



A.No.1682 of
C.S.(Comm.Div).No.157 of 2022

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S.SOUNTHAR, J.

This application is filed by the defendant seeking rejection of the plaint.

2. According to the applicant/defendant, the respondents/plaintiffs are having their Head Office at Coimbatore and the present suit has been filed by them mainly on the ground that they have got a Branch Office at Chennai. It is asserted in the affidavit filed in support of the application to reject the plaint that the averment in the plaint as if, the plaintiffs are having Branch Office at Chennai is false.

3. The learned counsel for the applicant/defendant by taking this Court to Section 134 of the Trade Marks Act, 1999, submitted that merely because the respondents/plaintiffs are having Branch Office at Chennai, when no part of cause of action arose within territorial limits of Chennai, it is not open to the respondents/plaintiffs to maintain a suit before this Court at Chennai.

4. In other words, it is the submission of the learned counsel that when no part of cause of action arose either in a place where the Head Office is situated or in a place where the Branch Office of the plaintiffs is situated. The plaintiffs have no other option but to file a suit before the Courts situated in the place where the



Head Office of the plaintiffs is situated. In support of his contention, the learned counsel for the applicant relied on the judgment of the Hon'ble Apex Court in ***Indian Performing Rights Society Ltd. vs. Sanjay Dalia and others*** reported in ***CDJ 2015 SC 522***.

5. Per contra, the learned counsel for the respondents/plaintiffs submitted that while considering the petition for rejection of the plaint, the averments contained in the written statement or the defence of the defendant cannot be taken into consideration and the same has to be decided based on the averments found in the plaint. The learned counsel further submitted that under Section 134 (2) of the Trade Marks Act, 1999, the plaintiffs are entitled to maintain a suit either in a place where the head office is situated or in a place where the plaintiffs are having a subordinate office. In support of her contention, the learned counsel relied on the judgment of this Court in ***Wipro Limited and others vs. Oushadha Chandrika Ayurvedic India (P) Limited and others*** reported in ***MANU/TN/0449/2008***.

6. It is settled law that in an application for rejection of the plaint, the Court is concerned only with the averments found in the plaint and the Court cannot look into the averments of the defendant in his written statement. In the case on hand, the plaintiffs had averred in their plaint that they were having a



Branch Office at Chennai. In support of the said averment, the respondents/plaintiffs had also filed certain invoices raised by them at Chennai.

The applicant herein in his affidavit specifically disputed the averments of the plaintiffs that they were having Branch Office at Chennai. Whether the plaintiffs are having a Branch Office at Chennai or not is a disputed question of fact which can be conveniently considered only at the time of trial. Based on the averments found in the plaint and also plaint document, there are enough materials to come to a *prima facie* conclusion that the plaintiffs are having branch office at Chennai. Therefore, the contention of the applicant that the plaintiffs are not having branch office at Chennai cannot be gone into in detail now. However, it is open to the applicant to raise this question at the time of final disposal of the suit.

7. In *Sanjay Dalia's* case cited supra, the cause of action, for filing plaint arose at Mumbai and the principal office of the plaintiff therein also situated at Mumbai. However, the suit was filed at Delhi. In that context, the Hon'ble Apex Court held that when plaintiff was having the Principal Office at Mumbai wherein the cause of action also arose, the suit had to be filed only at Mumbai.

8. As far as the present case is concerned, admittedly the defendant is carrying on business at Wayanad, Kerala. When no part of cause of action arose



either at Coimbatore, where the Principal Office of the plaintiffs is situated or at Chennai, where the Branch Office of the plaintiffs is situated, the plaintiffs are entitled to present the plaint at their option either at Chennai or at Coimbatore. It would be appropriate to refer to the decision of this Court in **Wipro Limited** case cited supra wherein this Court explained the expression 'carries on business' as follows:-

“11. ... In Section 62(2) of the Copyright Act as well as in Section 134(2) of the Trade Marks Act, a deliberate departure is made from Section 20 of the C.P.C to enable the plaintiff to sue one who infringed his copyright in the court within whose local limit he carried on business at the time of the institution of the suit or other proceedings. If the contrast as between two expressions namely, "actually and voluntarily resides" and "carries on business" is correctly perceived, it would reveal that while there is limitation, regarding residence, there is no such restriction with reference to "carrying on business". This is a clear indication that the term "carries on business" is not confined to only principal place of business. If the Legislature intended to mean the principal place only, it would have suitably qualified the expression "carries on business". The plain meaning of the above expression will only convey that wherever there is a business activity - be it the principal place or branch or branches - the party is said to carry on business in all such places.”

9. Therefore, it is clear that wherever the plaintiffs are having a subordinate office, it is deemed to carry on business in that place. In such



circumstances, under Section 134 (2) of the Trade Marks Act, 1999, the plaintiffs are entitled to maintain a suit in a place where they have got Branch Office. Only in cases where the part of cause of action arose in any one of the places where the Branch Office of the Plaintiffs is situated, the plaintiffs shall file the suit by combining the cause of action as well as their situs of the business.

10. In the case on hand, as mentioned earlier, no part of cause of action arose either at Coimbatore or at Chennai. In such circumstances, the plaintiffs are entitled to maintain a suit at Chennai where they have got a Branch Office.

11. In view of the discussions made earlier, the present application for rejection of the plaint is dismissed. However, the question whether the applicant has got Branch Office at Chennai or not and whether this Court has got territorial jurisdiction to entertain the suit can be argued by the applicant at the time of final disposal of the suit.

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