/s Jawahar Engineering Company (supra)* and, thereafter, held as under:-

“43. The said threat perception per se also cannot also be said to be acting as an escape route to invoke the jurisdiction of the courts by just averring so in the plaint. The judgments rendered in the Jawahar (supra) and Pfizer (supra) as well as the observations made herein have to be read in the context. The threats are accepted by the courts for the purposes of invocation of jurisdiction as a mixed question of fact and law when there are some facts indicating towards likelihood of the perfection of the said threats or furtherance of the threats becoming reality. The said nexus of the initial facts will allow the court to determine the likelihood aspect in such threat and will lead to the court drawing the inference treating it as a mixed question of fact and law.

44. Thus, the real test would be when the court seized of such a matter is under doubt as to whether there is a possibility of threat becoming reality though the possibility of the same not becoming the reality is also not ruled out. In such cases, the question of jurisdiction on the basis of apprehension becomes a mixed question of fact and law and the same is thus deferred until the establishment of further facts in the trial.”

10. It is also argued by learned counsel for the plaintiffs that at this stage, the plaintiffs are not required to elaborately disclose the extent of the business the defendants are likely to carry on or name its customers to whom the product be sold especially when the plaintiff's case is based on *quia*

timet action. It is argued that the averments in the plaint which shows *quia timet* action are *prima facie* sufficient to show that the defendants are planning to carry out their business within the jurisdiction of this Court and so the cause of action has arisen within the jurisdiction of this Court. The plaintiffs have also relied on the findings of this Court para 31 in *Bristol Myers Squibb Company (supra)* wherein this Court has held as under:-

“31. It is not necessary at this stage, for the Plaintiff to name the particular customers of Defendants 1 and 2 to whom the product is to be sold since what is expressed is only an apprehension of "offer for sale". At this stage, the Plaintiff can at best refer to the fact that Defendant 2 supplies oncology APIs to various generic companies and that the said APIs are sold in Delhi. The apprehension that such oncology APIs may in the near future include the infringing product which is also an oncology API cannot, in the circumstances, be characterised as lacking credibility and having been asserted merely to attract the jurisdiction of the Court. The above averments in the present plaint, which is in a quia timet action, are prima facie sufficient to show that Defendant No.2 "carries on business" in Delhi and that the prima facie the cause of action arises within the jurisdiction of this Court.”

11. It is submitted that since regarding the existence of a territorial jurisdiction in respect of *quia timet* action is a mixed question of law and fact, the plaint cannot be rejected at this stage, and therefore, this issue be decided only after the evidences are being led in the case.

12. It is however argued by learned counsel for the defendants that the pleadings are misconceived and the plaint has been cleverly drafted in order to take recourse to *quia timet* action by the plaintiffs. It is argued that such action is preventive in nature and is an example of precautionary justice intended to prevent apprehended wrong before the wrong is being done, if proved. So, it is argued that even in the case of *quia timet* action, the plaintiff is required to show the actual extended threat which needs protection. It is also required to show a strong case of probability that the apprehended mischief will in fact arise, inducing the Court to intervene to prevent such an injury. It is submitted that a mere possibility of injury does not give rise to cause of action unless the threat be certain or imminent and has relied on para 6 and para 8 of **Kuldip Singh vs. Subhash Chander Jain and Ors., (2000) 4 SCC 50.**

13. It is submitted that in this case the plaintiffs have failed to show that there was any imminent danger to any possible injury and thus no cause of action has arisen in favour of the plaintiff. It is submitted that admittedly the plaintiffs are not selling their products in Delhi and it thus has not attained any good will in Delhi which is *sine qua non* to an act of passing off and has relied on the findings in **Jay Engineering Works Ltd. vs. Ramesh**

Aggarwal, 135 (2006) DLT 666. It is also argued that in fact the plaintiffs have not earned any good will in Delhi. It is running its business in Rajasthan since July 2013 as disclosed by plaintiffs in para 7 of the plaint, and it is unlikely that in such a short period, its good will has travelled to Delhi. Learned counsel for the defendants has relied on the findings in the case of **Goenka Institute of Education & Research vs. Anjani Kumar Goenka & Anr, ILR (2009) VI Delhi 415.** Learned counsel has also relied on the findings in the case of **T. Arivandandam vs. T.V. Satyapal, (1977) 4 SCC 467** and has argued that the Court has to examine the allegation made in the plaint in a meaningful manner and also has to examine the documents in similar manner in order to assess if any cause of action has really arisen in favour of the plaintiff.

14. It is further argued that the findings in the case of *Bristol Myers Squibb Company and Anr.* (supra) does not apply to the facts of this case as in that case in para 16, the defendant no. 2 in its written statement had admitted that it had customers located at Delhi. At the time when *ex-parte* injunction order was obtained by the plaintiff from this Court on 28th March, 2000, the judgment in the case of **Kuldeep Singh vs. Subhash Chander Jain & Ors, (2000) 4 SCC 50** was not brought to its notice. It is submitted that

findings in the case of *Pfizer Products (supra)* are also not applicable in the present case since in that case, the plaintiff had alleged that the defendant had applied for registration in Delhi while in the present case, there is no such allegation. It is submitted that this Court has no territorial jurisdiction and the suit is liable to be dismissed.

15. I have heard the arguments and perused the relevant records of both the parties.

16. There is no dispute to the proposition of law that while deciding the issue relating to the jurisdiction at the initial stage, the Court has to rely on the averments in the plaint and the plaint is needed to be read as a whole to find out whether it discloses such facts which shows that a part of cause of action has arisen within the jurisdiction of this Court.

17. From the pleadings, it is apparent that this suit has been filed by the plaintiffs on its threat perception arising from the website of the defendants as well as an interview wherein the defendants disclosed and discussed its plan to launch its product throughout India including Delhi. In **Shilpa Medicare Limited vs. Bristol Myers Squibb Company and Ors, FAO(OS) 96/2014**, decided on 30.07.2015, this Court has held as under:-

“ 14. The suit filed by the respondents is by way of a *quia timet* action, which visualizes apprehended injury. No

doubt, there are important constraints placed upon a plaintiff who brings such an action, the most prominent one being that the burden of proving such apprehension is heavy. Yet, the fact remains that the suit is based to a large extent on the threat. Now how does a court evaluate a threat to adjudge if it is justified, in the context of a dispute about its territorial jurisdiction? This is to be seen from the requirements of what has to be pleaded in a plaint, and what can legitimately be seen when a dispute (with regard to the territorial jurisdiction) arises. The court necessarily has to confine its gaze to the plaint and the documents filed with it.....”

18. The Jurisdiction of Courts in cases of infringement of the trade mark and passing off, has to be determined in view of Section 134 of Trade Mark Act, 1999. In cases of infringement of the trade mark in addition to the provisions of Section 20 of Civil Procedure Code (CPC), the plaintiffs have the additional benefit of filing the suit within the jurisdiction of the Court wherein it is actually residing or carrying on business or personally working for gain. In this case, the plaintiffs in the plaint have not alleged anywhere that it is carrying on its business within the jurisdiction of this Court. The plaintiffs also do not have its registered office within the jurisdiction of this Court so this Court has no territorial jurisdiction in terms of Section 134 of the Trademark Act, 1999. As regards the jurisdiction of this Court under Section 20 CPC is concerned, the plaintiffs are required to show that the defendants are residing or carrying on its business within the jurisdiction of

this Court or that a cause of action has arisen within the jurisdiction of this Court. The plaintiffs in para 32 of the plaint have averred as under:-

“32. That the cause of action arose in favour of the Plaintiffs and against the Defendants in Week of January, 2015 when the Plaintiff's representative came across to the articles on the internet wherein the Defendants has clearly stated its intention to enter the Delhi Market with its "GRENADE XXX RESERVE BOTTLE" rum product. The cause of action further arose when Plaintiff searched on the website of the Defendants and found the impugned product was shown and found to be an outright fraudulent imitation of the Plaintiffs' GRENADE DARK RUM BOTTLE. The cause of action further arose when the Plaintiff's representative found the brochure, of the Defendants and in the brochure the impugned product is clearly visible and mentioned. The said cause of action is a continuing one and continues to subsist till the Defendants, their distributors, retailers, agents, assigns in business etc. are restrained from carrying on their illegal trade activities of selling impugned bottles.

19. As regards jurisdiction, it is averred in para 33 of the plaint reproduced as under:-

“33. This Hon'ble Court has jurisdiction to entertain and try the present suit since the Defendants are offering to supply and sell the infringing goods within the jurisdiction of this Hon'ble Court. This scale of business and activity of the defendants are not known at present and it is apprehended as being highly likely that the product sold under the impugned mark and designs- “GRENADE RESERVE BOTTLE” will be made available in New Delhi. The website of the Defendants as well as information in the newspaper publications reveal that the

Defendants are about to launch their products under the impugned designed bottle and mark in New Delhi. There is a reasonable apprehension that the Defendants are likely to sell their products bearing the impugned design bottle within the jurisdiction of this Hon'ble Court. Thus this Hon'ble Court has the necessary jurisdiction. Therefore, the cause of action has arisen at Delhi.

(emphasis supplied)

20. In the case of **T. Arivandandam vs. T.V. Satyapal and Anr.**, AIR 1977

SC 2421, the Supreme Court has held as under:-

“5. reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order VII Rule 11, C.P.C. taking care to see that the ground mentioned therein is fulfilled. And, if clear drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order X, C.P.C. An activist Judge is the answer to irresponsible law suits. The trial Courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, and must be triggered against them.....”

(emphasis supplied)

21. The Court therefore has to read the plaint in a meaningful manner and see whether the cause of action has arisen within its jurisdiction or not. Here, the Court is not concerned whether any cause of action has arisen or not in favour of the plaintiffs but it has to determine whether the cause of action, if any, has arisen in favour of the plaintiffs within the jurisdiction of

this Court or not. The plaintiff's case is based on the principle of *quia timet* action and it states that the defendants are likely to expand its business and also likely to start selling its products in Delhi. The courts, in the *Bristol Myers Squibb company and Anr (supra)* and *Pfizer Products (supra)* and other cases, has held that the *quia timet* action gives the cause of action. The question is whether that the plaintiffs have been able to show that any part of cause of action to sue the defendants on the basis of *quia timet* has arisen within the jurisdiction of this Court. The findings in the *Bristol Myers Squibb company and anr. (supra)* are not applicable on the facts of this case because in that case, the defendant itself had admitted that it had its customers in Delhi and also the plaintiff had pleaded that the defendant no. 3 was having its factory within the jurisdiction of this Court. In this case, however, the plaintiffs have not pleaded anywhere that the defendants are carrying on their business in Delhi or have their registered office in Delhi. Admittedly, both the plaintiffs and the defendants had their registered office as well as manufacturing units outside Delhi. It is also noteworthy that both of them are dealing in the products which is controlled under the Excise Act and they need the excise licences for doing their business in any State. It is not the case of the plaintiffs that defendants have applied for obtaining any

excise licence for sale of its products within the jurisdiction of Delhi. The peculiar nature of the business of both the parties show that none of the party has the liberty to start its business at any time in any part of the country including Delhi as they need to first get a license for such sale. Even if the defendants have plans to expand its business to Delhi, it cannot do so because it need excise permission and in the absence of allegation or contention that such an excise licence has been sought, it cannot be said that there is imminent apprehension to the plaintiffs.

22. Although principle of *quia timet* action gives a cause of action yet in the case of *Kuldeep Singh (supra)*, the Supreme Court has held as under:-

“6. A quia timet action is a bill in equity. It is an action preventive in nature and a specie of precautionary justice intended to prevent apprehended wrong or anticipated mischief and not to undo a wrong or mischief when it has already been done. In such an action the Court, if convinced, may interfere by appointment of receiver or by directing security to be furnished or by issuing an injunction or any other remedial process. In Fletcher v. Bealey, Mr. Justice Pearson explained the law as to actions quia timet as follows :-

There are at least two necessary ingredients for a Quia timet action. There must, if no actual damage is proved, be proof of imminent danger, and there must also be proof that the apprehended damage will, if it comes, be very substantial. I should almost say it must be proved that it will be irreparable, because, if the danger is not proved to be so imminent that no one can doubt that, if the remedy is delayed the damage will be suffered, I think it must be shown that, if the damage does occur

at any time, it will come in such a way and under such circumstances that it will be impossible for the plaintiff to protect himself against it if relief is denied to him in a Quia timet action.

7. xxx xxx xxx

8. In our opinion a nuisance actually in existence stands on a different footing than a possibility of nuisance or a future nuisance. An actually existing nuisance is capable of being assessed in terms of its quantum and the relief which will protect or compensate the plaintiff consistently with the injury caused to his rights is also capable of being formulated. In case of a future nuisance, a mere possibility of injury will not provide the plaintiff with a cause of action unless the threat be so certain or imminent that an injury actionable in law will arise unless prevented by an injunction. The Court may not require proof of absolute certainty or a proof beyond reasonable doubt before it may interfere; but a strong case of probability that the apprehended mischief will in fact arise must be shown by the plaintiff. In other words, a future nuisance to be actionable must be either imminent or likely to cause such damage as would be irreparable once it is allowed to occur. There may be yet another category of actionable future nuisance when the likely act of the defendant is inherently dangerous or injurious such as digging a ditch across a highway or in the vicinity of a childrens school or opening a shop dealing with highly inflammable products in the midst of a residential locality.” (emphasis supplied)

23. As discussed above in the present case, there is no certain or imminent threat or injury in favour of the plaintiffs which needs interference by the Court especially when no part of such cause of action has arisen in Delhi. The plaintiffs are not running its business in Delhi and the defendants also not having its registered office in Delhi or having

manufacturing unit in Delhi or have applied for excise licence or for registration of its trademark in Delhi. In the cases relied upon by the plaintiffs, clearly the defendants had existence in Delhi and it was on that fact that the Court had continued with the suit.

24. In the case of **United Phosphorus limited vs. Ajay Garg & Anr., 2015 (63) PTC 188 (Del)** while placing reliance on **Banyan Tree Holding (P) Ltd vs A. Murali Krishna Reddy & Anr 2010 (42) PTC361**, this Court had held as under:-

42. This Court holds that jurisdiction of the forum court does not get attracted merely on the basis of interactivity of the website which is accessible in the forum state. The degree of the interactivity apart, the nature of the activity permissible and whether it results in a commercial transaction has to be examined. For the "effects" test to apply, the Plaintiff must necessarily plead and show prima facie that the specific targeting of the forum state by the Defendant resulted in an injury or harm to the Plaintiff within the forum state. For the purposes of a passing off or an infringement action (where the plaintiff is not located within the jurisdiction of the court), the injurious effect on the Plaintiff's business, goodwill or reputation within the forum state as a result of the Defendant's website being accessed in the forum state would have to be shown. Naturally therefore, this would require the presence of the Plaintiff in the forum state and not merely the possibility of such presence in the future. Secondly, to show that an injurious effect has been felt by the Plaintiff it would have to be shown that viewers in the forum state were specifically targeted. Therefore the "effects" test would have to be applied in conjunction with the "sliding scale" test to determine if the forum court has jurisdiction to try a suit concerning internet based disputes.

43. xxx xxx xxx

44. xxx xxx xxx

45. *This court holds that in order to prima facie establish that the Defendant purposefully availed of the jurisdiction of this court, the Plaintiff would have to show that the Defendant engaged in some commercial activity in the forum State by targeting its website specifically at customers within that State. This is consistent with the law laid down in Cybersell and reiterated later in Toys R Us. It is also consistent with the application of the "tighter" version of the "effects" test which is "targeting". In any action for passing off or infringement, it would have to be shown that the Defendant by using its mark intended to pass off its goods as that of the Plaintiff's. A mere hosting of a website which can be accessible from anyone from within the jurisdiction of the court is not sufficient for this purpose. Also a mere posting of an advertisement by the Defendant depicting its mark on a passive website which does not enable the Defendant to enter into any commercial transaction with the viewer in the forum state cannot satisfy the requirement of giving rise to a cause of action in the forum state. (emphasis supplied)*

25. The settled law thus is that some connection needed to be shown with forum state of the activities of the defendant. The Courts are not to merely follow the averments of the pleadings. It can judge its correctness relying on the various other averments in the plaint and the documents supporting it.

26. Although in paragraph 33 of the plaint, the plaintiffs have stated that defendants are ***‘offering to supply and selling the infringing goods within the territorial jurisdiction of this Court’***, however, nowhere in the plaint,

the plaintiffs have stated that defendants are selling its product in Delhi. However, it is a fact that the product of the defendants which is liquor cannot be sold without an excise licence and the plaintiffs have not pleaded anywhere that the defendants hold an excise license for sale in Delhi. The plaintiff's case is based on the contention that the defendants are planning to sell its product in Delhi. The averments itself thus show that no products of the defendants and the plaintiffs are sold in Delhi. The plaintiffs thus have not been able to show *prima facie* that there is any infringement or passing off his trade mark by the defendants in Delhi. Even for *quia timet* action, the plaintiffs have to show that there is a strong possibility of the defendants selling its product in Delhi which is likely to cause injury to its business and trade mark. The plaintiffs have failed to *prima facie* show its presence in Delhi or any goodwill in Delhi.

27. The Court observing the contradictions in the pleadings in the case of **United Phosphorus limited vs. Ajay Garg & Anr, 2015 (63) PTC 188 (Del)**, reached to the conclusion that the plaintiff was doing the forum shopping observed as under:-

45. Reading of the paragraph 28, more particularly the underlined portion, would show that a positive assertion has been made that the defendants are actively marketing and offering for sale of Acephate 97% dry flow soluble granules

including at Delhi. This assertion is contradictory and misleading. Once the plaintiff was in possession of the licence of the defendant no.2, a copy of which was filed, it would show that this assertion in paragraph 28 is false for the reason that the licence is only for export and, thus, to say that the defendants are actively marketing and offering for sale of Acephate 97% is a false statement.

46. It has been averred that defendants have an office at Connaught Place. Having used the words “defendants” by the plaintiff, a duty is cast upon the plaintiff even at the initial stage to place a document on record or some material to make good such an averment especially when they have hired the services of an investigator. The defendant no.2 has taken a categorical stand that they do not have any office at Connaught Place and neither any business has been conducted by them through defendant no.1 in respect to Acephate 97%.”

28. In the case of **Jay Engineering Works ltd. vs. Ramesh Aggarwal,** **135 (2006) DLT 666**, this Court has also held that where the defendants are not residing or carrying on its business within the jurisdiction of this Court, this Court cannot be said to have any territorial jurisdiction under Section 20 of the CPC for entertaining any suit for infringement of the trade mark or for passing off.

29. From the above discussions, it is apparent that the plaint does not disclose that any part of the cause of action has arisen in Delhi. The plaintiffs seem to be indulging in the forum shopping by resorting to a clever drafting. From the averments in the plaint, it is clear that the plaintiff has no existence in Delhi. Neither do they have their office in Delhi nor they are

indulging into manufacturing of their product in Delhi. They are dealing with the supply of excisable liquor and they do not also have any licence for supply of their product in Delhi. The defendants are also not having their office including the registered office within the jurisdiction of this Court nor do they have a manufacturing unit in Delhi. They have also not applied for the registration of their trade mark within the jurisdiction of this Court nor have they applied for obtaining any excise licence for supply/sale of their products within jurisdiction of this Court. No part of cause of action has thus arisen within the jurisdiction of this Court. The Court, therefore, has no territorial jurisdiction. The plaint is returned to the plaintiffs for filing in the Court of appropriate jurisdiction. In view of the above, the interim order dated 23.03.2015 stands vacated.

The Registrar is directed to do the needful.

The petition along with pending applications stands disposed of in these terms.

**DEEPA SHARMA
(JUDGE)**

JULY 17, 2017

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