

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

CR-2863-2022 (O&M)

Date of decision: 25.07.2022

Monte Carlo Limited and others

....Petitioners

Versus

Monte Carlo Fashions Ltd.

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Puneet Gupta, Advocate for the petitioners

ANIL KSHETARPAL, J (Oral)

The petitioners before this Court are the defendants in a suit for complaining infringement of trade mark. When the suit was at the preliminary stage, an application filed by the plaintiff complaining passing off has been permitted to be added by amendment.

The defendant assails its correctness by filing a revision petition under Article 227 of the Constitution of India. Learned counsel representing the petitioners submits that the matter was required to be tried by a Commercial Court and not by an Additional District Judge. He further contends that nature of the suit has been changed as previously the suit was only complaining infringement of the registered trade mark.

On a Court question, learned counsel representing the petitioners admits that the jurisdiction of the court below, to try the suit, was never taken as an objection.

While deciding the revision petition, the court is required to examine the correctness and legality of the order in question. He admits that subsequently the suit has already been transferred to the

Commercial Court. Since this objection was never taken before the trial court, therefore, this Court does not find it appropriate to permit the petitioners to take up this point for the first time before this Court, particularly, when the suit has already been transferred to the Commercial Court.

The second argument of the learned counsel is with regard to the change in the nature of the suit. In my humble opinion, there is no change in the nature of the suit, particularly when in a suit infringement of trade mark as well as passing off can be combined.

Hence, dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

25.07.2022

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE