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A.Nos.1434 and 1802 of 2022
in C.S.(Comm.Div).No.401 of 2020

S.SOUNTHAR, J.

This application has been filed by the applicants/defendants seeking to return of the plaint for representation before the appropriate forum.

2. The respondent herein filed the present suit seeking permanent injunction restraining the applicants from infringing the respondent's registered trade mark,

The respondent also sought for injunction restraining the applicants from passing

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off their products as that of the respondent by using respondent's registered trade mark/trade dress.

3. According to the applicants, the respondent filed the present suit before this Court on the ground that its sales office is situated at Senthil Nagar, Chennai-600 099 within the territorial limits of this Court. However, the respondent failed to file any document to suggest even remotely that it has got its sales office within the territorial limits of this Court. It is the main contention of the applicant that the respondent is not having any sales office within the territorial limits of this Court and alleged infringing articles are also not found within the territorial limits of this Court and consequently, this Court has no territorial jurisdiction to entertain the plaint. It is also further averred in the affidavit filed in support of this application that earlier the respondent filed a similar suit against a third party in C.S.No.190 of 2020 and the same came to be returned by the order passed in A.No.181 of 2021. Further, it is also alleged that the respondent, for the purpose of filing opposition against the applicants' trade mark, used its registered office situated at Tiruvallur District and whereas for the purpose of filing the present suit before this Court surreptitiously stated that it has got sales office within the City of Chennai.

4. This application was opposed by the respondent by filing a counter

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affidavit wherein it was stated that at the time of filing of the suit, the respondent had sales office at Senthil Nagar, Kolathur, Chennai-600 099 and the same is now, shifted to Baba Nagar, Villivakkam, Chennai-600 049. It is also stated that the respondent also filed an application to amend the cause title to that effect in A.No.1802 of 2022 and they filed documents along with application to substantiate the same. It is the specific case of the respondent that in view of Section 134 (2) of the Trade Marks Act, 1999, the respondent is entitled to maintain the present suit before this Court as one of its sales office falls within the territorial limits of this Court.

5. The learned counsel for the applicants contended that though respondent claim its sales office is situated at Senthil Nagar, Villivakkam, Chennai-600 099, the same has not been substantiated by production of any document or sale invoice to show that the respondent is carrying business within the territorial limits of this Court.

6. The learned counsel for the respondent on the other hand by taking this Court to the GST Registration Certificate of the respondent enclosed in typed-set of papers of the respondent dated 19th April, 2022 filed in this application, submitted that perusal of the same would establish that the respondent has got

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sales office within the territorial limits of this Court. The learned counsel also has taken this Court to the other documents filed in the typed-set of papers in support of respondent's claim to show that it changed its sales office from Senthil Nagar, Kolathur, Chennai-600 099 to Baba Nagar, Villivakkam, Chennai-600 049.

7. It is settled law that an application filed under Order 7 Rule 10 of Code of Civil Procedure shall be decided based on the averments contained in the plaint along with the plaint documents. In the cause of action paragraph of the plaint, it is stated by the respondent that this Court has got territorial jurisdiction to entertain the present suit as their sales office is situated at Chennai and they are voluntarily carrying on business in Senthil Nagar, Kolathur, Chennai-600 099. The respondent filed 15 documents along with plaint, as seen from the list of documents filed along with the plaint as required under Order 11 Rule 1 of Code of Civil Procedure as amended by Commercial Courts Act, 2015. However, the respondent/plaintiff has not filed any documents to show that it is having sales office at Senthil Nagar, Kolathur, Chennai-600 099, within the territorial limits of this Court. Therefore, the contention raised by the applicants that the respondent had not filed any documents to show actually it was carrying on business within the territorial limits of Chennai on the date of suit merits acceptance.

8. In order to supplement his contention, the learned counsel for the

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respondent tried to rely on GST Registration Certificate in favour of the respondent wherein sales office of the respondent at Senthil Nagar address was also shown as one of the additional place of business. This particular document was filed by the respondent only in the typed-set of papers filed in the present application and the same was not filed along with the plaint. It is pertinent to note that when the very same document was pressed into service in an earlier infringement suit filed by the respondent against the third party, a Division Bench of this Court refused to accept the same by pointing out bar under Order 11 Rule 1 read with Rule 5 of Code of Civil Procedure as amended by Commercial Courts Act, 2015. The relevant observation of the Division Bench of this Court in O.S.A.(CAD).Nos.97, 111, 5 and 4 of 2021, dated 31.01.2022 reads as follows:-

> "*7. ... Applying the aforesaid principles to the facts of this case, it is borne out of the record that the Registration Certificate issued on 24.04.2020 under the Tamil Nadu Goods and Services Act, 2017, relied on by the Plaintiff was in existence at the time of the presentation of the suit on 13.08.2020 and that the Plaintiff had neither disclosed the same, nor made any application seeking leave to rely on it as additional document, nor produced it within the stipulated period of 30 days from the date of filing of the suit along with the requisite declaration on oath in terms of sub-rule (4) of the*

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amended Rule 1 of Order XI of the CPC. That apart, the Plaintiff also did not make any application under sub-rule (5) of the amended Rule 1 of Order XI of the CPC for leave of the Court to produce the documents establishing reasonable cause for its non-disclosure at the time of presentation of the plaint. Viewed from this perspective, we are in agreement with the Learned Single Judge that in the absence of the Plaintiff seeking leave explaining why that document could not be produced along with the plaint at the time of filing of the suit, it was not permissible to entertain the same as annexure to the written submissions filed by the Plaintiff in A. No. 181 of 2021 after orders had been reserved on 08.04.2021 in the matter. Consequently, the order dated 06.09.2021 passed in Review Application No. 2 of 2021 cannot be interferred in O.S.A. (CAD) No. 111 of 2021."

9. Even in the present case, the GST Registration Certificate which is sought to be pressed into service by the learned counsel for the respondent/plaintiff was not filed along with the plaint. Nor any application was filed as required under Rule 5 of Order 11 of CPC (as amended by Commercial Courts Act, 2015) seeking leave of the Court to produce the documents by

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establishing reasonable cause for non-disclosure along with the plaint. In view of strict provision of Order 11 Rule 5 of Code of Civil Procedure (as amended by Commercial Courts Act, 2015) unless respondent files an appropriate application seeking leave of the Court by establishing reasonable cause for its failure to produce the documents along with the plaint, it is not open to the respondent to rely on the same.

10. Admittedly, no such application has been filed explaining any reasonable cause. In these circumstances, the respondent is not entitled to rely on the GST Registration Certificate, which was not filed along with the plaint in support of its contention. In the absence of any documents to show even *prima facie*, the respondent/plaintiff has been carrying on business within the territorial limits of this Court through its sales office, it cannot invoke Section 134 (2) of the Trade Marks Act, 1999 and maintain a suit before this Court. Admittedly, the respondent is having its registered office at Ponniammanmedu outside the territorial limits of this Court. In such circumstances, this Court has no territorial jurisdiction to entertain the suit and the plaint is deserve to be returned for presentation before the proper forum.

11. The learned counsel for the respondent made a feeble attempt to convince the Court that as per the averments found in the plaint, the infringing

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materials are available for purchase from Chennai, therefore, part of the cause of action arose within the territorial limits of this Court. In cause of action paragraph of the plaint, the respondent has averred as follows:-

> *"The defendant launch of the unit with the impugned mark is available for access through the internet through facebook at Chennai".*

12. It is not the case of the respondent that the customers in Chennai purchased alleged products of the applicants by accessing the online platform from Chennai and the infringing products are delivered to the customers at Chennai. In such circumstances, the above said averments found in the cause of action paragraph cannot be interpreted as if, the infringing products are available within the territorial limits of this Court. Therefore, the said contention of the learned counsel for the respondent is also rejected.

13. In view of the discussions made earlier, the present application in A.No.1434 of 2022 for return of the plaint for want of territorial jurisdiction is allowed.

14. The Registry is directed to return the plaint in C.S.(Comm.Div).No.401 of 2020 for presentation before the appropriate forum.

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The plaintiff is granted three weeks time from the date of return of the plaint for presentation before appropriate forum having territorial jurisdiction to entertain the suit. Consequently, the connected application in A.No.1802 of 2022 is closed.

27.06.2023
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