

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR-1946-2021(O&M)

Date of decision:-17.9.2021

M/s Indica Bottling and another

...Petitioners

Versus

M/s Archian Foods

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.R.K. Moudgil, Advocate
for the petitioners.

H.S. MADAAN, J.

Briefly stated, the facts of the case are that plaintiff M/s Archian Foods, a Partnership Firm (herein respondent) through its Chief Marketing Officer and authorized representative, village Fatehgarh, District Roop Nagar has brought a suit for grant of permanent injunction against defendants i.e. M/s Indica Bottling, Industrial Area, Kurukshetra and its Proprietor Dharam Pal Singh (herein petitioners) craving for restraining the defendants or persons claiming under them from continuing their impugned action of passing off in the context of use,

marketing, sale advertisement, export etc. of their product in the name and style of 'Mast Lahori Zeera' so as to safeguard the material and valuable rights of the plaintiff on the strength of their trade mark and further restraining the defendants from using identical trademark 'Lahori' both visually as well as phonetically to prevent further damage to the goodwill and reputation of the plaintiff and to avoid further confusion amongst the customers with imperfect memory and further requiring the defendants to jointly or severally act in accordance with law with regard to their trade policies and practices besides seeking recovery of stocks of defendants pertaining to the cartons, packages, bottles, labels and contents and for recovery of damages. That suit was filed in the Court of District Judge, SAS Nagar (Mohali) and was assigned to Additional District Judge, SAS Nagar (Mohali).

On getting notice, the defendants appeared and filed an application under Order 7 Rule 11 read with Section 151 CPC for rejection of the plaint on various ground, to wit, that the plaint does not disclose any cause of action; that the Court at Mohali lacks territorial jurisdiction to entertain and try the present suit since no act of passing off as alleged was committed within jurisdiction of the Court; that the defendants do not have any dealer, partner or agent within jurisdiction of this Court and not even a single bottle of 'Mast Lahori Zeera' has been sold by defendants within jurisdiction of the Court at SAS Nagar (Mohali); that the suit is not properly valued for the purpose of Court fee and jurisdiction.

The application was resisted by the plaintiffs.

Vide the impugned order dated 1.9.2021, the trial Court had dismissed the application. For ready reference, the operative part of the order is being reproduced as under:

5. *The plaintiff has filed the present suit for permanent injunction restraining the defendants from passing off the trade mark of the plaintiff. The plaintiff is using trade mark of 'Lahori Zeera' while defendants are manufacturing their similar product under the name and style of 'Mast Lahori Zeera'. The defendants have filed written statement in this case and have taken similar pleas as taken in their application under Order 7 Rule 11 CPC. It cannot be denied that for deciding application under Order 7 Rule 11 CPC only pleadings are to be seen. The plaintiff in para No.55 of the plaint have specifically pleaded that defendants are using online marketing means and methods and selling the product in India including SAS Nagar on commercial basis, But due to legal notice issued by the plaintiff they are not issuing bills. The defendants in their reply to this para have simply pleaded that no act of passing off is committed within the jurisdiction of this Court. The counsel for the defendants has referred to Indian Performing Rights Society Ltd. Vs. Sanjay Dalia and Anr Civil Appeal Nos. 10643-10644 of 2010 decided on 1.07.2015 (SC) where it has been held that procedure to institute suit in respect of passing off continues to be governed by section 20 CPC. He argued that since no cause of action arisen within the jurisdiction of this Court, therefore, this Court has no jurisdiction to entertain and try the*

present suit. However, in this judgment itself a reference has been made to Section 134(2) of the Trade Mark Act which provides that suit can be filed in the district court in whose jurisdiction the plaintiff resides. Counsel for the plaintiff, on the other hand, has referred to Caterpillar Inc. Vs. Mehtam Ahmed and Ors Suit No.892 of 1998 decided on 9.08.2002 (Delhi High Court) where it has been held that in modern world, advertisements, in the newspapers travel beyond the country where party is engaged in business through overseas editions or otherwise. Even if it is assumed that such advertisements or mark do not travel beyond the borders of the countries where the plaintiff has the business still it has a right to protect its reputation and goodwill. In N.R. Dongre Vs. Whirlpool Corporation, 1996 PTC(16)(SC), it has been held that even advertisement of trade mark without existence of goods in the market is also to be considered as use of trade marks.

6. *Now in this case, the plaintiff has specifically pleaded about the cause of action. The question of jurisdiction in this case is at the most a mixed question of facts and law and cannot be termed as purely question of law. Thus, at this stage, it cannot be said that no cause of action has arisen to the plaintiff to file the suit within jurisdiction of this Court. As far as, the question of court fee is concerned, the damages are tentatively assessed and court fee can be assessed at the time of final decision of the case. The plaint cannot be rejected at this stage on the ground that proper court fee has not been paid by the plaintiff. Thus, at his stage the application*

under Order 7 Rule 11 CPC is not maintainable and is without merits and the same is liable to be dismissed. However, issues regarding the points raised by the defendants can be framed which will be decided at the final decision of the case. With these observation, the application under Order 7 rule 11 CPC filed by defendants stand dismissed. However, any observation made herein before by this Court shall have no bearing on the merits of the case.

The defendants felt aggrieved by the impugned order dated 1.9.2021 and have approached this Court by way of filing the present revision petition praying that the same be accepted, the impugned order be set aside and application under Order 7 Rule 11 CPC filed by the revisionist/defendants be allowed.

I have heard learned counsel for the revisionists besides going through the record.

Since there is similarity in the names of product of the plaintiff and defendants and the plaintiff is alleging passing off on the part of defendants i.e. according to the plaintiff, the defendants are presenting their products as if those have been manufactured by the plaintiff and in that way, making use of goodwill and standing in the market earned by the plaintiff with passage of time, which defendants cannot do as per law. The plaintiff being aggrieved by such passing off, Prima face it can be taken that a cause of action did arise in favour of the plaintiff to bring a suit against the defendants. As far as the challenge raised by the defendants to the territorial jurisdiction of the Court at Mohali to entertain

and try the suit, the trial Court has dealt with that aspect in detail making reference to Section 134(2) of the Trade Mark Act providing that suit can be filed in the district Court in whose jurisdiction the plaintiff resides and in modern world, advertisements, in the newspapers travel beyond the country where party is engaged in business through overseas editions or otherwise etc. It has been rightly observed that under the circumstances question of jurisdiction in this case is a mixed question of law and fact and only after the parties are afforded opportunities to lead evidence any clear conclusion can be reached in that regard. With regard to the third objection raised that the suit is not properly valued for the purpose of Court fee and jurisdiction, the trial Court did not fall in error observing that damages are tentatively assessed and the Court fee payable can be determined at the the time of final decision of the case.

As regards the authorities i.e. *Indian Performing Rights Society Ltd. Versus Sanjay Dalia and another, 2016 (2) RCR(Criminal) 213, M/s Dhodha House Versus S.K. Maingi, 2006(1) RCR(Criminal) 385* referred to by learned counsel for the revisionists, those do not find application to the present case due to different facts and circumstances and the context in which such observations had been made.

The order passed by the trial Court is quite detailed, well reasoned based on proper appraisal and appreciation of the legal as well as factual position and the same does not suffer from any illegality and infirmity and can certainly be not termed as arbitrary or having been passed against settled legal principles, which might have called for interference by this Court while exercising revisional jurisdiction.

Thus, finding no merit in the civil revision petition, the same stands dismissed.

17.9.2021
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(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No