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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.01.2022

DELIVERED ON : 31.01.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI,
ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKEVALU

O.S.A.(CAD) NOS.97, 111, 5 AND 4 OF 2021

O.S.A.(CAD) NOS.97 AND 111 OF 2021

Tirumala Milk Products Private Limited,
No.125, 1st Floor,
7th Cross Street,
Senthil Nagar,
Chennai - 600 099,
rep. by its Manager (Legal),
S.Mukundh.

... Appellant

.Vs.

1. Tirumala Daaairy Limited,
Rep. by its Director,
Suresh Dnyanobaraao Kute,
S.No.406 & 407 at Nimbhore,
Post Surwadi Taluka,
Phaltan Satara, Satara,
Maharashtra - 415 523.
2. Tirumalaa Fresh Daaairy Farms Pvt. Ltd.,
Rep. by its Director,
Archana Suresh Kute,
S.No.406 & 407 at Nimbhore,
Post Surwadi Taluka,
Phaltan Satara, Satara,
Maharashtra - 415 523.
3. Suresh Dnyanobaraao Kute,
Director - Fresh N Natural Dairy Farms (P) Ltd.,
Radha Cloth Centre,
Hirabai Chowk,
Beed, Maharashtra - 431 122.



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4. Archana Suresh Kute,
Director - Fresh N Natural Dairy Farms (P) Ltd.,
Radha Cloth Centre,
Hirabai Chowk, Beed,
Maharashtra - 431 122.

... Respondents

O.S.A. (CAD) NOS.5 AND 4 OF 2021

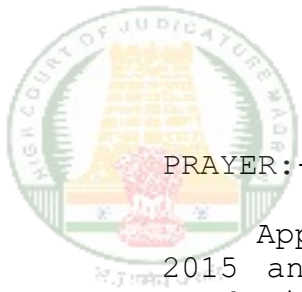
1. Swaraj India Industries Limited,
Rep. by its Director,
Suresh Dnyanobarao Kute,
S.No.406 & 407 at Nimbhore,
Post Surwadi Taluka,
Phaltan Satara, Satara,
Maharashtra - 415 523.
2. Fresh N Natural Dairy Farms (P) Ltd.,
Rep. by its Director,
Archana Suresh Kute,
S.No.406 & 407 at Nimbhore,
Post Surwadi Taluka,
Phaltan Satara, Satara,
Maharashtra - 415 523.
3. Suresh Dnyanobarao Kute,
Director - Fresh N Natural Dairy Farms (P) Ltd.,
Radha Cloth Centre,
Hirabai Chowk, Beed,
Maharashtra - 431 122.
4. Archana Suresh Kute,
Director - Fresh N Natural Dairy Farms (P) Ltd.,
Radha Cloth Centre,
Hirabai Chowk, Beed,
Maharashtra - 431 122.

... Appellants

.Vs.

Tirumala Milk Products Private Limited,
No.125, 1st Floor, 7th Cross Street,
Senthil Nagar, Chennai - 600 099,
rep. by its Manager (Legal),
S.Mukundh.

... Respondent



PRAYER:-

Appeals filed under Section 13 of the Commercial Courts Act, 2015 and under Order XXXVI Rule 1 of the Original Side Rules read with Clause 15 of the Letters Patent against the (i) order dated 19.04.2021 passed in A.No.181 of 2021; (ii) order dated 06.09.2021 passed in Review Petition No.2 of 2021 in A.No.181 of 2021; (iii) common order dated 15.10.2020 passed in O.A.Nos.330 and 331 of 2020 in C.S. (Comm. Div.) No.190 of 2020 on the file of this Court.

PRAYER IN O.A.NO.330 OF 2020:-

This Application filed under Order XIV Rule 8 of O.S. Rules read with Order XXXIX Rule 1 and 2 of C.P.C., praying that this Hon'ble Court be pleased to pass an Interim Injunction restraining the Respondents or their assigns, successors in interest, licensees, franchisees, sister concerns, representatives, servants, distributors, agents family members, employees etc., and/or any person or entity acting for or on behalf of them, from using Applicants, trade mark THIRUMALA/THIRUMALA MILK components thereof or any other mark(s) deceptively similar thereto, including TIRUMALA DAAIRY singularly or in conjunction with any other words or monogram/logo as a trade mark service mark, corporate name, trade name, trading style, domain name, website address, electronic mail identity or in any other manner whatsoever on or in relation to or any product or dairy business including advertising, business papers, etc., pending disposal of this suit.

PRAYER IN O.A.NO.331 OF 2020:-

This Application filed under Order XIV Rule 8 of O.S. Rules read with Order XXXIX Rule 1 and 2 of C.P.C., praying that this Hon'ble Court be pleased to pass an Interim Injunction against Respondents or their assigns, successors-in-interest, licensees, franchisees, sister concerns, representatives, servants, distributors, agents family members, employees etc., and/or any person or entity acting for or on behalf of them restraining them from passing off their business or milk and dairy products as or for the products of the applicant by restraining them from using applicants trade mark THIRUMALA/THIRUMALA MILK impugned Branding or any other mark(s) deceptively similar thereto including THIRUMALA DAAIRY singularly or in conjunction with any other words or monogram/logo as a trade mark, service mark, corporate name, trade name, trading style domain name, website address, electronic mail identity or in any other manner whatsoever on or in relation to or any product service/business including advertising business papers etc., pending disposal of this suit.



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For the Appellant : Mr.P.V.Balasubramanian
in O.S.A.(CAD) Nos.97 Mr.Abraham Prabhu
and 111 of 2021 For M/s.VAT Legal
and respondent in
O.S.A.(CAD) Nos.5
and 4 of 2021

For the Respondents : Mr.AR.L.Sundaresan
in O.S.A.(CAD) Nos.97 Senior Counsel
and 111 of 2021 For Mr.A.K.Balaji
and appellants in
O.S.A.(CAD) Nos.5
and 4 of 2021

C O M M O N J U D G M E N T

(Order of the Court was made by
the Hon'ble Mr.Justice P.D.AUDIKESSAVALU)

These intra-Court appeals invoking Clause 15 of the Letters Patent, 1865 (hereinafter referred to as 'the Letters Patent' for short) read with Section 13 of the Commercial Courts Act, 2015 (hereinafter referred to as 'the Commercial Courts Act' for short) arise out of interlocutory orders passed in C.S.(Comm. Div.) No.190 of 2020 on the file of the Original Side of this Court.

2. The parties are hereinafter referred to as per their description in the suit for the sake of clarity and convenience.

3. The sequence of events leading to the filing of these appeals are narrated below:-

- (i) The Plaintiff, which is a Private Limited Company, incorporated under the Companies Act, 1956, with its sales office at No.125, 1st Floor, 7th Cross Street, Senthil Nagar, Chennai - 600099 laid the suit in C.S. (Comm. Div.) No. 190 of 2020 on 13.08.2020 in the Commercial Division of the Original Side of this Court, against the Defendants, who are having their respective offices in the State of Maharashtra, for perpetual injunction restraining the Defendants from using the trade mark of the Plaintiff 'THIRUMALA/THIRUMALA MILK' or components thereof, or any other mark(s) deceptively similar thereto, including "THIRUMALAA DAIRY", singularly or in conjunction with any other words or monogram/logo, as a trade mark in any



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manner, on or in relation to or any product or diary business, including advertising, business papers, etc. and from passing off their business or milk and dairy products as or for the products of the Plaintiff by using the said mark and for certain other consequential reliefs.

- (ii) Applications in O.A.Nos.330 and 331 of 2020 had also been filed by the Plaintiff under Rule 1 and 2 of Order XXXIX of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the CPC' for short), restraining the Defendants from infringing the aforesaid trade mark claimed by the Plaintiff and also to restrain the Defendants from passing off their business or milk and dairy products or for the products of the Plaintiff, and an exparte order of injunction was granted on 21.08.2020, while ordering notice to the Defendants.
- (iii) Apart from the filing of the Written Statement on 18.12.2020 after service of summons in that suit, the Defendants have also filed their Counter-Affidavit in O.A. Nos. 330 and 331 of 2020 objecting the continuance of the order of interim injunction.
- (iv) The Learned Single Judge, who heard the applications in O.A.Nos.330 and 331 of 2020, by the order dated 15.10.2020, made the interim injunction earlier granted absolute till the disposal of the suit, aggrieved by which the Defendants have filed O.S.A.(CAD) Nos. 5 and 4 of 2021 respectively.
- (v) Another Application in A.No.181 of 2021 had been taken out on 17.12.2020 by the Defendants before the Learned Single Judge for rejection of the plaint under Rule 11(d) of Order VII of the CPC on the contention that the Plaintiff was not actually having any sales office at the address furnished in the plaint at No.125, 1st Floor, 7th Cross Street, Senthil Nagar, Chennai - 600099, within the territorial limits of jurisdiction of the Original Side of this Court, though the Plaintiff had filed a Counter-Affidavit dated 26.02.2021 denying the same.
- (vi) After hearing both sides in A.No.181 of 2021, orders were reserved by the learned Single Judge on the Original Side of this Court on 08.04.2021, granting liberty to the parties to file their written submissions in the said application.
- (vii) According to the Plaintiff, written submissions was filed on 09.04.2021 along with the Registration Certificate issued on 24.04.2020 under the Tamil Nadu Goods and Services Tax Act, 2017, containing the list of additional



places of business of the Plaintiff in which item 28 is its sales office mentioned in the plaint.

(viii) Final order was passed on 19.04.2021 in A.No.181 of 2021 holding that the Plaintiff had not placed any material to show that it was carrying on business within its territorial limits of jurisdiction on the date of filing of the suit and though it was not a ground to reject the plaint under Rule 11 of Order VII of the CPC, it was directed to be returned for re-presentation before the appropriate Court having jurisdiction to hear the matter. It has also been stated therein that the interim order already granted shall be in force for 60 days from then.

(ix) The Plaintiff then made an application in Review Application No.2 of 2021 for re-consideration of the aforesaid order dated 19.04.2021 passed in A.No.181 of 2021 stating that the Registration Certificate dated 24.04.2020 filed along with the written submissions had not been taken into account while passing that order. The Learned Single Judge, who heard that application, pointed out that the Court had permitted only to file written submissions while reserving orders after hearing the parties on 08.04.2021 in A.No.181 of 2021 and the Plaintiff cannot introduce new documents without obtaining leave of the Court and that even assuming those documents are taken into consideration, they do not provide any prima facie evidence to show that the Plaintiff was carrying on business at the time of filing of the suit on 13.08.2020 in the address given in the plaint in that suit. It was also noticed that it was only after the Defendants have filed the application to reject the plaint, the Plaintiff has come out with an explanation that after filing of the suit, on 01.02.2021, it had vacated from the said premises. It was held that the documents filed along with the written submissions could not be used in evidence without obtaining the leave of the Court. The Court came to the conclusion that by merely referring an address within the jurisdiction of a particular Court, a claim that it is the place where the Plaintiff carries on business, was not sustainable and in the absence of showing that the business was carried on in the said place, the plaint was bound to be returned for being re-presented before the appropriate Court and, accordingly, the Review Application was rejected.

(x) The Plaintiff has filed O.S.A.(CAD) No.97 of 2021 against the order dated 19.04.2021 passed in A.No.181 of 2021 and O.S.A.(CAD) No.111 of 2021 against the order dated 06.09.2021 passed in Review Application No. 2 of 2021 in A. No. 181 of 2021 in C.S.(Comm. Div.) No.190 of 2020.



4. We have heard Mr.P.V.Balasubramanian, Learned Counsel for the Plaintiff and Mr.AR.L.Sundaresan, Learned Senior Counsel appearing for the Defendants and perused the materials placed on record, apart from the pleadings of the parties.

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5. The first question that requires to be considered is whether the Learned Single Judge was justified in refusing to take into account the documents said to have been filed by the Plaintiff along with the written submissions after orders were reserved on 08.04.2021 in the application in A. No. 181 of 2021?

6. Learned Counsel for the Plaintiff vehemently contended that inasmuch as procedure is a handmaid of justice, there was no necessity for the Plaintiff to seek any leave of the Court for receiving the additional documents along with the written submissions before the Learned Single Judge.

7. Before proceeding further, it must be noticed here that the Hon'ble Supreme Court of India in a recent decision in Sudhir Kumar @ S.Baliyan -vs- Vinay Kumar G.B., (Judgment dated 15.09.2021 in Civil Appeal No. 5620 of 2021) had extensively analyzed the manner in which additional documents could be received by the Trial Court at any stage after presentation of plaint in a suit falling as a 'commercial dispute' within the meaning of the Commercial Courts Act, as in this case. The relevant passages therein are extracted below:-

"7.2. At the outset, it is required to be noted that as such the said application for leave to produce on record additional documents was preferred by the appellant herein - original plaintiff under Order VII Rule 14(3) of the CPC. However, considering the Order XI Rule 1 as applicable to the commercial suits by which Civil Procedure Code has been amended with respect to the suits before the commercial court and in view of the Section 16 of the Commercial Courts Act, Order VII Rule 14(3) of the CPC shall have no application at all. After the Order XI Rule 1 has been amended with respect to the suits before the commercial courts and a specific provision/procedure has been prescribed with respect to the suits before the commercial division and before the commercial court, the provision of the Code of Civil Procedure as has been amended by the Commercial Courts Act, 2015 shall have to be followed and any provision of any rule of the jurisdiction of the High Court or any amendment to the Code of Civil Procedure by the State Government which is in conflict of the Code of the Civil Procedure as amended by Commercial Courts Act, the



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provision of the Code of the Civil Procedure as amended by the Commercial Courts Act shall prevail. Therefore, Order XI Rule 1 as amended by the amendment in the Commercial Courts Act, with respect to the suits before the commercial division and the commercial court, the provisions of Order VII Rule 14(3) shall not be applicable at all. Therefore as such the plaintiff applied the wrong provision seeking leave of the court to place on record the additional documents. However, considering the fact that thereafter, both the learned Commercial Court as well as the High Court treated and considered and even applied Order XI Rule 1 of the CPC as amended by the Commercial Courts Act and as applicable to the suits filed before the commercial division, commercial court, we proceed to consider the application submitted by the appellant herein - original plaintiff, as if the same was submitted under Order XI Rule 1(4) of the CPC.

7.3. It is true that Order XI Rule 1 of the CPC as applicable to the commercial suits brought about a radical change and it mandates the plaintiff to file a list of all documents, photocopies of all documents, in its power, possession, control or custody, pertaining to the suit, along with the plaint and a procedure provided under Order XI Rule 1 is required to be followed by the plaintiff and the defendant, when the suit is the commercial suit. Order XI Rule 1, as applicable to commercial suits reads as under:—

ORDER XI DISCLOSURE, DISCOVERY AND INSPECTION
OF DOCUMENTS IN SUITS BEFORE THE COMMERCIAL
DIVISION OF A HIGH COURT OR A COMMERCIAL COURT

1. Disclosure and discovery of documents.—(1)
Plaintiff shall file a list of all documents
and photocopies of all documents, in its
power, possession, control or custody,
pertaining to the suit, along with the plaint,
including:—

- (a) documents referred to and relied on by the plaintiff in the plaint;
- (b) documents relating to any matter in question in the proceedings, in the power, possession, control or custody of the plaintiff, as on the date of filing the



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plaint, irrespective of whether the same is in support of or adverse to the plaintiff's case;
(c) nothing in this Rule shall apply to documents produced by plaintiffs and relevant only—

(i) for the cross-examination of the defendant's witnesses, or

(ii) in answer to any case set up by the defendant subsequent to the filing of the plaint, or

(iii) handed over to a witness merely to refresh his memory.

(2) The list of documents filed with the plaint shall specify whether the documents in the power, possession, control or custody of the plaintiff are originals, office copies or photocopies and the list shall also set out in brief, details of parties to each document, mode of execution, issuance or receipt and line of custody of each document.

(3) The plaint shall contain a declaration on oath from the plaintiff that all documents in the power, possession, control or custody of the plaintiff, pertaining to the facts and circumstances of the proceedings initiated by him have been disclosed and copies thereof annexed with the plaint, and that the plaintiff does not have any other documents in its power, possession, control or custody.

Explanation.— A declaration on oath under this sub-rule shall be contained in the Statement of Truth as set out in the Appendix.

(4) In case of urgent filings, the plaintiff may seek leave to rely on additional documents, as part of the above declaration on oath and subject to grant of such leave by Court, the plaintiff shall file such additional documents in Court, within thirty days of filing the suit, along with a declaration on oath that the plaintiff has produced all documents in its power, possession, control or custody, pertaining to the facts and circumstances of the proceedings initiated by the plaintiff and that the



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plaintiff does not have any other documents, in its power, possession, control or custody.

(5) The plaintiff shall not be allowed to rely on documents, which were in the plaintiff's power, possession, control or custody and not disclosed along with plaint or within the extended period set out above, save and except by leave of Court and such leave shall be granted only upon the plaintiff establishing reasonable cause for non-disclosure along with the plaint.

(6) The plaint shall set out details of documents, which the plaintiff believes to be in the power, possession, control or custody of the defendant and which the plaintiff wishes to rely upon and seek leave for production thereof by the said defendant.

(7) The defendant shall file a list of all documents and photocopies of all documents, in its power, possession, control or custody, pertaining to the suit, along with the written statement or with its counterclaim if any, including—

(a) the documents referred to and relied on by the defendant in the written statement;

(b) the documents relating to any matter in question in the proceeding in the power, possession, control or custody of the defendant, irrespective of whether the same is in support of or adverse to the defendant's defence;

(c) nothing in this Rule shall apply to documents produced by the defendants and relevant only—

(i) for the cross-examination of the plaintiff's witnesses,

(ii) in answer to any case set up by the plaintiff subsequent to the filing of the plaint, or

(iii) handed over to a witness merely to refresh his memory.



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(8) The list of documents filed with the written statement or counterclaim shall specify whether the documents, in the power, possession, control or custody of the defendant, are originals, office copies or photocopies and the list shall also set out in brief, details of parties to each document being produced by the defendant, mode of execution, issuance or receipt and line of custody of each document.

(9) The written statement or counterclaim shall contain a declaration on oath made by the deponent that all documents in the power, possession, control or custody of the defendant, save and except for those set out in sub-rule (7)(c)(iii) pertaining to the facts and circumstances of the proceedings initiated by the plaintiff or in the counterclaim, have been disclosed and copies thereof annexed with the written statement or counterclaim and that the defendant does not have in its power, possession, control or custody, any other documents.

(10) Save and except for sub-rule (7)(c)(iii), defendant shall not be allowed to rely on documents, which were in the defendant's power, possession, control or custody and not disclosed along with the written statement or counterclaim, save and except by leave of Court and such leave shall be granted only upon the defendant establishing reasonable cause for non-disclosure along with the written statement or counterclaim.

(11) The written statement or counterclaim shall set out details of documents in the power, possession, control or custody of the plaintiff, which the defendant wishes to rely upon and which have not been disclosed with the plaint, and call upon the plaintiff to produce the same.

(12) Duty to disclose documents, which have come to the notice of a party, shall continue till disposal of the suit.

Order XI Rule 1(3) provides that the plaint shall contain a declaration on oath from the plaintiff that all documents in the power, possession, control or



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custody of the plaintiff, pertaining to the facts and circumstances of the proceeding initiated by him have been disclosed and copies thereof annexed with the plaint, and that the plaintiff does not have other documents in its power, possession, control or custody. As per the explanation under Order 11 Rule 1 (3) a declaration on oath under this sub-rule shall be contained in the Statement of Truth as set out in the Appendix. Appendix I with respect to the statement of truth reads as under:—

APPENDIX-I
STATEMENT OF TRUTH

(Under First Schedule, Order VI-Rule 15A and Order XI-Rule 3)

I the deponent do hereby solemnly affirm and declare as under:

1. I am the party in the above suit and competent to swear this affidavit.
2. I am sufficiently conversant with the facts of the case and have also examined all relevant documents and records in relation thereto.
3. I say that the statements made in – paragraphs are true to my knowledge and statements made in –paragraphs are based on information received which I believe to be correct and statements made in –paragraphs are based on legal advice.
4. I say that there is no false statement or concealment of any material fact, document or record and I have included information that is according to me, relevant for the present suit.
5. I say that all documents in my power, possession, control or custody, pertaining to the facts and circumstances of the proceedings initiated by me have been disclosed and copies thereof annexed with the plaint, and that I do not have any other documents in my power, possession, control or custody.



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6. I say that the above-mentioned pleading comprises of a total of – pages, each of which has been duly signed by me.

7. I state that the Annexures hereto are true copies of the documents referred to and relied upon by me.

8. I say that I am aware that for any false statement or concealment, I shall be liable for action taken against me under the law for the time being in force.

Place:

Date:

DEPONENT

VERIFICATION

I, do hereby declare that the statements made above are true to my knowledge. Verified at [place] on this [date]

DEPONENT.".]

Therefore, the declaration on oath shall be part of the plaint. The plaintiff has to declare on oath that all documents in its/his power, possession, control or custody, pertaining to the facts and circumstances of the proceedings, initiated by him/it have been disclosed and the copies thereof annexed with the plaint, and that he does not have any other documents in his power, possession, control or custody. Therefore as such it is mandated by Order XI Rule 1 for the plaintiff to disclose and produce all the documents in his power, possession, control or custody, pertaining to the facts and circumstances of the proceedings.

7.4. However, the additional documents can be permitted to be brought on record with the leave of the court as provided in Order XI Rule 1(4). Order XI Rule 1(4) provides that in case of urgent filings, the plaintiff may seek leave to rely on additional documents as part of the above declaration on oath [as provided under Order 11 Rule 1(3)] and subject to grant of such leave by Court, the plaintiff shall file such additional documents in Court, within thirty days of filing the suit, along with a declaration on oath that the plaintiff has produced all documents in its power, possession, control or

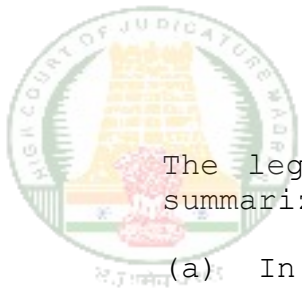


custody, pertaining to the facts and circumstances of the proceedings initiated by the plaintiff and that the plaintiff does not have any other documents, in its power, possession, control or custody.

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7.5. Order XI Rule 1(5) further provides that the plaintiff shall not be allowed to rely on documents, which were in the plaintiff's power, possession, control or custody and not disclosed along with plaint or within the extended period set out above, save and except by leave of Court and such leave shall be granted only upon the plaintiff establishing reasonable cause for non disclosure along with the plaint. Therefore on combined reading of Order XI Rule 1(4) read with Order XI Rule 1(5), it emerges that (i) in case of urgent filings the plaintiff may seek leave to rely on additional documents; (ii) within thirty days of filing of the suit; (iii) making out a reasonable cause for non disclosure along with plaint.

7.6. Therefore a further thirty days time is provided to the plaintiff to place on record or file such additional documents in court and a declaration on oath is required to be filed by the plaintiff as was required as per Order XI Rule 1(3) if for any reasonable cause for non disclosure along with the plaint, the documents, which were in the plaintiff's power, possession, control or custody and not disclosed along with plaint. Therefore plaintiff has to satisfy and establish a reasonable cause for non disclosure along with plaint. However, at the same time, the requirement of establishing the reasonable cause for non disclosure of the documents along with the plaint shall not be applicable if it is averred and it is the case of the plaintiff that those documents have been found subsequently and in fact were not in the plaintiff's power, possession, control or custody at the time when the plaint was filed. Therefore Order XI Rule 1(4) and Order XI Rule 1(5) applicable to the commercial suit shall be applicable only with respect to the documents which were in plaintiff's power, possession, control or custody and not disclosed along with plaint. Therefore, the rigour of establishing the reasonable cause in non disclosure along with plaint may not arise in the case where the additional documents sought to be produced/relied upon are discovered subsequent to the filing of the plaint."



The legal position that emanates from the aforesaid dictum is summarized below:-

- (a) In view of Section 16 of the Commercial Courts Act, the provisions of Rule 14(3) of Order VII of the CPC would not at all apply to suits falling under the purview of 'commercial dispute' within the meaning of the Commercial Courts Act, and instead would be governed by Rule 1 of Order XI of the CPC, as amended by the Commercial Courts Act.
- (b) Sub-rule (1) of the amended Rule 1 of Order XI of the CPC mandates the Plaintiff to file a list of documents, photocopies of all documents, in his power, possession, control or custody, pertaining to the suit along with the plaint and in terms of sub-rule (3) of the amended Rule 1 of Order XI of the CPC, a declaration on oath to that effect shall be contained in the Statement of Truth as set out in the Appendix thereto, which shall be a part of the plaint.
- (c) As provided in sub-rule (4) of the amended Rule 1 of Order XI of the CPC, in case of urgent filings, the Plaintiff may seek leave to rely on additional documents as part of that declaration on oath and subject to the grant of such leave by the Court, the Plaintiff shall file such additional documents in Court, within 30 days of filing the suit along with declaration on oath to the effect that all available documents have been produced and that the Plaintiff does not have any other document and nothing remains to be produced.
- (d) There is a prohibition in sub-rule (5) of the amended Rule 1 of Order XI of the CPC on the Plaintiff to rely on the documents, which were in his power, possession, control or custody and not disclosed along with the plaint or disclosed but not produced within the extended period of 30 days mentioned supra. However, if the Plaintiff has discovered a document subsequent to the presentation of the plaint, he would have to obtain leave of the Court to produce it in evidence by showing reasonable cause for its non-disclosure at the time of filing of the suit.

Applying the aforesaid principles to the facts of this case, it is borne out of the record that the Registration Certificate issued on 24.04.2020 under the Tamil Nadu Goods and Services Act, 2017, relied on by the Plaintiff was in existence at the time of the presentation of the suit on 13.08.2020 and that the Plaintiff had neither disclosed the same, nor made any application seeking leave to rely on it as additional document, nor produced it within the stipulated period of 30 days from the date of filing of the suit along with the requisite declaration

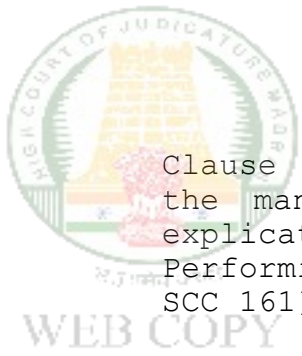


on oath in terms of sub-rule (4) of the amended Rule 1 of Order XI of the CPC. That apart, the Plaintiff also did not make any application under sub-rule (5) of the amended Rule 1 of Order XI of the CPC for leave of the Court to produce the documents establishing reasonable cause for its non-disclosure at the time of presentation of the plaint. Viewed from this perspective, we are in agreement with the Learned Single Judge that in the absence of the Plaintiff seeking leave explaining why that document could not be produced along with the plaint at the time of filing of the suit, it was not permissible to entertain the same as annexure to the written submissions filed by the Plaintiff in A.No.181 of 2021 after orders had been reserved on 08.04.2021 in the matter. Consequently, the order dated 06.09.2021 passed in Review Application No. 2 of 2021 cannot be interfered in O.S.A.(CAD) No.111 of 2021.

8. The next aspect of the matter pertains to the correctness of the order dated 19.04.2021 passed in A.No.181 of 2021 directing return of the plaint for re-presentation before the appropriate Court having territorial jurisdiction over the matter.

9. Even according to the Plaintiff, the address of all the Defendants in the suit, are located in Maharashtra, which falls outside the territorial limits of jurisdiction of the Original Side of this Court. The Plaintiff has also not stated anything in the plaint to show that any part of the cause of action has arisen by infringement of the trade mark or passing off the goods of the Plaintiff by the Defendants within the territorial limits of jurisdiction of the Original Side of this Court, and except for a bare statement that the Plaintiff is carrying on business with its Sales Office at No.125, 1st Floor, 7th Cross Street, Senthil Nagar, Chennai - 600099, located within the territorial limits of jurisdiction of this Court, there is nothing to show as to how the Plaintiff could sue the Defendants in the Original Side of this Court. In other words, it is not the case of the Plaintiff that either any cause of action has arisen or any of the Defendants are carrying on business within the territorial limits of jurisdiction of the Original Side of this Court, so as to be entitled to approach this Court under Clause 12 of the Letters Patent. Moreover, in view of Section 120 of the CPC, it is unnecessary to delve into the applicability of Section 20 of the CPC in this case.

10. It is, no doubt, true that Section 134(2) of the Trade Marks Act, 1999 (hereinafter called as 'the Trade Marks Act' for short), confers jurisdiction on the District Court to entertain a suit from a Plaintiff who actually and voluntarily carries on business within its local limits at the time of its filing, in addition to the places mentioned in Section 20 of the CPC or



Clause 12 of the Letters Patent, as the case may be. However, the manner in which such right could be enforced has been explicated by the Hon'ble Supreme Court of India in Indian Performing Rights Society Limited -vs- Sanjay Dalia [(2015) 10 SCC 161] in the following words:-

"14. Considering the very language of Section 62 of the Copyright Act and Section 134 of the Trade Marks Act, an additional forum has been provided by including a District Court within whose limits the plaintiff actually and voluntarily resides or carries on business or personally works for gain. The object of the provisions was to enable the plaintiff to institute a suit at a place where he or they resided or carried on business, not to enable them to drag the defendant further away from such a place also as is being done in the instant cases. In our opinion, the expression "notwithstanding anything contained in the Code of Civil Procedure" does not oust the applicability of the provisions of Section 20 of the Code of Civil Procedure and it is clear that additional remedy has been provided to the plaintiff so as to file a suit where he is residing or carrying on business, etc. as the case may be. Section 20 of the Code of Civil Procedure enables a plaintiff to file a suit where the defendant resides or where cause of action arose. Section 20(a) and Section 20(b) usually provides the venue where the defendant or any of them resides, carries on business or personally works for gain. Section 20(c) of the Code of Civil Procedure enables a plaintiff to institute a suit where the cause of action wholly or in part, arises. The Explanation to Section 20 CPC has been added to the effect that corporation shall be deemed to carry on business at its sole or principal office in India or in respect of any cause of action arising at any place where it has subordinate office at such place. Thus, "corporation" can be sued at a place having its sole or principal office and where cause of action wholly or in part, arises at a place where it has also a subordinate office at such place.

15. The learned author Mulla in Code of Civil Procedure, 18th Edn., has observed that under clauses (a) to (c) of Section 20, the plaintiff has a choice of forum to institute a suit. The intendment of the Explanation to Section 20 of the Code of Civil Procedure is that once the corporation has a subordinate office in the place where the



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cause of action arises wholly or in part, it cannot be heard to say that it cannot be sued there because it did not carry on business at that place. The linking of the place with the cause of action in the Explanation where subordinate office of the corporation is situated is reflective of the intention of the legislature and such a place has to be the place of the filing of the suit and not the principal place of business. Ordinarily the suit has to be filed at the place where there is principal place of business of the corporation.

16. "Corporation" in the Explanation to Section 20 CPC would mean not only the statutory corporation but companies registered under the Companies Act, as held by this Court in Patel Roadways Ltd. v. Prasad Trading Co. [(1991) 4 SCC 270] and New Moga Transport Co. v. United India Insurance Co. Ltd. [New Moga Transport Co. v. United India Insurance Co. Ltd., (2004) 4 SCC 677] The domicile of the company is fixed by the situation of its principal place of business as held in Jones v. Scottish Accident Insurance Co. Ltd. [(1886) LR 17 QBD 421 (DC)] In the case of companies registered under the Companies Act, the controlling power is, as a fact, generally exercised at the registered office, and that office is therefore not only for the purposes of the Act, but for other purposes, the principal place of business, as held in Watkins v. Scottish Imperial Insurance Co. [(1889) LR 23 QBD 285 (DC)] A company may have subordinate or branch offices in fifty different jurisdictions and it may be sued in any one of such jurisdictions in respect of a cause of action arising there, has been held in Peoples' Insurance Co. Ltd. v. Benoy Bhusan Bhowmik [1943 SCC OnLine Cal 15 : AIR 1943 Cal 199], Home Insurance Co. Ltd. v. Jagatjit Sugar Mills Co. Ltd. [AIR 1952 Punj 142] and Prag Oil Mills Depot v. Transport Corpn. of India [1978 SCC OnLine Ori 72 : AIR 1978 Ori 167].

17. Accrual of cause of action is a sine qua non for a suit to be filed. Cause of action is a bundle of facts which is required to be proved to grant relief to the plaintiff. Cause of action not only refers to the infringement but also the material facts on which right is founded. Section 20 CPC recognises the territorial jurisdiction of the courts inter alia where the cause of action wholly or in part arises. It has to be decided in each case whether



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cause of action wholly or in part arises at a particular place, as held by this Court in Rajasthan High Court Advocates' Assn. v. Union of India [(2001) 2 SCC 294 : AIR 2001 SC 416] . Thus, a plaintiff can also file a suit where the cause of action wholly or in part arises.

18. On a due and anxious consideration of the provisions contained in Section 20 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). The plaintiff(s) can also institute a suit at a place where he is residing, carrying on business or personally works for gain de hors the fact that the cause of action has not arisen at a place where he/they are residing or any one of them is residing, carries on business or personally works for gain. However, this right to institute suit at such a place has to be read subject to certain restrictions, such as in case the 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, the 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 the 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 CPC as well. The interpretation of provisions has to be such which prevents the mischief of causing inconvenience to the 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 CPC of going to a place



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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 the 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 that the impediment imposed under Section 20 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 the 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 the plaintiff is having branch offices, etc.



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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.

.....

48. Coming to the submission that vires of Section 62 has not been questioned. There is no doubt about it that the challenge to the vires of Section 62 has not been made. However, the question is that of interpretation and not that of vires of the provisions which has been considered by us.

There will be no violence to Section 62 of the Copyright Act and Section 134 of the Trade Marks Act by the interpretation adopted by us and the right of the plaintiff which has been conferred under the provisions, also remains intact. There is no question of giving disadvantage to the plaintiff vis-à-vis the defendant but both will stand to gain by proper interpretation.

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52. In our opinion, the provisions of Section 62 of the Copyright Act and Section 134 of the Trade Marks Act have to be interpreted in the purposive manner. No doubt about it that a suit can be filed by the plaintiff at a place where he is residing or carrying on business or personally works for gain. He need not travel to file a suit to a place where the defendant is residing or cause of action wholly or in part arises. However, if the plaintiff is residing or carrying on business, etc. at a place where the cause of action, wholly or in part, has also arisen, he has to file a suit at that place, as discussed above."

(emphasis supplied)

The essence of that authoritative pronouncement has been illustratively spelt out by the Delhi High Court in *Ultra Home Construction Private Limited -vs- Purushottam Kumar Chaubey* (Judgment dated 20.01.2016 in FAO (OS) No.494 of 2015 and CM No.17816 of 2015) as follows:-

"14. 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



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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

Coming to the facts of the case on hand, it is not in dispute that the registered office of the Plaintiff, which has been incorporated as a private limited company, is not situated within the territorial limits of jurisdiction of the Original Side of this Court. Further, in the absence of the Plaintiff establishing that any part of the cause of action has arisen within the territorial limits of jurisdiction of the Original Side of this Court where its sales office at No.125, 1st Floor, 7th Cross Street, Senthil Nagar, Chennai - 600099 is said to have been located at the time of the filing of the suit, in terms of the dictum laid down in the aforesaid binding ruling of the Hon'ble Supreme Court of India, the suit of the Plaintiff cannot be tried in this Court. At this juncture, it has to be recapitulated that though Rule 10 of Order VII of the CPC is inapplicable to the suits filed in the Original Side of this Court by virtue of Rule 3 of Order XLIX of the CPC, the inherent power to return the plaint for lack of territorial limits of



jurisdiction so as to file it before the proper Court is available in terms of Section 151 of the CPC as observed by the Division Bench of this Court in R.P.C' Connor -vs- P.G.Sampath Kumar (AIR 1953 Mad 897). There is no acceptable reason to take a different view of the matter from what has been concluded by the learned Single Judge in the order dated 19.04.2021 passed in A.No.181 of 2021 in that suit directing the plaint to be returned for presentation before the proper Court having territorial jurisdiction to decide the lis instead of rejecting the plaint as sought by the Defendants, and O.S.A. (CAD) No. 97 of 2021 would also have to fail.

11. Now what remains to be considered is the legal effect on the common order dated 15.10.2020 passed in O.A.Nos.330 and 331 of 2020, which is impugned in O.S.A. (CAD) Nos. 5 and 4 of 2021 respectively, arising out of confirmation of the order dated 09.04.2021 in A.No.181 of 2021 passed by the Trial Court.

12. It is beyond cavil that the doctrine of coram non judice envisages that where a Court exercises a jurisdiction not vested in it, any decision rendered in such proceeding would have to be treated as null and void from inception. In this context, reference may be made to the ruling of the Hon'ble Supreme Court of India in EXL Careers -vs- Frankfinn Aviation Services Private Limited [(2020) 12 SCC 667] in which the question of law as to whether a suit would have to be proceeded afresh or continued from the stage when it was pending before the Court at the time of returning the plaint under Rules 10 and 10A of Order VII of the CPC for want of territorial jurisdiction has been examined and it was held as follows:-

"20. The statutory scheme now becomes clear. In cases dealing with transfer of proceedings from a court having jurisdiction to another court, the discretion vested in the court by Sections 24(2) and 25(3) either to re-try the proceedings or proceed from the point at which such proceeding was transferred or withdrawn, is in marked contrast to the scheme under Order 7 Rule 10 read with Rule 10-A where no such discretion is given and the proceeding has to commence de novo."

As a corollary of this legal position, it would obviously mean that the order of interim injunction granted and made absolute till the disposal of that suit passed on 15.10.2020 in O.A.Nos. 330 and 331 of 2020 gets effaced in view of the order dated 19.04.2021 passed in A.No.181 of 2021 returning the plaint in C.S.(Comm. Div.) No.190 of 2020, which has been reiterated by order dated 06.09.2021 in Review Application No.2 of 2021 and affirmed in this order in respect of O.S.A.(CAD) Nos.97 and 111



of 2021. However, on re-presentation of the plaint before the proper Court, the applications in O.A.Nos.330 and 331 of 2020 would stand revived before that Court and would have to be decided afresh following the prescribed procedure on merits and in accordance with law uninfluenced and uninhibited by the order earlier passed on 19.04.2021 by this Court in those applications. Accordingly, it is not necessary to delve into merits of the controversy involved in O.S.A.(CAD) Nos.5 and 4 of 2021, except the clarification made supra.

The upshot of the foregoing discussion is that O.S.A. (CAD) Nos. 97 and 111 of 2021 are dismissed and O.S.A.(CAD) Nos.5 and 4 of 2021 are disposed on the aforesaid terms. C.M.P.Nos.86, 104, 17049 and 18534 of 2021 are closed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

bbr/vjt

To

The Sub Assistant Registrar,
Original Side,
High Court, Madras.

(To return the original copy of the plaint in C.S. (Comm. Div.) No.190 of 2020 with all documents and the Applications in O.A.Nos.330 and 331 of 2020 to the Plaintiff under written acknowledgment after retaining a copy of the same for record.)

+1cc to Mr.A.K.Balaji, Advocate, S.R.No.5497

O.S.A.(CAD) NOS.97, 111,
5 AND 4 OF 2021

NR(CO)
PBS/08/02/2022