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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.04.2023

PRONOUNCED ON : 12 .06.2023

CORAM:

THE HON'BLE Mr. JUSTICE S.SOUNTHAR

A.No.2100 of 2023

in C.S (COMM DIV) No.247 of 2022

M/s.MMUNNA Garments,
Represented by its Proprietor, Mr.Mohammed Kalith,
#19/20A, Royapuram Main Road, Tirupur – 641 601,
Tamil Nadu, India.

... Applicant

Vs.

M/s.AQJ Apparels Private Limited,
Rep, by its Managing Director Mr.Shiraj Abdulgani Patanwala,
No.31A, Thiru Vi Ka Nagar North,
1st Street, College Road, Tirupur – 641 602,
Tamil Nadu, India.

... Respondent

Application filed under Order XIV Rule 8 of Original Side Rules r/w
Clause 12 of Letter Patent Act, praying to revoke the leave granted to the
respondent in A.No.5013 of 2022 in C.S(Comm. Div).SR.No.101355 of 2022
vide order dated 28.11.2022.



For Applicant
For Respondent

:M/s.Suresh Kumar
:M/s.Ramesh Ganapathy

O R D E R

This application has been filed by the plaintiff/first defendant seeking revocation of leave granted to the respondent in A.No.5013 of 2022 by order dated 28.11.2022.

2. The respondent herein filed the above suit for injunction restraining the applicant herein from infringing the registered trademark of the respondent AQJ's M&M by using the mark “**MM MMUNNA**” and for other reliefs. The respondent filed an application in A.No.5013 of 2022 seeking leave to sue mainly on the ground that the second defendant in the suit sold applicant/first defendant products within territorial limits of this Court at Old No.12, Singara Garden, 8th Lane, (Opp. To K.C.S Girls School), Old Washermenpet, Chennai – 600 021. The invoice for purchasing of infringing products within the territorial limits of this Court was produced by the respondent as Plaint Document No.17.



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3. On service of suit summons, the applicant/first defendant has come up with this petition seeking revocation of leave. It is the case of the applicant that the applicant is carrying on business at Tiruppur. The respondent/plaintiff has got its registered office at Tiruppur within the territorial jurisdiction of District Court Tiruppur. It is also stated that neither the applicant nor the respondent have got any other branch or office within the territorial limits of this Court. The applicant had further averred that allegedly infringing products, evidence and witnesses all lie within the territorial jurisdiction of District Court Tiruppur. When the place of business of both the applicant and respondent is Tiruppur, the entire cause of action arose within the territorial limits of District Court, Tiruppur and hence leave granted to the respondent needs to be revoked. It was further averred by the applicant that merely because the respondent claimed that second defendant in the suit purportedly sold the infringing product within the territorial jurisdiction of this Court, the respondent is not entitled to obtain leave to sue.

4. The respondent herein filed a counter affidavit stating that the infringing products of the applicant were sold by the second defendant within



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the territorial limits of this Court and hence part of the cause of action arose within jurisdiction of this Court. It was also stated that this Court after taking into consideration part of the cause of action arose within its territorial limits allowed the application for grant of leave to sue. It is also averred that the second defendant in his counter affidavit to Original Application Nos.802 to 804 of 2022, admitted selling of infringing products within the territorial limits of this Court. Therefore, the respondent herein prayed for dismissal of the present application seeking revocation of leave.

5. Heard the arguments of the learned counsel for the applicant and the learned counsel for the respondent.

6. The learned counsel for the applicant submitted that merely because single sale of infringing product had taken place at Chennai or part of the cause of action arose within territorial limits of this Court, the respondent is not entitled to maintain a suit before this Court. In support of his contention, the learned counsel for the applicant relied on the following judgments.

(i) *F.Hoffmann-La Roche Ltd and another Vs Intas*



Biopharmaceuticals Limited, reported in CDJ 2013 MHC2364;

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***(ii) K.K.Rajan, Trading as Shar Industries and Another Vs
M/s.V.Vidhya Industries, a Registered Partnership Firm, Coimbatore,
reported in CDJ 2019 MHC 4621;***

7. The learned counsel for the respondents submitted that under Clause 12 of the Letters Patent Act, when part of the cause of action arose within the territorial limits of this Court, it can exercise jurisdiction over the entire suit. The learned counsel by taking this Court to the order dated 28.11.2022 made in leave to sue application submitted that leave was granted to the respondent after having satisfied that part of the cause of action namely sale of infringed goods had taken place within the territorial limits of this Court and consequently it need not be revoked. The learned counsel relied on the following judgments in support of his contentions:

***(i) M/s.Duro Flex Pvt., Limited Vs Duroflex Sitzings System 150,
reported in 2014-5-LW-673;***

(ii) Madanlal Jalan Vs. Madanlal reported in AIR 1949 Cal 495;

***(iii) Unreported judgment of this Court in Application No.8110 of
2019, dated 16.12.2019;***



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8. It is settled law under Clause 12 of the Letters Patent Act, the Court has got discretion to entertain a suit even if only a portion of the cause of action arose within its territorial limits. In other words, even if a portion of the cause of action arose outside the territorial limits of this Court, this Court can entertain the suit and exercise jurisdiction over the entire suit. The only condition that the plaintiff, in such case is he must obtain prior leave of the Court. The exercise of its discretion available to the Court under Clause 12 of Letters Patent was very well explained by *Madanlal Jalan Vs. Madanlal* reported in AIR 1949 Cal 495, the relevant observation of the Calcutta High Court, in this regard is as follows:

"On a consideration of the legal principles established by the judicial decisions mentioned above it seems to me that balance of convenience is a material consideration in the exercise of discretion under Cl. 12. From these judicial authorities the following propositions may, I think, be enunciated:

(a) that the application lies for revoking the leave granted under Cl. 12 of the Letters Patent;



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(b) that such an application should be made at an early stage of the suit and delay and acquiescence may be a bar to such an application;

(c) that if the application depends on difficult questions of law or fact the Court should not revoke leave on a summary application but should decide the question at the trial;

(d) that if the defendant shows clearly that no part of the cause of action arose within jurisdiction the leave should be revoked as a matter of course;

(e) that if only a part of the cause of action arose within jurisdiction, then it is a question of discretion for the Court to give or refuse leave or where leave has already been granted to revoke or maintain the leave;

(f) that assignment is a very important part of the cause of action in a suit by the assignee;

(g) that in giving or refusing leave or maintaining or revoking leave the Court will ordinarily take into consideration the balance of convenience and may, if the balance is definitely in favour of the defendant, apply the doctrine of forum convenience;



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(h) that the Court may refuse leave or revoke leave on the ground of balance of convenience although there be no evidence of bad faith or abuse of process on the part of the plaintiff;

(i) that if the cause of action is founded on an assignment within jurisdiction of a negotiable instrument the Court will in recognition of the principle of negotiability insist on a far greater degree of balance of convenience in favour of the defendant and will more readily give or maintain leave than in other cases of assignment;

(j) that if the Court is satisfied that the suit has been filed mala fide for the purpose of harassing or oppressing the defendant or might result in injustice the Court should in all cases readily refuse leave or if leave has already been granted revoke the leave as a matter of course."

9. In ***M/s.Duro Flex Pvt., Limited Vs Duroflex Sitzings System 150, reported in 2014-5-LW-673***, a Full Bench of this Court had occasion to consider the applicability of principles of “Forum Conveniens” to the application for leave to sue under Clause 12 of Letters Patent. The relevant



observation of the Full Bench is as follows:

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"II. Whether the principles of forum conveniens or analogous principles apply to consideration of an application for leave to sue under Clause 12 of the Letters Patent in case part of cause of action arises at Chennai?"

49. Insofar as the second question is concerned, we have already observed in paragraph 21 aforesaid that learned counsel for the parties are ad idem that in matters of grant of leave under Clause 12 of the Letters Patent, the principles of forum conveniens would be applicable. It is trite to say that the principles of forum conveniens really have no application to civil proceedings governed by the Code of Civil Procedure and are applicable primarily to foreign forums (Horlicks case and Abdul Gafur's case supra).

50. A number of judgments were cited in the context of Section 62 of the Copyright Act, which gave the discretion to the litigant to decide the forum, including of this Court in Brooke Bond (India) Ltd. case (supra). Interestingly, this very Court in Glaxo Operations U.K. Ltd. (supra) observed that the expression 'carrying on



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business' is too wide to embrace the branch or branches where business activities are carried on. The jurisdiction of the Court under Section 20 of the Code of Civil Procedure is different from the jurisdiction under Clause 12 of the Letters Patent. In a proceeding under Clause 12 of the Letters Patent, the plaintiff does not have an absolute right to bring proceedings in the High Court and can only do so with the prior leave of the Court (Food Corporation of India case (supra)). Thus, what is to be seen in case of grant or refusal of leave or revocation of leave is the convenience of the parties or appropriateness of the jurisdiction. Balance of convenience was considered to be material for exercise of discretion under Clause 12 of the Letters Patent and thus, steps have been enunciated by the Calcutta High Court in Madanlal Jalan's case (supra).

51. A number of relevant passages from different judicial pronouncements on the principles of forum conveniens were referred to, which have been enunciated in paragraph 37 aforesaid. The principle of balance of convenience has been held to be an expansion of the doctrine of forum conveniens. In



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Seshagiri Row's case (supra), this Court held that having regard to the wordings of Clause 12 of the Letters Patent, despite part of cause of action arising within the local limits, the Court may decline leave to sue. The question of convenience could not thus be excluded from consideration.

52. In the aforesaid context, in Horlicks Ltd. case (supra), it has been rightly observed that it is appropriateness or suitability of forum which is the test while deciding the question of forum conveniens and thus, a plaintiff does not have an absolute right to bring proceedings in High Court and can do so only with the prior leave of the Court. Thus, the mere fact that a part of cause of action has arisen within the jurisdiction of the Court itself may not be considered to be a determinative factor, compelling the Court to decide the matter on merits. The convenience of all the parties has to be seen (India TV Independent News Service Pvt. Ltd. case (supra)).

53. In paragraph 31 aforesaid, three situations have been set out which arise for grant of leave arising out



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of a trademark infringement. In two eventualities, the question of obtaining prior leave would not arise, i.e., when the plaintiff resides within the jurisdiction of the Court, benefit conferred by Section 134(2) of the Trade and Merchandise Marks Act, 1958 and when the defendant resides within the jurisdiction of the Court. It is in the third eventuality which is material for the controversy. On the plea of the appellant that the situs of the Trademark Registry within the jurisdiction of the Court would give a part of cause of action on the issue of registration of the trademark alone being sufficient, we have already given a finding under the first question of law aforesaid. Thus, a bundle of facts would determine whether the cause of action has arisen qua the trademark infringement within the jurisdiction of the Court.

54. We may add that a Division Bench of this Court comprising two of us (S.K.K.,CJ. and M.S.N.,J.) had an occasion to examine the applicability of the principles of forum conveniens in a case of writ proceedings in Bharat Bhogilal Patel and others v. Union of India and others reported in MANU/TN/1915/2014 : 2014-5-L.W.



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289 : (2014) 7 M.L.J. 641). In the context of that judgment, we referred to the decision of a five judges' bench of the Delhi High Court in *Sterling Agro Industries Ltd. v. Union of India* reported in (MANU/DE/2838/2011 : A.I.R. 2011 Delhi 74), which had gone into the doctrine of *forum conveniens vis-à-vis* the concept of cause of action. In the context of that judgement, it was observed in *Sterling Agro Industries Ltd.* case (*supra*) as under :--

"The concept of *forum conveniens* fundamentally means that it is obligatory on the part of the Court to see the convenience of all the parties before it. The convenience in its ambit and sweep would include the existence of more appropriate forum, expenses involved, the law relating to the *lis*, verification of certain facts which are necessitous for just adjudication of the controversy and such other ancillary aspects. The balance of convenience is also to be taken note of. The principle of *forum conveniens* in its ambit and sweep encapsulates the concept that a cause of action arising within the jurisdiction of the Court would not itself constitute Court to entertain the matter. While exercising jurisdiction under Articles 226 and 227 of



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the Constitution of India, the Court cannot be totally oblivious of the concept of forum conveniens."

The conclusion thus arrived at was that the principles of forum conveniens, though applicable to the international law as a principle of Comity of Nations, would apply to the discretionary remedy under Article 226 of the Constitution of India.

55. In yet another decision in Fathima Bathool v. MM. Zulaiha MANU/TN/2909/2014 : 2014-5-L.W. 579 : 2014 (6) C.T.C. 241, a Division Bench of this Court comprising two of us (S.K.K.,CJ. and M.S.N., J.) had occasion to consider an identical issue. In the aforesaid case, the leave to sue was revoked on the basis that a major portion of the suit properties was situated outside the jurisdiction of the High Court. Applying the principles of forum conveniens, it was held that since the parties/witnesses who had knowledge with regard to certain transactions alleged in the plaint would have to be examined and who were also ordinarily residing in Tuticorin, the suit should be instituted in the Court of local jurisdiction.



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56. *There is little doubt that the principles of forum conveniens, though not applicable to civil proceedings, have a role to play insofar as the consideration of grant of leave or revocation thereof under Clause 12 of the Letters Patent is concerned. This is irrespective of the fact as to what expression is used. As observed aforesaid, the balance of convenience is also forum conveniens. The test applied is of appropriateness or suitability of the forum which ought to apply, whether it be called forum conveniens or that the jurisdiction of the Court under Section 20 of the Code of Civil Procedure is different from Clause 12 of the Letters Patent (Food Corporation of India case (supra)).*

57. *We are thus of the view that in considering an application for grant of leave or revocation thereof, the appropriateness or suitability of the forum would be material and to that extent, principle akin to forum conveniens would apply.*

10. A close reading of the above judgment of the Full Bench of this Court in ***M/s.Duroflex case*** would make it clear that despite the fact part of



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the cause of action for the suit arose within the territorial limits, this Court may decline to grant leave to sue.

11. While exercising discretion in this regard, the Court can take into consideration convenience of all the parties concerned. Actual test to be applied is appropriation or suitability of forum.

12. In the case on hand, the plaintiff has approached this Court mainly on the ground that there was a sale of infringed products within the territorial limits of this Court by the second defendant. The plaint Document No.17 is the invoice for purchase of infringing product. Whether the single instance of sale of product can be taken into consideration for exercising discretion in favour of the plaintiff came up for consideration before this Court in ***F.Hoffmann-La Roche Ltd and another Vs Intas Biopharmaceuticals Limited, reported in CDJ 2013 MHC2364***, wherein the Division Bench of this Court observed as follows:

51.It is a well settled position in law that a sporadic sale would not constitute 'commercial sale' in the normal



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course of business. Further, the appellants had not been in a position to show that Vitman Pharma is the authorized agent or stockist of the respondent. There is nothing on record to show that Vitman Pharma had sold the infringing product as an authorized agent of the respondent, showing the causal link.

13. Even in the present case, the perusal of the plaint averment would suggest that there is no averment in the plaint that the second defendant in the suit is the authorized agent of the respondent/first defendant and he sold the infringing product as the authorized agent of the respondent.

14. ***In K.K.Rajan, Trading as Shar Industries and Another Vs M/s.V.Vidhya Industries, a Registered Partnership Firm, Coimbatore, reported in CDJ 2019 MHC 4621***, this Court, while dealing with the similar case observed as follows:

Though it is alleged in the plaint that the defendant's goods are also available at Chennai the entire cause of action for the alleged passing of goods and the defendant alleged adoption of prior mark of the



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plaintiff arose only within the jurisdiction of the Coimbatore Courts, where the plaintiff and first defendant are residing at Coimbatore. Such being the position even assuming that whether certain goods are marketed at Chennai part of the cause of action arose within the local jurisdiction of this Court, as per the dictum laid down by the Supreme Court and the judgment of the Full Bench of this Court, convenience of all the parties has to be seen. Therefore, mere fact that the part of the cause of action arose within this court itself may not be considered to determine the jurisdiction.

15. In the case on hand, admittedly, both the applicant/first defendant and the respondent/plaintiff are carrying on business within the territorial limits of District Court, Tiruppur, as seen from the address given in the plaint. The alleged infringement of trademark and copyright has taken place within the territorial limits of Court at Tiruppur. All the material witnesses appeared to be available in Tiruppur as both of them have got registered office at Tiruppur. The respondent/plaintiff has chosen to file the present suit before this Court, merely on the allegation that the infringing products of the



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applicant/first defendant were sold by the second defendant within the territorial limits of this Court. Merely because the part of cause of action arose within the territorial limits, this Court is not bound to grant leave to sue.

16. As held by the Full Bench of this Court in *Duroflex case*, while considering the application under Clause 12 of Letters Patent, this Court must take into consideration the balance of convenience of all the parties and the suitability of the forum to entertain the suit. When both the applicant and respondent have their registered office within the territorial limits of District Court, Tiruppur, the respondent need not travel to Chennai and file the suit before this Court. It is obligatory on the part of the Court to see the convenience of all the parties concerned. It will be convenient for both the applicant and respondent to agitate the matter before the Court at Tiruppur. An isolated sale of infringing product by the second defendant under plaint Document No.17 would not be sufficient to say that the substantial portion of the cause of action arose within the territorial limits of this Court especially when the applicant is admittedly carrying on business at Tiruppur. Therefore,



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this Court is of the view that this is a fit case to apply the balance of convenience and the test of suitability of forum as held by the Full Bench of this Court in *M/s.Duroflex case*.

17. Considering the fact that the applicant as well as the respondent are having their registered office at Tiruppur, the Courts at Tiruppur would be appropriate and more suitable forum to decide the *lis*. Hence, the leave granted to the respondent is liable to be revoked. Accordingly, this application is allowed.

18. In view of the allowing of application to revoke the leave, Registry is directed to return the plaint within two weeks from the date of receipt of a copy of this order. The respondent/plaintiff is granted a further period of one month from the date of return to represent the plaint before the District Court, Tiruppur for proceeding further. If the returned plaint is re-presented by the respondent/plaintiff within time stipulated, the District Court is directed to proceed further in accordance with law.



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19. In the result, the application is allowed and the plaint is ordered to be returned. Consequently, the connected applications are closed.

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S.SOUNTHAR, J.

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