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C.R.P.No.2919 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.09.2022

PRONOUNCED ON : 27.10.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.No.2919 of 2022
and C.M.P.No.15841 of 2022

1.TirumalaaDaairy Limited,
Rep. by its Director Suresh Dnyanobaraokute,
S.No.406 & 407, at Nimbhore,
Post Surwadi Taluka,
PhaltanSatara, Satara,
Maharastra-415523

2.Tirumalaa Fresh Daairy Farms Pvt Ltd,
Rep. by its Director Archana Suresh Kute,
S.No.406 & 407, at Nimbhore,
Post Surwadi Taluka,
PhaltanSatara, Satara,
Maharastra-415523.

3.Suresh Dnyanobarakute
Director - Fresh N Natural Dairy Farms (P) Ltd.
Radha Cloth Center,
Hirabaichowk, Beed,
Maharastra-431122.

4.Archana Suresh Kute,
Director-Fresh N Natural Dairy Farms (P) Ltd,
Radha Cloth Center,
Hirabaichowk, Beed, Maharastra

...Petitioners



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Vs.

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Tirumala Milk Products Private Limited,
Registered Office at New No:75/B,
200 Feet Ring Road, Tirumalai Nagar Extention,
Pooniammanmedu, Chennai-600 110,
Rep by its
Manager (Legal), Mr.S.Mukundh

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the order dated 08.07.2022 passed by the learned Judge in I.A.No.06 of 2022 in Commercial O.S.No.73 of 2022 on the file of Principal District Judge at Tiruvallur.

For Petitioners : M/s.V.Lakshmi Narayanan
for M/s.A.K.Balaji

For Respondent : M/s.P.V.Balasubramaniam
for M/s.VAT Legal

O R D E R

The present Civil Revision Petition is filed challenging the order passed by the Principal District Judge, Thiruvallur dismissing the petition to reject the plaint filed by the revision petitioners.

2. The respondent/plaintiff filed a suit against revision petitioners/defendants in O.S.No.73 of 2022 on the file of the Principal District Judge, Thiruvallur under Order 7, Rule 1 of Civil Procedure Code read with



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Section 134 and 135 of the Trade Marks Act. Seeking a relief of permanent injunction restraining the Revision Petitioners/Defendants from using Respondent/Plaintiff's trade mark "Thirumala/ Thirumala-milk". The respondent also prayed for permanent injunction against the revision petitioners from passing off their business or milk and dairy products by restraining them from using plaintiff's trade mark "Thirumala /Thirumala-milk" and other reliefs. The revision petitioners after entering appearance filed a petition for rejection of the plaint on following grounds.

a) The Court below namely Principal District Court, Thiruvallur has no territorial jurisdiction to entertain the suit having regard to the fact, the cause of action for filing the suit arose at Maharashtra. But not within the territorial jurisdiction of the Court before which the plaint was presented.

b) The respondent/plaintiff suppressed the material facts regarding the order passed by the 1st Bench of the Madras High Court directing the respondent to present the plaint before the proper court having the territorial jurisdiction.

c) The respondent amended the prayer clause E without leave of the Court.

d) The present suit is barred under Order 7 Rule 11(d) of Civil Procedure



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Code as respondent presented a fresh suit before the Principal District Court, Thiruvallur instead of representing the plaint as directed by the High Court. In Nut Shell presenting a new suit without representing earlier plaint as directed by the High Court would amount to abuse of process of the Court.

3. The revision petitioners filed a counter and opposed application for rejection of the plaint. The respondent had averred in its counter that the original plaint that was presented before original side of the High Court was received back and represented before the Principal District Court, Thiruvallur which has got territorial jurisdiction to entertain the suit by virtue of the fact principal place of business of respondent falls within the territorial limits of said Court. It was submitted that returned plaint alone was represented before Thiruvallur Court and no fresh suit was instituted as alleged by revision petitioners. Therefore, it was contention of the respondent that no material facts were suppressed and no new suit was filed as contended by the revision petitioners. The respondent further submitted that the principal office of the respondent company situated at new No.75/8, old No.1418/2B, 200 feet ring road, Thirumalai nagar extension, Ponnammanmedu, Chennai 600 110 which comes within territorial limits of Principal District Court, Thiruvallur. It was



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further submitted as per Section 134 (2) of the Trade Marks Act, the plaintiff is entitled to present the plaint in a place where he actually and voluntarily resides or carry on business or personally works for gain. It was submitted in the case on hand, the principal registered office of the respondent/plaintiff situated within the territorial limits of the Principal District Court, Thiruvallur. The respondent further contended, since returned plaint was presented before the Court having territorial jurisdiction as per the directions issued by the High Court, there was no abuse of process of Court as claimed by the revision petitioners and hence Order 7 Rule 11(d) is not attracted.

4. The trial Court on careful consideration of the contentions of the respective parties came to the conclusion based on the averments found in the plaint that the principal place of business of the respondent is situated within its territorial limits and the cause of action for filing suit namely the infringement committed by the revision petitioners occurred at Maharashtra where the respondent is not having either principal office or subordinate office. On such finding, the learned Principal District Judge came to the conclusion that he has got territorial jurisdiction to entertain the suit, though cause of action for filing the suit arose outside the territorial limits, by virtue of Section 134(2) of the



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Trade Marks Act. On such finding, it was held by Court below that the respondent is entitled to file suit before Thiruvallur Court and consequently dismissed the petition for rejection of plaint. Aggrieved by the same, defendants in the suit have come up by way of this revision.

5. The learned counsel for the petitioners assailed the orders of the Court below mainly on the ground that the revision petitioners failed to obey the order passed by the High Court in representing the plaint before the Court which does not possess territorial jurisdiction to entertain the plaint. The learned counsel elaborated the same by saying that the respondent in his plaint averred that cause of action for the suit arose at Beed and Ahmednagar of Maharashtra wherein alleged infringement of his trade mark had taken place and respondent also admitted in their plaint averments that their company had widespread presence in Maharashtra. It is the submission of the learned counsel for the petitioner, when respondent has widespread presence in Maharashtra and cause of action for the suit also arose at Maharashtra, he ought to have filed the suit before the Courts at Maharashtra, not before the Court within whose jurisdiction its principal office located. The learned counsel for the petitioners relied on the order passed by the 1st bench of this Court in ***O.S.A (CAD).Nos.97, 111, 5 and***



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4 of 2021, Tiruvamala Milk Products Private Limited versus Tirumala

Daairy Limited and Ors, in support of his contention. The learned counsel also submitted that the respondent is guilty of suppression of material facts and further they deleted prayer E in the plaint without obtaining leave of the Court and hence the plaint is liable to be rejected. In other words, it was his submission that the plaint was returned with direction to represent the same before the appropriate forum and hence it was not open to the respondent to delete one of the prayer without leave of the Court and file it before another Court.

6. Per contra the learned counsel for the respondent submitted that the respondent has got registered office at Ponniammanmedu, Chennai 600 110 within the territorial limits of the Principal District Judge, Thiruvallur. Under Section 134 (2) of the Trade Marks Act, plaintiffs is entitled to present the suit in the place, where he voluntarily resides or carry on business or works for gain. In the case on hand, the principal registered office of the respondent situated within the territorial limits of Thiruvallur Court and consequently, the said Court has got territorial jurisdiction to entertain the plaint. The learned counsel further submitted that the 1st Bench of this Court returned the plaint



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filed by the respondent only on the ground that original side of the High Court had no territorial jurisdiction to entertain the plaint. The plaint was returned with direction to present it before proper Court having territorial jurisdiction. Under Section 134(2) of the Trade Marks Act, Thiruvallur Court has got territorial jurisdiction. Therefore, it was presented before that Court. The learned counsel further submitted that there is no suppression of the facts by the respondent and the original returned plaint, which was returned by the High Court was presented before Thiruvallur Court. Hence, according to the learned counsel for the respondent, the suppression of facts pleaded by the revision petitioners is without any substance. He further submitted that it is always permissible for the plaintiff to restrict his claim. Therefore, at the time of representation of the plaint, the respondent/plaintiff deleted the prayer E in the plaint which was relating to claim for damages. The learned counsel submitted that merely because plaintiff restricted his original claim at the time of representation of the papers before the appropriate forum, plaint cannot be rejected. I have considered rival contentions of the counsel for either side and also perused the typed set of papers.



7. The present suit is the one filed under Order 7, Rule 1 of C.P.C. read with Section 134 and 135 of the Trade Marks Act, seeking relief of injunction restraining, the revision petitioners from infringing the registered trade mark of the respondent and also for passing off. The territorial limits for filing the suit has to be decided based on Section 20 of C.P.C and Section 134 of the Trade Marks Act.

Section 20 of Civil Procedure Code is as follows:

*"20. Other suits to be instituted where defendants reside or cause of action arises.—Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction— (a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or (b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally works for gain, as aforesaid, acquiesce in such institution; or (c) The cause of action, wholly or in part, arises. 1 * * 2 [Explanation].—A corporation shall be*



deemed to carry on business at its sole or principal office in 3 [India] or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place. Illustrations (a) A is a tradesman in Calcutta, B carries on business in Delhi. B, by his agent in Calcutta, buys goods of A and requests A to deliver them to the East Indian Railway Company. A delivers the goods accordingly in Calcutta. A may sue B for the price of the goods either in Calcutta, where the cause of action has arisen, or in Delhi, where B carries on business. (b) A resides at Simla, B at Calcutta and C at Delhi. A, B and C being together at Benaras, B and C make a joint promissory note payable on demand, and deliver it to A. A may sue B and C at Benaras, where the cause of action arose. He may also sue them at Calcutta, where B resides, or at Delhi, where C resides; but in each of these cases, if the non-resident defendant objects, the suit cannot proceed without the leave of the Court."

Section 134 of the Trade Marks reads as follows.

"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 clause (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 the 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."

8. The combined reading of above two provisions makes it clear, apart



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from the places where a suit can be instituted under Section 20 of the C.P.C, in cases involving infringement of trade marks, the plaintiff is having the luxury of instituting the suit before the Court within whose jurisdiction, he actually and voluntarily resides or carries on business or personally works for gain. In other words, it is a concession conferred by the Trade Marks Act to the plaintiffs who sues for infringement on trade marks. The reason for conferring such a benefit to the plaintiffs can be understood by the statement of objects and reasons for the Trade Marks Act, 1999 which repealed the earlier Act, namely the Trade and Merchandise Act, 1958. One of the main object of the Act is to provide better protection of the trade marks. Therefore to facilitate legal remedy to the persons affected by infringement of trade marks at their door steps, the Parliament in its wisdom introduced Section 134(2) of the Trade Marks Act by conferring territorial jurisdiction on the Courts within whose jurisdiction the plaintiffs voluntarily resides, carries on business or works for gain. Therefore, there is no doubt the present suit being a suit relating to infringement of trade mark, the respondent/plaintiff is entitled to file the same before the Court within whose jurisdiction, its principal registered office is situated. As per the address given in the plaint, the respondent/plaintiff has registered office at Ponniammanmedu within the territorial limits of Principal District Judge,



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Thiruvallur. Therefore on the basis of the averments found in the plaint, the Principal District Court, Thiruvallur has got territorial jurisdiction to entertain the plaint.

9. The learned counsel for the revision petitioners vehemently contented by relying on the order passed by the 1st bench of this Court in ***O.S.A (CAD).Nos.97, 111, 5 and 4 of 2021***, that the respondent cannot file suit before the Court within whose jurisdiction its registered office is situated when admittedly respondent has got widespread presence in Maharashtra and cause of action for the suit namely infringement of alleged trade mark had taken place at Maharashtra as per the averments found in the plaint. By taking into the plaint averments, the learned counsel contended that the respondent clearly averred that alleged infringement had taken place within Beed and Ahmednagar of Maharashtra, the respondent also has got branch office at Maharashtra and hence as per the order passed by the 1st bench of this Court, the suit should be filed only before the place where the respondent/plaintiff has got branch office and also the alleged infringement had taken place. But not in the place where the plaintiff's registered office is situated. The perusal of the order passed by the 1st bench of this Court, makes it clear that in cases where the registered office of



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the plaintiff situated at A and its Branch/ Subordinate office situated at B and

the alleged infringement takes place at the place C, As per Section 134 (2) of the Trade Marks Act and 62(2) of the Copy Rights Act, the place of suing should be A, where the registered office situated. The relevant portion of of the observation made by the 1st bench of this Court is as follows:

*"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.***

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.



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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.

.....

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



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of 2015 and CM No.17816 of 2015) as follows:-

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"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 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



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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



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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."

10. The close reading of the order passed by the 1st bench of this Court makes it clear that in cases of suits complaining infringement of trade marks, the place of business of the plaintiffs and place where the cause of action has to be linked for the purpose of ascertaining the jurisdiction. It was held that in cases where the cause of action arose in a place where the subordinate office of plaintiff situate and the principal registered office of the plaintiff situate in other place, the plaintiffs cannot take advantage of Section 134(2) of the Trade Marks Act and Section 62 (2) to the Copy Right Act and file his plaint, in the place where his Principal office is situated. By virtue of authoritative pronouncement



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made by the Hon'ble Apex Court, ***Indian Performing Rights Society Limited***

versus Sanjay Dalia [(2015) 10 SCC 161], which was followed in the order passed by the 1st bench of this Court, in all cases where the cause of action arose in a place where the subordinate office situated, the plaintiffs necessarily has to file the suit in the place where his subordinate office is situated, but not in the place where his principal office is situated. But in the case on hand, the registered office of the respondent is situated within the territorial limits of Thiruvallur Court, as per the plaint averments and also the documents filed by the plaintiffs. The revision petitioners claim that respondent/plaintiff has got subordinate office at Maharastra also where the cause of action arose, therefore as per the decision of the Hon'ble Apex Court and the 1st bench of this Court, the plaint should have been presented before Maharastra Court. The close scrutiny of the plaint averment would suggest, though the respondent/plaintiff averred that it has strong presence in Maharastra, there is nothing in the plaint documents to suggest that they have got branch office / subordinate office in Beed District or Ahmednagar District of Maharastra, where cause of action for the suit namely infringement of the trade mark had taken place. The Trial Court in the impugned order has said it is open to the revision petitioners to prove that respondent/plaintiff has got branch offices in Maharastra at the time of trial and



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whether the respondent/plaintiff has got branch office at Maharashtra is a question of fact which has to be decided only based on evidence at the time of trial. In the absence of any material to show that the respondent/plaintiff has got branch office within territorial limits of the Court within whose jurisdiction the alleged cause of action arose (Beed and Ahmednagar District of Maharashtra), the plaint cannot be rejected on the ground of territorial jurisdiction. Further the 1st bench of this Court held that the respondent/plaintiff failed to show that it has got branch office within the territorial limits of Original Side of the High Court and also failed to show that any part of the cause of action arose within territorial limits of the High Court and consequently, it ordered plaint has to be returned for presentation before the proper forum. After taking the return, the respondent/plaintiff has presented it before the Principal District Court, Thiruvallur within whose jurisdiction the registered office of the respondent/plaintiff is situated. In the light of the discussions made above on the basis of the averments found in the plaint, it can be safely concluded as per Section 134(2) of the Trade Marks Act, the plaintiff is entitled to present the plaint before the Principal District Judge, Thiruvallur within whose jurisdiction it has got registered office.



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11. As far as the contention regarding suppression of fact by the plaintiff is concerned, the perusal of the typed set of papers would suggest, the original plaint that was presented before the High Court of Madras was taken back and presented before the Principal District Court, Thiruvallur. As it is seen from the plaint presented before Thiruvallur, in the preamble portion the words “In the High Court of Judicature, Madras (Ordinary Civil Original Jurisdiction)” was struck off and it was re-written as “In the Court of Principal District Judge, Court, Thiruvallur”. It also contains the endorsement of return of the Assistant Registrar (O.S.II) dated 28.01.2022 wherein the original plaint was returned by referring to the order dated 19.04.2021 in A.No.181 of 2021 in C.S.No.190 of 2020 and also review application No.2 of 2021. Therefore, the respondent/plaintiff has not suppressed the fact that originally plaint was filed before the High Court and the same was returned on the ground lack of territorial jurisdiction.

12. The contention of the learned counsel for the petitioner that the respondent/plaintiff had deleted the prayer E without leave of the Court in the plaint and consequently the plaint has to be rejected cannot be accepted. The



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plaintiff can always restrict his prayer. In the case on hand original prayer E

was relating to the claim of damages against the revision petitioner/ defendants.

At the time of representation plaintiff decided to not press that prayer and hence deleted it. That would not give cause of action for the revision petitioner to seek rejection of plaint.

13. In view of the above discussions, I do not find any reasons to interfere with the order passed by the Court below in dismissing the petition to reject the plaint. Consequently, the Civil Revision Petition is dismissed. In the facts and circumstances of the case, there shall be no order as to costs. Connected Civil Miscellaneous petition is closed.

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Index: Yes/ No

Speaking Order / Non-Speaking Order

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To

1. The Principal District Judge,
Tiruvallur.



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S.SOUNTHAR, J.

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