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

Date of Decision: January 16, 2018

\+ CS(OS) 1320/2014

LOUIS VUITTON MALLETIER ..... Plaintiff

Through Mr.Dhruv Anand, Ms.Udita Patro & Mr.Shamim Nooreyezdan and, Advocates.

versus

KAPIL PAHUJA & ORS ..... Defendants

Through None.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. None has been appearing for the defendants for the last three hearings. Even today none has appeared for the defendants. The defendants are proceeded ex-parte.

2. The present suit is filed seeking an order for permanent injunction restraining the defendants from dealing directly or indirectly in wallets, handbags, suitcases, luggage, purses, belts, footwear, jewellery or any other goods bearing the registered trademarks "LOUIS VUITTON", "LV" logo, Toile monogram pattern, Damier pattern and/or LV Flower pattern or any similar trademark amounting to an infringement of registered Trademarks Nos. 441451, 448229, 441452B, 448230, 448231, 448235, 448234, 441453B, 861145, 1335385 and 1335386. Other connected reliefs are also sought.

3. The plaintiff is said to be a company incorporated and existing under the laws of France, having its registered office at 2, rues du Pont-Neuf,

75001- Paris, France. The plaintiff derives its name from its founder, Mr.Louis Vuitton, who opened the first Louis Vuitton Store in Paris in the year 1854. It is pleaded that the plaintiff has built and maintained a reputation for producing a variety of lifestyle goods that are products of imaginative and distinctive designs etc.

4. The plaintiff is said to have a long association in India. As early as 1926 a tea case was created by the plaintiff for the Maharaja of Baroda. Till date the plaintiff's products have been, and are regularly used by celebrities and other members of the society in India. The trademarks of the plaintiff have tremendous goodwill and reputation in India. The plaintiff is said to have opened its first exclusive store in India in 2003 at the Oberoi Hotel in New Delhi. Currently there are four Louis Vuitton exclusive stores in India - one in New Delhi and one in Bangalore and two in Mumbai. These four boutiques are the only stores that sell authentic Louis Vuitton products in India. It is pleaded that the plaintiff rigorously invests in publicity and sponsoring of its brands every year. Advertisements have also been appearing in several Indian magazines. The communication and marketing expenditure of the plaintiff in India for the years 2008 to 2010 was exceeding Rs.31 crores. The sale in India during the period from 2007 to 2010 was exceeding Rs.213 crores.

5. The plaintiff has also statutory rights over several of its trademarks in India. The "LOUIS VUITTON' word mark, the "LV" logo, the Toile monogram pattern, the Damier pattern and the LV Flower Patterns are registered in India.

6. The defendants have shops located in Chandigarh, which are involved in the business of selling apparels and fashion accessories. It is pleaded that

the defendants' shops have been found to be dealing in counterfeit goods bearing various registered trademarks of the plaintiff. It was in August, 2013 during a market survey in Chandigarh that the infringing and counterfeiting activities of defendant Nos.1 and 2 were revealed. An independent investigator upon receipt of the plaintiff's instructions sent one of his operators to Chandigarh on 31.08.2013 to investigate in the activities being undertaken at defendant No.1 shop. The investigator purchased a sample product which bears marks infringing the registered trademarks of the plaintiff. Hence, the present suit has been filed.

7. On 06.05.2014 this court appointed the two local commissioners to visit the shops of the defendants and make an inventory of all infringing products and take into custody all the goods including packaging etc. The reports of the local commissioners show that a large number of counterfeit products were detected by the local commissioners which were given on superdari to the defendants.

8. The learned counsel for the plaintiff states that 174 such infringing products were found by the local commissioners.

9. Defendants No.1, 2 and 3 to 5 have filed their written statements. The defendants primarily challenged the territorial jurisdiction of this court to adjudicate the matter. It has been pleaded that no cause of action has arisen for this court to adjudicate the matter. They have denied the authority/instrument to power of attorney holder to file the suit on behalf of the plaintiff. They have denied the report of the investigator. They have also denied that goods found in the premises of the defendants are counterfeit goods.

10. On 18.01.2017 this court framed a preliminary issue as follows:

> "Whether this Court has territorial jurisdiction to entertain the present suit? OPP"

11. I have heard the learned counsel for the plaintiff on the above issue of territorial jurisdiction.

12. The learned counsel for the plaintiff has relied upon section 134(2) of the Trademarks Act. He has also relied upon the judgments of the Supreme Court in the case of ***Dhodha House v. S.K.Maingi, (2006) 9 SCC 41*** and ***Indian Performing Rights Society Ltd. v. Sanjay Dalia & Another, (2015) 10 SCC 161*** to contend that this court has the territorial jurisdiction to try the suit.

13. He pleads that under Section 134(2) of the Trademarks Act, the plaintiff is entitled to institute a suit where the plaintiff personally carries on business or personally works for gain. He submits that in India, the plaintiff operates only through its retail stores, which are wholly owned/under the plaintiff's company. There are four places in India where the plaintiff's exclusive stores are found, namely, New Delhi, Bangalore, Chennai and Mumbai. He submits that the plaintiff does not carry out any business activities in Chandigarh and this court has territorial jurisdiction to adjudicate the suit.

14. Section 134(2) of the Trademarks Act, reads as follows:

> "134(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 persons 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.”

15. The Supreme Court in ***Dhodha House v. S.K.Maingi***(supra), elaborate the expressions “carries on business” and “personally works for gain”. Relevant para 46 of the judgment reads as follows:

> “46. The expression 'carries on business' and the expression 'personally works for gain' connotes 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 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 there over. The expression is much wider than what the expression in normal parlance connotes, because of the ambit of a civil action within the meaning of section 9 of the Code. But it is necessary that the following three conditions should be satisfied, namely:-
>
> > "(1) The agent must be a special agent who attends exclusively to the business of the principal and carries it on in the name of the principal and not a general agent who does business for any one that pays him. Thus, a trader in the mufassil who habitually sends grain to Madras for sale by a firm of commission agents who have an independent business of selling goods for others on commission, cannot be said to "carry on business" in Madras. So a firm in England, carrying on business in the name of A.B. & Co., which employs upon the usual terms a Bombay firm carrying on business in the name of C.D. & Co., to act as the English firm's commission agents in Bombay, does not "carry on business" in Bombay so as to render itself liable to be sued in Bombay.

(2) The person acting as agent must be an agent in the strict sense of the term. The manager of a joint Hindu family is not an "agent" within the meaning of this condition.

(3) To constitute "carrying on business" at a certain place, the essential part of the business must take place in that place. Therefore, a retail dealer who sells goods in the mofussil cannot be said to "carry on business" in Bombay merely because he has an agent in Bombay to import and purchase his stock for him. He cannot be said to carry on business in Bombay unless his agent made sales there on his behalf. A Calcutta firm that employs an agent at Amritsar who has no power to receive money or to enter into contracts, but only collects orders which are forwarded to and dealt with in Calcutta, cannot be said to do business in Amritsar. But a Bombay firm that has a branch office at Amritsar, where orders are received subject to confirmation by the head office at Bombay, and where money is paid and disbursed, is carrying on business at Amritsar and is liable to be sued at Amritsar. Similarly a Life Assurance Company which carries on business in Bombay and employs an agent at Madras who acts merely as a Post Office forwarding proposals and sending moneys cannot be said to do business in Madras. Where a contract of insurance was made at place A and the insurance amount was also payable there, a suit filed at place B where the insurance Co. had a branch office was held not maintainable. Where the plaintiff instituted a suit at Kozhikode alleging that its account with the defendant Bank at its Calcutta branch had been wrongly debited and it was claimed that that court had jurisdiction as the defendant had a branch there, it was held that the existence of a branch was not part of the cause of action and that the Kozhikode Court therefore had no jurisdiction. But when a company through incorporated outside India gets itself registered in India and does business in a place in India through its agent authorized to accept insurance proposals, and to pay claims, and to do other business

> incidental to the work of agency, the company carries on business at the place of business in India."

The specific examples have been given above stating that a Amritsar firm where orders are received subject to confirmation by the head office at Bombay and money is paid and disbursed, is carrying on business at Amritsar and is liable to be sued at Amritsar.

16. Reference may be had to the judgment of the Supreme Court in the case of ***Indian Performing Rights Society Ltd. v. Sanjay Dalia & Another***(supra). The Supreme Court held as follows:

> "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 Code of Civil Procedure 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."

17. It is clear from the above judgment of the Supreme Court that where a corporation is having ordinary residence/principal place of business and cause of action has also arisen at that place, the corporation has to institute a suit at the said place and not at other places. Section 134 of the Trademarks Act never intended to operate in the field where the place of business and cause of action has arisen at that place so as to enable it to file a suit at a distant place where its subordinate office is situated.

18. In the present case, the plaintiff does not carry on business at Chandigarh where the cause of action has arisen. On the other hand, the plaintiff carries on business from Delhi. Hence, in view of Section 134(2) of the Trade Mark Act, this court would have territorial jurisdiction to adjudicate the present suit. The preliminary issue is answered accordingly.

19. I will now deal with the suit.

20. Order 13A Rules 1, 2 and 3 CPC reads as follows:

> "1.*Scope of and classes of suits to which this Order applies.*-(1) This Order sets out the procedure by which Courts may decide a claim pertaining to any Commercial Dispute without recording oral evidence.
> (2) For the purposes of this Order, the word "claim" shall include-
> (a) part of a claim;

(b) any particular question on which the claim (whether in whole or in part) depends; or
(c) a counter-claim, as the case may be.
(3) Notwithstanding anything to the contrary, an application for summary judgment under this Order shall not be made in a suit in respect of any Commercial Dispute that is originally filed as a summary suit under Order XXXVII.
2. *Stage for application for summary judgment*.- An applicant may apply for summary judgment at any time after summons has been served on the defendant:
Provided that, no application for summary judgment may be made by such applicant after the Court has framed the issues in respect of the suit.
3. *Grounds for summary judgment.*- The Court may give a summary judgment against a plaintiff or defendant on a claim if it considers that –
(a) the plaintiff has no real prospect of succeeding on the claim or the defendant has no real prospect of successfully defending the claim, as the case may be; and
(b) there is no other compelling reason why the claim should not be disposed of before recording of oral evidence.
xxxxxxxxx"

Hence, the court can give a summary judgment against the defendants, if the defendants do not have any substantial defence.

21. In the present case, the learned counsel for the plaintiff has relied upon the observations of this court in another matter pertaining to the plaintiff. In CS(OS) 1668/2013, titled as "Louis Vuitton Malletier v. Mr.Manoj Khurana & Ors., decided on 20th August, 2015, this court had noted as follows:

"14. As per the plaintiff, only Exclusive retail outlets of the plaintiff are authorized to sell original Louis Vuitton goods. At present there are only 4 boutiques that sell authentic LV products in India with one such boutique situated in New Delhi at the DLF Emporio Mall, Vasant Kunj. Printouts from the LV international website showing the boutiques operating at the time of filing of the suit have been placed on record.

15. Therefore, the plea raised by the defendants totally appears to be false that he was selling the goods under wrong belief that the said products were owned by the plaintiff. It is apparent that where LV goods are found to be sold outside the exclusive LV stores, an adverse inference is to be drawn under the Indian Evidence Act, 1872 that the goods are counterfeit beyond any doubt whatsoever. This Court is empowered under Section 144 of the Trade Marks Act, 1999 under which it shall admit evidence of the usages of the trade concerned. Thus, the arguments of the plaintiff have a force.

16. The Court has declared "Louis Vuitton" word mark, Toile Monogram pattern and the "LV" logo as well- known mark vide the following orders:

i. Order dated 31st March, 2014 as passed by this Court in 'Louis Vuitton Malletier v. Arif Khatri & Anr.' in CS (OS) No. 270 of 2014;
ii. Order dated 9 th May, 2009 as passed by this Court in 'Louis Vuitton Malletier v. Abdul Salim & Ors.' in CS (OS) No. 90 of 2006; and
iii. Order dated 22nd December, 2011 as passed by this Court in 'Louis Vuitton Malletier v. H. Sawhney & Anr'. in CS (OS) No. 2239 of 2007."

22. The local commissioners have confirmed the seizure of goods which are counterfeit goods and which have illegally violated the trademarks of the plaintiff. The defendants have not made any submission on the merit of the case except a bland denial of the pleas raised by the plaintiff. It is manifest that the goods being sold by the defendants were counterfeit as the goods of the plaintiff are sold only from the plaintiff-owned retail outlets.

23. It is a fit case for this court to pass a summary judgment. Accordingly,

a decree is passed in favour of the plaintiff and against the defendants in terms of prayer para 56(a) and (b) of the plaint. The local commissioners had given the infringing products on superdari to the defendants. The defendants are directed by a decree of mandatory injunction to destroy the said products. The plaintiff shall also be entitled to cost as per bill of cost filed by the plaintiff duly certified by the learned counsel for the plaintiff.

24. The suit is disposed of.

JAYANT NATH, J.

JANUARY 16, 2018/v