

FAO-COM-7-2022 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-COM-7-2022 (O&M)
Date of decision : 02.05.2022

M/s Pepsy Fireworks Industries

.....Appellant

VERSUS

Pepsico Inc. and another

....Respondents

**CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Mr. Ashutosh, Advocate
for the appellant.

Mr. Akshay Bhan, Senior Advocate with
Mr. Saurabh Gautam, Advocate and
Mr. Rohit Khanna, Advocate
for the caveator.

AUGUSTINE GEORGE MASIH, J.

CM-FACOM-27-2022

Exemption is granted from filing certified/more legible as well as typed copies of order dated 19.01.2022 and the annexures and the same are taken on record, subject to all just exceptions.

Application stands disposed of.

FAO-COM-7-2022

Challenge in this appeal is to the order dated 19.01.2022 passed by the the Additional District Judge-cum-Presiding Judge, Exclusive Commercial Court at Gurugram, whereby application under Order XXXIX,

Rules 1 and 2 read with Section 151 of Code of Civil Procedure, seeking *ad interim* injunction restraining the appellant, its agent, representatives, servants, men, distributors from using upon or in relation to its business produceds, the impugned mark and/or any other marks, which may be identical and/or deceptively similar to the registered PEPSI trade mark of respondent No.1, has been allowed and the appellant has been restrained from infringing the copyright in the PEPSI logo of the respondents or indulging into any activity having the effect of diluting the distinctive character of respondents' PEPSI marks.

2. Learned counsel for the appellant has raised the challenge to the above referred to order on the sole ground of territorial jurisdiction not being vested in Court below which has passed the impugned order. He asserts that since the respondents do not have an office in India, the Court at Gurugram will not have the territorial jurisdiction to entertain the suit for infringement of the trade mark. He contends that the said plea has been wrongly dealt with by the Court below while passing the impugned order. The suit has been filed seeking infringement of alleged trade mark of respondent No.1 and no relief has been claimed on the basis of passing off. The jurisdiction is sought to have been conferred upon the trial Court on the basis of Section 134 (2) of the Trade Marks Act, 1999. Respondent No.1, although has the registered name but none are registered in the name of respondent No.2. Since respondent No.2 is not registered owner of any of the trade marks in respect of which infringement is claimed, the Court at Gurugram will have no territorial jurisdiction. Prayer has, thus, been made for setting aside the impugned order and dismissing not only the application

but suit of the respondents also.

3. On the other hand, learned senior counsel for the caveator submits that although respondent No.1 does not have an office in India, however, the said respondent is the registered proprietor of the PEPSI marks in India and therefore, entitle to institute the suit. Reliance has been placed upon the judgment of the Hon'ble Supreme Court in **Zenner International GMBH & CO KG and others Vs. Anand Zenner Company Pvt. Ltd.**

2018 SCC OnLine Del 7011, wherein it has been held that a foreign corporation carrying on business in India through another entity even if not registered user within the meaning of the Act would definitely be carrying on business in India at a place where it can carry on business through its licensee or some other arrangement. He contends that as per Section 134 of the Trade Marks Act, 1999, the term “carries on business” is not confined to any principal place of business and therefore, places where foreign corporation carries out business, the Courts there will have territorial jurisdiction to entertain a suit for infringement of a trade mark.

4. Learned senior counsel has further brought to the notice of the Court the issues which have been framed by the Presiding Judge, Exclusive Commercial Court at Gurugram, vide order dated 27.04.2022. Referring to issue No.6, it is contended by the counsel that the issue with regard to the territorial jurisdiction of the Court to entertain the suit, the onus has been put upon the appellant, therefore, the said issue has to be now decided on the basis of the evidence led by the parties. Prayer has, thus, been made for dismissal of the present appeal.

5. We have considered the submissions made by the learned

FAO-COM-7-2022 (O&M)

counsel for the parties and with their assistance have gone through the impugned order and the pleadings but do not find any merit in the present appeal as in the considered view of this Court, *prima facie* respondents have been able to satisfy the trial Court with regard to the aspect of territorial jurisdiction especially in the light of framing of the issue where the onus with regard to the territorial jurisdiction of the Court to entertain the suit has been cast upon the appellant. The opinion as expresses by the Court below in the impugned order appears to be quite justified and supported by the law on this aspect, on which learned counsel for the caveator has placed reliance and has been referred to above.

6. The present appeal, therefore, stands dismissed. Caveat discharged.

CM-FACOM-28-2022

In the light of the dismissal of the main appeal, no order is required to be passed in the present application for stay as the same has been rendered infructuous.

Disposed of as such.

(AUGUSTINE GEORGE MASIH)
JUDGE

02.05.2022

Harish

(SANDEEP MOUDGIL)

JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No