

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

***Reserved on: 07.09.2022***

***Date of decision: 02.11.2022***

+ **RFA-IPD 4/2022**

VIVEK PURWAR AND ANR.

..... Appellants

Through: Mr.Jagdish Sagar, Mr.Praveen Kumar Jain, Mr.Naveen Kumar Jain, Ms.Shalini Jha, Ms.Rashmi Kumari and Ms.Meenakshi Dutta, Advs.

versus

HARI RAM AND SONS

..... Respondent

Through: Mr.S.K.Bansal and Mr.Ajay Amitabh Suman, Advs.

+ **RFA-IPD 5/2022 & CM 96-99/2022**

HARI RAM AND SONS

..... Appellant

Through: Mr.S.K.Bansal and Mr.Ajay Amitabh Suman, Advs.

versus

VIVEK PURWAR & ANR.

..... Respondents

Through: Mr.Jagdish Sagar, Mr.Praveen Kumar Jain, Mr.Naveen Kumar Jain, Ms.Shalini Jha, Ms.Rashmi Kumari and Ms.Meenakshi Dutta, Advs.

**CORAM:**

**HON'BLE MR. JUSTICE NAVIN CHAWLA**

1. The present cross-appeals have been filed challenging the judgment and order dated 01.06.2022 passed by the learned Additional District Judge, Central, Tis Hazari Courts, Delhi (hereinafter referred to

as the ‘learned Trial Court’) in the suit, being TM No.1054/2016, titled ***Hari Ram & Sons v. Prem Narain Purwar & Ors***, decreeing the suit filed by the plaintiff in the suit [the appellant in RFA-IPD 5/2022] for the relief of permanent injunction against the defendants in the suit [the appellants in RFA-IPD 4/2022], thereby restraining the defendants in the suit from using the trade mark ‘**HARI RAM AND SONS & HR LOGO**’.

2. The parties are referred to in the present judgment as ‘*the plaintiff in the suit*’ and ‘*the defendants in the suit*’.

#### **FACTUAL BACKGROUND**

3. The defendants in the suit are aggrieved of the impugned judgment and order on the ground that the learned Trial Court, having categorically held that it does not have territorial jurisdiction to try the suit, could not have proceeded to decree the same. It is contended that the decree passed by the learned Trial Court is a nullity.

4. On the other hand, the plaintiff in the suit is aggrieved of the finding of the learned Trial Court on the issue of lack of territorial jurisdiction and has challenged the same.

5. As the two appeals are arising from the same judgment and decree and raise the same issue of lack or otherwise of the territorial jurisdiction of the learned Trial Court, they are being disposed of by way of this common judgment.

6. The plaintiff in the suit had filed the subject-suit alleging therein that they are engaged in the business of manufacturing, marketing and

sales of sweets, *namkeens*, confectionary, fast food, *chutney* and other allied and related goods since the year 1890 in Agra in the State of Uttar Pradesh under the trade mark '**M/s. HARI RAM & SONS**'. In the year 1964, the plaintiff in the suit adopted the trade marks '**HR LOGO**' and the words '**HARI RAM & SONS**'. The plaintiff in the suit is also the registered proprietor of the mark '**HARI RAM & SONS**' registered in Classes 30 and 42 respectively.

7. It was averred that in the year 1911, Sh. Hari Ram with his father Sh. Mithulal came to Allahabad (now Prayagraj) and started a *namkeen* business in the name and style of '*M/s. Hari Ram and Sons*', preparing *samosa* and *mota sev* along with Sh. Gauri Shankar and Sh. Ram Bharose, and continued this arrangement till the year 1943. In the year 1943, Smt. Jogia (the wife of Sh. Mithu Lal and the mother of Sh. Hari Lal) partitioned all the movable and immovable properties, including the *namkeen* business, vide registered Partnership Deed dated 22.12.1943, wherein the *namkeen* business came to the share of Sh. Hari Ram and Sh. Ram Bharose. The said mark has been in use by the partnership firm since then by the legal heirs, though the partners have changed and partnership reconstituted due to the retirement and/or death of previous partners.

8. It was alleged that the defendants in the suit have adopted the same mark and are engaged in the same business as that of the plaintiff in the suit. It was alleged that the adoption of the mark by the defendants in the suit is *mala fide* and dishonest as the defendant no.1 is the brother of Sh. Ram Purwar and the uncle of Sh. Arvind Kumar Purwar, who are both

partners of the plaintiff-firm, while the defendant no.2 is the nephew of Sh. Ram Purwar and the cousin of Sh. Arvind Kumar Purwar. In a suit being OS No. 15 of 1981 titled **Sanjay Purwar v. Shiv Shanker Lal and Ors.** filed in the Court of Small Causes, Senior Division, Allahabad (hereinafter referred to as 'the Court of Small Causes'), being a suit for declaration, partition and accounts, it was held vide judgment and order dated 22.01.2000 that the business run by the plaintiff in the suit was not a joint family business; neither Sh. Sanjay Purwar nor other persons had any right to seek partition or cause interference in the business thereof. Sh. Prem Narain Purwar, who is the defendant no. 1 in the suit, was a party in that suit before the Court of Small Causes.

9. The defendants in the suit filed their written statement to contest the impugned suit, which included raising a contention that the learned Trial Court lacked territorial jurisdiction to entertain and try the suit.

10. The learned Trial Court was pleased to frame the following issues, vide order dated 21.01.2011:-

***“1. Whether this Court has territorial jurisdiction to entertain and try the suit? OPP***

***2. Whether suit suffers from mis-joinder of defendant no. 1? If so, to what effect? OPD***

***3. Whether this suit is barred by laches and acquiescence? OPD***

***4. Whether plaintiff is the prior adopter, owner/ proprietor of Trade Mark/ Trade Name/ device in question in relation to the stated goods? OPP***

***5. Whether the trade Mark/ Trade Name of defendants is identical with and deceptively similar to the Trade Marks of the plaintiff? QPP***

***6. Whether the plaintiff is entitled to decree of permanent injunction as have been claimed in the suit? OPP***

***7. Whether the plaintiff is entitled to decree of rendition accounts to access profits earned out of illegal trade activities by the defendants? OPP***  
***8. Relief.”***

11. Additional issues were framed in the suit, vide order dated 09.09.2013 as under:-

***“9. Whether the plaintiff is entitled to relief of injunction against defendant for infringement of trademark "Hari Ram & Sons"? OPP***  
***10. Whether the registration of trademark in favour of the plaintiff in relation to goods other than Namkeen, Dalmoth, Khasta, Samosa and Khatta Ghana is invalid? OPD”***

12. On consideration of the pleadings and evidence lead by the parties, the learned Trial Court, vide impugned judgment and order, held that it lacked territorial jurisdiction to try the suit. However, since evidence had already been led in the suit, the judgment was pronounced on other issues as well. The judgment being in favour of the plaintiff in the suit on issues other than territorial jurisdiction, the suit was decreed in favour of the plaintiff in the suit.

13. Before proceeding further, I shall first quote the finding of the learned Trial Court on the issue of territorial jurisdiction as under:-

***“31. The first issue is regarding jurisdiction. It is the case of the plaintiff that he has specifically mentioned in Para 25 of his plaint that defendants already solicit business in Delhi hence cause of action has arisen within the jurisdiction of Delhi. It is submitted that it is not specifically denied by defendants that they are also soliciting business in Delhi.***

***32. On the other hand, it is submitted by counsel for defendants that they have specifically denied***

*in their reply to the said para that all the allegations are false and fabricated. It is further submitted that no proof is filed by plaintiff to show that it is having business in Delhi. Plaintiff has not filed any receipts to show that he sold his goods in Delhi. He has not given name of his any agent or shops where goods of the plaintiff are sold in Delhi. It is further submitted that in cross-examination, witness of plaintiff admitted that we are not in Delhi. Further on the newspaper it is not mentioned that it is newspaper of Delhi which is filed by plaintiff on record.*

*33. I have heard both the sides and gone through the record on this issue. Plaintiff has not been able to file any document to show that he has business in Delhi and is selling his products in Delhi nor he has been able to show any document that defendant in selling his products in Delhi. Rather plaintiff himself admitted in his cross-examination that he is not doing any business in Delhi. **Hence it is not proved that the present court has territorial jurisdiction to try the present suit.** However since evidence has already been concluded in this matter and this issue of territorial jurisdiction is decided on merits at the time of disposal of the suit, I am bound to give judgment on other issues as well on merits.”*

**SUBMISSIONS ON BEHALF OF THE LEARNED COUNSEL FOR THE PLAINTIFF IN THE SUIT**

14. The learned counsel for the plaintiff in the suit submits that the above finding of the learned Trial Court is erroneous, inasmuch as, the plaintiff in the suit, in the plaint, had *inter alia* contended that the defendants in the suit are soliciting business under the impugned trade mark within the territorial limits of Delhi. This was not specifically denied by the defendants in the suit in their written statement. The defendants in the suit, having not specifically denied the same, are deemed to have admitted the said assertion and, therefore, on such

admission itself, the learned Trial Court had the requisite territorial jurisdiction to try the suit. In support of this submission, he places reliance on the judgment of the Division Bench of this Court in ***Pfizer Enterprises Sarl v. Cipla Ltd.***, 2009 (39) PTC 358 (Del) (DB). He submits that solicitation of business is an important part of the cause of action and, therefore, the learned Trial Court would have the necessary territorial jurisdiction. In support, he places reliance on the judgments of this Court in ***Govardhan Motels and Restaurants v. I. Subramanyam and Ors.***, 2008 (36) PTC 513 (Del.) and ***M/s Ruchi Pvt. Ltd. & Others v. M/s Indian Flame Enterprises & Others***, 2001 SCC OnLine Del 968.

15. The learned counsel for the plaintiff in the suit further submits that the learned Trial Court, vide order dated 02.02.2019, had rejected the application of the defendants in the suit raising a preliminary objection to the territorial jurisdiction of the Court; observing that as the defendants in the suit had not specifically denied the fact of their conducting business at Delhi, the Court would have the territorial jurisdiction to entertain the suit. He submits that the position did not change thereafter and, therefore, as there was no categorical denial on the part of the defendants in the suit to their soliciting business at Delhi, there was no requirement of the plaintiff in the suit to lead any further evidence.

16. The learned counsel for the plaintiff in the suit further submits that the defendants in the suit, in their written statement had further pleaded that they have continuously been promoting their goods and business under the impugned trade mark through advertisement and publicity in leading newspapers, namely, 'Amar Ujala', 'Hindustan' and 'Dainik

*Jagran*', as also in magazines, namely, '*Yellow India*', '*Trade Hoardings*', and television channels such as '*Sahara U.P. T.V. Channels*'. It was further pleaded that the mark of the defendants in the suit is a '*well-known trade mark*' within the meaning of Section 2(1)(zg) of the Trade Marks Act, 1999 (in short, 'the Act'). He submits that, therefore, as the defendants' mark was being advertised within the territorial limits of Delhi, this Court would have the territorial jurisdiction, and on the own contention of the defendants in the suit that it is a well-known trade mark, clearly they were expressing their right to use the trade mark in Delhi as well. He submits that even the pleadings of the defendants in the suit prove that the learned Trial Court had territorial jurisdiction to entertain the suit. He places reliance on the judgments of this Court in ***Bhatia Industries and Ors. v. Pandey Industries and Ors.***, 2011 SCC OnLine Del 238 and ***Amar Soap Factory v. Public Grant Udyog Samiti***, 1984 SCC OnLine Del 258.

17. The learned counsel for the plaintiff in the suit further submits that admittedly, the defendants in the suit had applied for the registration of their trade mark with the Registrar of Trade Marks at Delhi. The said application had no conditions or restrictions on the territorial limit and was filed for the entire country, including for the territory of Delhi. Therefore, even on apprehension that the said mark would be used in Delhi by the defendants in the suit, this Court would have the territorial jurisdiction to entertain the suit praying for an order of injunction. In support, he places reliance on the judgment of this Court in ***Pfizer Products Inc. v. Rajesh Chopra and Ors.***, 2007 SCC OnLine Del 868.

**SUBMISSIONS ON BEHALF OF THE LEARNED COUNSEL FOR THE DEFENDANTS IN THE SUIT**

18. On the other hand, the learned counsel for the defendants in the suit submits that the defendants in the suit had categorically denied the assertion of the plaintiff in the suit that the defendants in the suit carry on their business in Delhi. He submits that, therefore, there was no admission in the pleadings of which the plaintiff in the suit could have taken any advantage. He submits that the plaintiff in the suit, during his cross-examination had also admitted that the plaintiff in the suit is not carrying on its business at Delhi. On being cross-examined on the basis of making an assertion that the defendants in the suit carry on their business in Delhi, the plaintiff's witness gave an evasive answer and therefore, the learned Trial Court has rightly arrived at a conclusion that there was no evidence produced by the plaintiff in the suit in support of its assertion that the defendants in the suit carry out their business within the territorial limits of Delhi.

19. On the plea of the plaintiff in the suit that the defendants in the suit have stated about advertising their trade mark in print and electronic media, the learned counsel for the defendants in the suit submits that the defendants in the suit had clearly stated in their written statement to the suit that these newspapers have circulation only in the State of Uttar Pradesh. The TV channel, by its very name, is again targeting viewers in the State of Uttar Pradesh only. Therefore, these advertisements in print and electronic media would not confer any jurisdiction in the Courts at Delhi. He further submits that in any case, advertisements cannot vest the

learned Trial Court with jurisdiction. In support of this assertion, he places reliance on the judgment of the Supreme Court in ***Dhodha House v. S.K. Maingi***, (2006) 9 SCC 41.

20. The learned counsel for the defendants further submits that the plea of the defendants in the suit that the mark of the defendants in the suit is a ‘*well-known trade mark*’ under the provisions of the Act, must not be read out of context and are contrary to their submission that the defendants are confined in their operations only to the city of Prayagraj.

21. He further submits that the mere filing of an application for the registration of the trade mark before the Registrar of Trade Marks at Delhi would again not vest this Court with the requisite territorial jurisdiction. In this regard, he places reliance on the judgment of the Supreme Court in ***Dhodha House (supra)*** and of this Court in ***St. Ives Laboratories Inc. v. Arif Perfumers and Ors.***, 2009 SCC OnLine Del 208.

#### **ANALYSIS AND FINDINGS**

22. I have considered the submissions made by the learned counsels for the parties.

23. At the outset, I shall consider the submission made by the learned counsel for the plaintiff in the suit that there was an admission of the defendants in the suit of soliciting customers at Delhi, that is, within the territorial jurisdiction of the learned Trial Court and therefore, no further proof thereof was required to be furnished by the plaintiff in the suit to invoke the territorial jurisdiction of the learned Trial Court. In this regard,

he had drawn my attention to the following averments made in the plaint and in the written statement:

**Plaint**

*“25. This Hon’ble Court has the territorial jurisdiction to try and adjudicate upon the present suit. The defendants are committing the impugned acts within the jurisdiction of this Hon’ble Court by conducting soliciting, selling and marketing their impugned goods and business under the impugned trade mark/label/trade name in Delhi besides other parts of the country. The plaintiff is carrying on its said goods and business under the said Trade Mark/label in Delhi. The plaintiff’s trade mark applications are effected from the Trade Marks Registry, Delhi. Further the defendants have filed application for registration of impugned trade mark on all India basis including Delhi. The cause of action in whole and/or in part has arisen within the jurisdiction of this Hon’ble Court. The plaintiff has tremendous goodwill and reputation in its said trade marks/labels in Delhi which is being tarnished by defendants impugned activities of the Defendants in Delhi. The plaintiffs said proprietary rights are being prejudicially affected in Delhi due to the defendants impugned activities. This Hon’ble Court, as such, has the jurisdiction to try and adjudicate the present suit and also by virtue of Section 62 (2) of the Indian Copyright Act, 1957.”*

**Written Statement**

**Preliminary Objections:**

1. That this Hon’ble Court has no jurisdiction to try and entertain the present suit

*The Plaintiff as well as the Defendants actually and voluntarily reside and carry on their business for gains at Allahabad (U.P.) exclusively in as much as the Plaintiff and the Defendants manufactures and supply all their goods at Allahabad only, and there is no*

*manufacture, marketing and sale of their Products outside the territory of U.P. Both, the Plaintiff as well as the Defendants have their offices and base at Allahabad alone. The Plaintiff as well as the Defendants do not have any business activity in Delhi and within the territorial jurisdiction of this Hon'ble Court. The plaintiff has not placed even any prima facie evidence on record to the contrary. Thus there is no question of infringement of Plaintiff's trade mark, copy right or passing off their products by the Defendants at Delhi within the jurisdiction of this Hon'ble Court. Therefore as per the provisions of Section 20 of the C.P.C. and Section 134 of Trade Marks Act, 1999 this Hon'ble Court does not have jurisdiction to entertain and try this Suit.*

*2. The defendants are exclusively using their Trademark Hari Ram and Sons Papad since 2001 within the State of Uttar Pradesh. The Plaintiffs are well aware of this fact as they are also related to the defendants and further the place of the business activities of the defendants are exclusively in Uttar Pradesh and more prominently in Allahabad.....”*

**Additional Plea:**

*“6. That defendants have been continuously promoting their said goods and business under the said trade mark/ label through different means and modes including through their advertisements and publicity in leading news papers, namely "AMJR UJALA" "HINDUSTAN and DAINIK JAGRAN", having circulation in Uttar Pradesh, trade literature magazines, namely Yellow INDIA, trade hoardings and Sahara U.P. T.V. Channels, etc. That defendants have already spent huge amounts of money on the publicity in consequence thereof and having regard to the excellent quality and the high standard of the products of the defendants under their said trade mark/ label, they have acquired high reputation and they presently enjoy tremendous goodwill and enviable reputation in the market. The defendants also give*

*high importance to its packaging of their goods so that the spices/papad retains its flavour and quality. The defendants also put the nutritional value of their products in their packaging and therefore gives maximum importance to the quality of their products.*

*7. That said Trade mark/ Label have already become a distinctive indicium of the defendants and their said goods and business thereunder. The purchasing public, traders and Public at large associate, Identify and distinguish the said Trade Mark/ Label with the defendants and defendants goods and business alone. The defendants contend that the said Trade Mark/ Label have acquired secondary significance denoting the said goods and business of the defendants and are recognized with the defendants' source alone. The defendants' said Trade Mark/ Label 's well known Trade Mark within in the meaning of Section 2 (1) (z g) of the Trade Marks Act, 1999."*

**Written Statement**

**Parawise reply:**

*"Para 25. That the contents of Para No.25 are wrong and ill advised hence are denied. The plaintiff and defendants reside and work for gain at Allahabad and have their offices and business activities exclusively at Allahabad (U.P.) and none of the party has/ had any business activity in Delhi of any kind including sale for commercial purposes. It is denied that the defendants are marketing and selling their goods in Delhi and other parts of the country. As stated hereinabove the sale of their products is confined to the Uttarpradesh only. The Plaintiff has made bald averments in the said para without any basis. Mere filing of the trademark applications for registration of the trademark in delhi does not confer jurisdiction before this Hon'ble Court. The jurisdiction of the offices of the Trademark Registry has been fixed by the trademarks Registry i.e for Uttarpradesh, state of J & K,*

*Punjab, Himachal Pradesh and Chandigarh the trademark registry at Delhi will have the jurisdiction for registration of trademark. The plaintiffs goods are not at all sold in Delhi and therefore the question of goodwill for their trademark does not arise at all. The defendants have never sold their products in Delhi nor they have any intention to sell their products in Delhi or within the jurisdiction of this Hon'ble Court. In fact the products of plaintiff and defendants are entirely different and distinct. This Hon'ble Court, therefore, has no jurisdiction to entertain and try the present suit against the defendants either under section 134 of the Trade Marks Act, 1999 or under section 62 (2) of the Copy Right, Act 1957 or under Section 20 of C.P.C."*

24. As noted hereinabove, the primary contention of the plaintiff in the suit is that while the plaintiff in the suit, in paragraph 25 of the plaint reproduced hereinabove, had *inter-alia* contended that the defendants in the suit are soliciting business under the impugned trade mark within the territorial limits of Delhi, the same has not been specifically denied by the defendants in the suit in their written statement. I find the said submission untenable. A wholistic reading of the written statement filed by the defendants in the suit would clearly show that the defendants in the suit have explicitly stated that their business activities are confined exclusively to the State of Uttar Pradesh, and more particularly to the city of Prayagraj, and have no business activities in Delhi of any kind 'including sale for commercial purpose'. The defendants in the suit have denied that they are marketing and selling their goods in Delhi. They reiterate that the sales of their product are confined to the State of Uttar Pradesh. Merely because they have not used the word 'soliciting' in their written statement would not mean that there is no denial of this fact in the

written statement filed by the defendants in the suit. It is trite law that the written statement has to be read as a whole and sentences cannot be read in isolation. [Refer: *Express Towers P. Ltd. & Anr. V. Mohan Singh & Ors.*, 2007 SCC OnLine Del 1213; and *Charanjit Singh v. Kehar Singh*, 2006 SCC OnLine Del 578.

25. Similarly, reliance of the learned counsel for the plaintiff in the suit on the order dated 02.02.2009 passed by the learned Trial Court dismissing the application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (in short, the 'CPC') filed by defendants in the suit, is also of no assistance to the plaintiff in the suit, inasmuch as, not only the said order recorded that it was on the basis of a *prima facie* opinion of the learned Trial Court at that stage, but also because thereafter, a specific issue regarding the territorial jurisdiction of the learned Trial Court was framed vide order dated 21.01.2011. The plaintiff in the suit was, therefore, put to notice that there is no admission of the territorial jurisdiction of the learned Trial Court in the pleadings and that the plaintiff in the suit would have to prove it on leading evidence.

26. The judgment of this Court in *Govardhan Motels and Restaurants (supra)* has stated that defendants soliciting the customers within the territorial jurisdiction of the Court may be one of the criteria for vesting the jurisdiction in a Court. In the facts of that case, it was found that the said assertion was supported by the report of the Local Commissioner appointed by the Court therein. In spite of the same, the Court clarified that the said issue was being decided at the preliminary stage, where the averments made in the plaint are assumed to be correct. In the present

case, as the parties have undergone the trial and led their respective evidence, the referred judgment would have no application. The plaintiff has led no evidence to prove that the defendants were indeed soliciting business in the impugned trade mark in Delhi.

27. Similarly, in the case of *M/s Ruchi Pvt. Ltd.* (*supra*), the Court, while considering the application filed under Order XXXIX Rule 1 and 2 of the CPC and the averment made in the plaint, held that the Court possesses the territorial jurisdiction to entertain the suit. The said judgment, having been passed at an *ad-interim* stage, again would not apply to the facts of the present case.

28. In *Pfizer Enterprises Sarl* (*supra*), the defendant had not denied the assertion of the plaintiff that the complained product was available for sale and distribution in Delhi. It was in that peculiar fact that the Court held that in absence of denial to such an important averment, the plaintiff would, in fact, not require evidence on this aspect and the return of the plaint was improper. In the present case, as noted hereinabove, on a wholistic reading of the written statement, mere absence of the word '*soliciting*', cannot lead to an inference of an admission against the defendants in the suit. The said judgment, therefore, would be of no avail to the plaintiff in the suit.

29. The contentions of the plaintiff in the suit that the defendants in the suit, themselves having contended that they have been advertising their product in print as also electronic media, the learned Trial Court would have the territorial jurisdiction to entertain the suit, also cannot also be accepted. In this regard, paragraph 6 of the '*Additional Plea*' taken in the

written statement of the defendant nos.2 and 3 in the suit has been reproduced hereinabove. The same clearly shows that the defendants in the suit had pleaded that they are advertising their products in newspapers 'having circulation in Uttar Pradesh'. The television channel mentioned in the written statement of the defendants in the suit was 'Sahara U.P. T.V. Channels'. Clearly therefore, it was the assertion of the defendants that the advertisements, both in print as also electronic media, were targeted to customers in the State of Uttar Pradesh. In my opinion, such an advertisement cannot vest jurisdiction in a Court located at Delhi, as the said advertisements were not intended for the customers at Delhi. In **Dhodha House** (*supra*), the Supreme Court, placing reliance on another judgment of the Apex Court in **Oil and Natural Gas Corporation v. Utpal Kumar Basu**, (1994) 4 SCC 711, held that an advertisement appearing in a journal or newspaper by itself would not confer any jurisdiction on the Court, if it otherwise did not have any.

30. In the present case, both the plaintiff and the defendants in the suit are admittedly carrying on their business only within the State of Uttar Pradesh. This has been also admitted by the witness appearing for the plaintiff in the suit. Merely because in the course of their business, the defendants in the suit have advertised their products in the print as also electronic media, which may have a spill over circulation in Delhi (which also has not been proved by the plaintiff in the present case), it cannot be said that the learned Trial Court at Delhi would gain jurisdiction to entertain the suit of trade mark infringement and passing off against the defendants in the suit.

31. In *Amar Soap Factory (supra)*, this Court held that the defendant thereto had advertised his mark in a newspaper '*widely circulated in Delhi and sold their products at Delhi*'. It was based on this finding that this Court held that the Court at Delhi had the requisite territorial jurisdiction to try the matter.

32. Coming to the submission of the learned counsel for the plaintiff in the suit that the defendants in the suit have filed for the registration of its trade mark at Delhi and such registration is not confined to any particular territory but to the whole of India, including Delhi, this Court would have jurisdiction, in my opinion, the same would have been a relevant consideration at the stage of considering jurisdiction of this Court at a preliminary stage. Once the parties have led their evidence and it is the specific case on behalf of the defendants in the suit that the defendants in the suit neither carry out nor intend to carry out any business in Delhi, the mere filing of such an application before the Registrar of Trade Marks would not vest jurisdiction in the learned Trial Court to entertain the suit. The application has to be necessarily filed at Delhi as the jurisdictional office of the Registrar of Trade Marks is situated at Delhi. Though, an application is applied for on a pan-India basis, the trade mark is yet to be registered. The defendants in the suit could also amend their application so as to confine the territorial limit of their registration. The same could also be directed by the Registrar of Trade Marks while considering the application of the defendants in the suit. As noted hereinabove, the plaintiff and the defendants in the suit both carry on their business only in the State of Uttar Pradesh.

33. In ***Dhodha House*** (*supra*), the Supreme Court has held that a cause of action will arise only when a registered trade mark is used and not when an application is filed for registration of the trade mark. The suit may lie where an infringement of trade mark or copyright takes place but a cause of action for filing the suit would not arise within the jurisdiction of the Court only because an advertisement has been issued in the Trade Marks Journal or any other journal, notifying the factum of filing of such an application.

34. In ***St. Ives Laboratories Inc.*** (*supra*), a Coordinate Bench of this Court has held that the registration of a trade mark in Delhi cannot be a ground to invoke the jurisdiction of a Delhi Court. The same was reiterated in a judgment of this Court in ***M/s Matrumal Dhannalal Oil Mill v. M/s Abhishek Enterprises***, 2010 SCC OnLine Del 1100.

35. In ***Pfizer Products Inc vs. Rajesh Chopra*** (*supra*), this Court was considering an application filed under Order VII Rule 10 of the CPC and held that the threat of sale of offending goods in Delhi would itself confer the jurisdiction of a Court at Delhi to entertain the suit claiming injunction in respect thereof. However, in the present case, where this threat is not found to be genuine, at a trial of the suit, it cannot be said that the Court would still have the jurisdiction to entertain the suit. It would always depend on the facts and circumstances of the given case to determine whether the Court has territorial jurisdiction to entertain the suit or not. In the totality of facts, pleadings and evidence of the parties, it cannot be accepted that any part of the cause of action had arisen within the territorial jurisdiction of the learned Trial Court.

36. Order VII Rule 10 of the CPC is reproduced herein below:

*“10. Return of plaint.- (1) Subject to the provisions of rule 10A, the plaint shall at any stage of the suit be returned to be presented to the court in which the suit should have been instituted.*

*Explanation: For the removal of doubts, it is hereby declared that a court of appeal or revision may direct, after setting aside the decree passed in a suit, the return of the plaint, under this sub-rule.*

*(2) Procedure on returning —On returning a plaint, the Judge shall endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reasons for returning it.”*

37. It is trite law that the plaint can be returned ‘*at any stage of the suit*’. Therefore, on the recording of the evidence, if the Court finds that in the given facts, the Court has no territorial jurisdiction, it will return the plaint to be presented before the Court in which the suit should have been instituted. The Explanation to Order VII Rule 10 of the CPC vests this power even in the Court of appeal or revision.

38. It is also settled law that once the Court finds that it has no territorial jurisdiction to entertain or adjudicate the suit, it must return the plaint to be filed in a Court of appropriate jurisdiction. The finding thereafter rendered by it, though may have to be necessarily given in view of Order XIV Rule 2 of the CPC, shall not be binding on the parties; the same would be a nullity, as held by the Supreme Court in **Kiran Singh & Ors. v. Chaman Paswan & Ors.**, (1955) 1 SCR 117.

39. In the present case, not only was the objection of lack of territorial jurisdiction taken by the defendants in the suit at the initial stage of the trial of the suit, but an issue in that regard has been framed and has been answered by the learned Trial Court in favour of the defendants in the suit. The proper and only course open to the learned Trial Court thereafter was to return the plaint to the plaintiff in the suit to file the same before a Court having jurisdiction. The learned Trial Court, having held that it lacked territorial jurisdiction, could not have proceeded to decree the suit in favour of the plaintiff in the suit.

**RELIEF**

40. In view of the above, the finding of the learned Trial Court on issue no.1 as regard the lack of territorial jurisdiction of the court to adjudicate the suit, is upheld. Consequently, the plaint is returned to the plaintiff in the suit to be filed before a Court of competent jurisdiction. The finding of the learned Trial Court on the other issues is set aside and shall not be binding on the parties, in view of the lack of territorial jurisdiction of the Court.

41. The decree passed by the learned Trial Court is, consequently, also set aside.

42. The cross-appeals are disposed of in the above terms along with the pending applications. There shall be no order as to cost.

**NAVIN CHAWLA, J.**

**NOVEMBER 02, 2022/rv/AB/Ais**