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A.Nos.3653 of 2022
in C.S.No.706 of 2017

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C.SARAVANAN, J.

This application has been filed by the applicant/plaintiff for introducing four documents as additional documents. The suit has been filed by the applicant/plaintiff for infringements of the trademark. Earlier, the respondent/defendant had filed Application No.1253 of 2018, under Order VII Rule 11 (a) & (d) of CPC to reject the plaint. By an order dated 03.07.2018, Application No.1253 of 2018, filed by the respondent/defendant was allowed. Aggreived by the same, the applicant/plaintiff filed O.S.A.No.291 of 2018 before the Hon'ble Division Bench of this Court. After elaborate arguments, the said appeal was allowed by the Hon'ble Division Bench of this Court on 30.01.2019 with the following observation:

“13.In the present case, the appellant is carrying on business at the Branch Office situated at Thambu Chetty street. In terms of the provisions of Section 134 (2) Trademarks Act and Section 62 of the Copyrights Act, appellant/plaintiff is entitled to file the suit, where, they are carrying on business. As long as the appellant is carrying on business at the Branch Office, they are entitled to sue against the defendant. Infringement, according appellant, happened at Thandalam, where, the defendant is carrying on business. No doubt, the forum chosen by the plaintiff is nearer and convenient to the plaintiff to file the present suit against the defendant. Choosing the jurisdiction by the plaintiff where the



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plaintiff is carrying on business at the principal place of business or, where they are having Branch Office has to be decided only by the plaintiff alone. In the present case, at the convenient of the appellant, they have chosen to file the suit at the place, where, its Branch Office is situated. Since the appellant is carrying on its business through the Branch Office, the appellant is entitled to file the present suit. Even as per the decision rendered by the Hon'ble Supreme Court , in the case of Indian Performing Rights Society Ltd., (Supra), relied upon by the learned counsel for the appellant, the suit filed by the appellant/plaintiff is sustainable. Therefore, the decisions relied upon by the learned counsel for the respondent are not applicable to the facts of the case on hand.

14. In the light of the above discussion, we are of the view that the impugned order, rejecting the plaint is liable to be set aside. However, with regard to situation of the branch Office at Thambu Chetty street and ownership of the Trademark 'Roobini', it is left open to the Court to decide the same at the time of trial after the parties let in evidence. Accordingly, the original side Appeal is allowed. Consequently, the suit along with other connected applications are restored. Insofar as the application for rejection of the plaint is concerned, the same is dismissed, in the light of the order passed hereinabove. No costs."

2.Meanwhile, the Commercial Courts Act was notified and thus, the case was transferred to the Commercial Division. The respondent/defendant failed to file the written statement in time and thus, the matter was referred before the undefended Board for marking the evidence on behalf of the applicant/plaintiff. It is at that stage that the applicant/plaintiff has filed this application for marking the above 4 documents in addition to 9 documents that were filed along with the



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plaint. The application for marking additional document is opposed by the

respondent/defendant by placing reliance on Order XI Rule 1(5) of amended

CPC as made applicable to Commercial Courts Act 2015 which reads under:

Order XI Rule 1(5)

"1.(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."

It is submitted that this document ought to have been filed within 30 days of the filing of the suit along with the declaration of oath that the applicant had produced all the documents in its power, Possession, control or custody pertaining to the facts and circumstances of the proceeding initiated by the applicant/plaintiff and that the applicant/plaintiff did not have any other document in its power, possession, control or custody. It is submitted that the applicant/plaintiff can be allowed to rely on documents which were in applicant/plaintiff's possession, power, control or custody and not disclosed along with the plaint or within extended period, set out, save and accepted by leave of the Court and such leave shall be granted only on plaintiff's establishing a reasonable cause for non-disclosure along with the plaint.



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3.Learned counsel for the respondent/defendant submitted that these documents, which are proposed to be marked as additional documents, cannot be allowed to be introduced as additional documents as the suit is of the year 2017 and these are sought to be introduced in the evidence only at the time when case was referred for marking ex-parte evidence on behalf of the applicant/plaintiff. In this connection, learned counsel for the respondent/defendant has placed reliance on the decision of Hon'ble Division Bench of this Court in ***Tirumala Milk Products Private Ltd., vs Tirumala Daairy Limited***, and in ***Swaraj India Industries Limited, vs. Tirumala Milk Products Private Limited*** reported in (2022) 89 PTC 449. A specific reference is made to summation of law by the Hon'ble Division Bench of this Court placing reliance on the decision of the Hon'ble Delhi High Court in ***Ultra Home Consruction Pvt. Ltd., vs Purushottam Kumar Chaubey*** on 20.01.2016 wherein it has been held as follows:

"13. It is evident from the above observations that the interpretation given to the expression "carries on bussiness" 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 the 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



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provisions of Section 134(2) or Section 62(2), respectively. Both the latter provisions are in pari materia. Under these provisions four situations can be contemplated in the context of the plaintiff being a corporation (which includes a company). First of all, is the case where the plaintiff has a sole office. In such a case, even if the cause of action has arisen at a different place, the plaintiff can institute a suit at the place of the sole office. Next is the case where the plaintiff has a principal office at one place and a subordinate or branch office at another place and the cause of action has arisen at the place of the principal office. In such a case, the plaintiff may sue at the place of the principal office but cannot sue at the place of the subordinate office. The third case is where the plaintiff has a principal office at one place and the cause of action has arisen at the place where its subordinate office is located. In this eventuality, The plaintiff would be deemed to carry on business at the place of his subordinate office and not at the place of the principal office. Thus, the plaintiff could sue at the place of the subordinate office and cannot sue (under the scheme of the provisions of section 134(2) and 62(2) at the place of the principal office. The fourth case is where the cause of action neither arises at the place of the principal office nor at the place of the subordinate office but at some other place. In this case, the plaintiff would be deemed to carry on business at the place of its principal office and not at the place of the subordinate office. And, consequently, it could institute a suit at the place of its principal office but not at the place of its subordinate office. All these four cases are set out in the table below for greater clarity:"

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

4.While dealing with an identical situation, this Court concluded in

Tirumala Milk Products case cited (supra) as follows:

"14.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, Sethil 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 v. 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



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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."

It is therefore submitted that the application filed by the applicant/plaintiff is liable to be rejected.

5. Per contra, learned counsel for the applicant/plaintiff submits that the issue regarding jurisdiction of this Court to entertain a suit has been decided by the Hon'ble Division Bench of this Court in the appeal filed by the applicant/plaintiff in O.S.A.No.291 of 2018 in C.M.P.Nos.13573 to 13577 of 2018. The relevant portion of the said decision reads under:

"13.In the present case, the appellant is carrying on business at the Branch Office situated at Thambu Chetty street. In terms of the provisions of Section 134 (2) Trademarks Act and Section 62 of the Copyrights Act, appellant/plaintiff is entitled to file the suit, where, they are carrying on business. As long as the appellant is carrying on business at the Branch Office, they are entitled to sue against the defendant. Infringement, according appellant, happened at Thandalam, where, the defendant is carrying on business. No doubt, the forum chosen by the plaintiff is nearer and convenient to the plaintiff to file the present suit against the defendant. Choosing the jurisdiction by the plaintiff where the plaintiff is carrying on business at the principal place of business or, where they are having Branch Office has to be decided only by the plaintiff alone. In the present case, at the convenient of the appellant, they have chosen to file



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the suit at the place, where, its Branch Office is situated. Since the appellant is carrying on its business through the Branch Office, the appellant is entitled to file the present suit. Even as per the decision rendered by the Hon'ble Supreme Court , in the case of Indian Performing Rights Society Ltd., (Supra), relied upon by the learned counsel for the appellant, the suit filed by the appellant/plaintiff is sustainable. Therefore, the decisions relied upon by the learned counsel for the respondent are not applicable to the facts of the case on hand."

6. It is submitted that some of documents were not available when the suit came to be instituted and therefore, provisions of restriction in Order XII Rule 1(5) of amended CPC as made applicable to the provision of Commercial Courts, Act 2015 cannot be pressed it against the applicant/plaintiff.

7. I have considered the arguments advanced by the learned counsel for the plaintiff and learned counsel for the defendant.

8. The suit that has been filed by the applicant/plaintiff for infringement of the registered trademarks which were originally registered in the name of the applicant/plaintiff predecessor. The registration of the assignment the Trademark in the name of the applicant/plaintiff was not complete, at the time when the suit was instituted in the year 2017. Subsequently, the trademark registry has recorded the assignment pursuant to request in form 23 dated 24.07.2015 and passed orderd dated 25.01.2018. At that stage, this case had not



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been transfered to the Commercial Division. The records also indicate that the

applicant/plaintiff has a Branch office in Thambu Chetty Street at Chennai -600

001. Section 134(2) of the Trademarks Act,1999, reads as under:

***"134. Suit for infringement, etc., to be instituted before
District Court--***

(1) No Suit--

*(a) for the infringement of a registered trade mark;
or*

*(b) relating to any right in a registered trade mark;
or*

*(c) for passing off arising out of the use by the
defendant of any trade mark which is identical with or
deceptively similar to the plaintiff's trade mark, whether
registered or unregistered,
shall be instituted in any Court inferior to a District Court
having jurisdiction to try the suit.*

*(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."*

9. At the time when the suit was filed and instituted registration of
assignment of the registered trade mark was not completed. However, the suit



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was relating to infringement of a right in a registered Trademark. There is no dispute on this aspect. Thus, the marking of the documents which has been issued by the Trade Mark Registry cannot be objected. Under these circumstances, I am inclined to allow the applications filed for marking these documents. The case is directed to be listed before the learned Additional Master No.III for completion of trial between 3.01.2023 to 05.01.2023. The respondent/defendant can cross-examine the plaintiff witnesses. The case shall be listed before this Court on 09.01.2023 for filing written arguments on behalf of the parties along with convenience set.

19.12.2022

vsn

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19.12.2022