

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

CR-658-2021 (O&M)

Decided on:-11.10.2023

Rakesh Kumar and others

....Petitioners.

vs.

M/s Grey Matters and others

....Respondents.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Keshav Partap Singh, Advocate,
for the petitioners.

Mr. Suvir Sidhu, Advocate,
for the respondents.

HARKESH MANUJA J. (Oral)

1. By way of present revision petition, challenge has been laid to an order dated 19.02.2021 (Annexure P-4) passed by the Additional District Judge, Chandigarh, while dismissing an application under Order 7 Rule 11 CPC, filed at the instance of petitioners-defendants No.2,3, 4 and 6.

2. In the present case, a suit for permanent injunction came to be filed at the instance of private respondents, invoking the provisions of Trade Marks Act, 1999 (for short, "1999 Act"), alleging passing off action against the petitioners. In the said suit, the petitioners moved an application under Order 7 Rule 11 CPC, while placing reliance upon clause (c) of sub-Section 1 to Section 134 of the 1999 Act, pleaded that once the case set up in the entire plaint was only regarding passing off action, the territorial jurisdiction was to be governed by Section 20 of CPC & thus, the Court at Chandigarh was having no territorial jurisdiction to entertain the suit. The aforesaid

CR-658-2021 (O&M)

application was strongly opposed by private respondents before the Trial Court having filed their detailed reply. Section 134 of the 1999 Act, is reproduced hereunder:-

134. Suit for infringement, etc., to be instituted before District Court:-

(1) No suit-

*(a) for the infringement of a registered trade mark; or
(b) relating to any right in a registered trade mark; or
(c) for passing off arising out of the use by the defendant of any trade mark which is identical with or deceptively similar to the plaintiff's trade mark, whether registered or unregistered, shall be instituted in any court inferior to a District Court having jurisdiction to try the suit.*

(2) For the purpose of clauses (a) and (b) of sub-section (1), a "District Court having jurisdiction" shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908) or any other law for the time being in force, include a District Court within the local limits of whose jurisdiction, at the time of the institution of the suit or other proceeding, the person instituting the suit or proceeding, or, where there are more than one such persons any of them, actually and voluntarily resides or carries on business or personally works for gain. Explanation.— For the purposes of sub-section (2), "person" includes the registered proprietor and the registered user."

3. The Trial Court vide order dated 19.02.2021, dismissed the application filed at the instance of petitioners.

4. I have heard learned counsel for the parties in detail while being confronted with paragraph No.5 of the plaint, wherein the entire cause of action is admittedly based on the place of business of the petitioners/defendants and the passing off action, thus, falls under clause (c)

CR-658-2021 (O&M)

of sub-Section 1 to Section 134 of the 1999 Act, the territorial jurisdiction has to be determined in terms of Section 20 CPC, which in the present facts and circumstances upon consideration of the averments made in the plaint becomes the place of business of petitioners-defendants i.e. Bathinda. Para 5 of the plaint which is relevant for discussion is reproduced hereunder:-

*“That in order to prevent further misuse and misrepresentation of the company, the plaintiffs got issued various advertisements in the local newspapers which were active in the city where the Defendant was operating Advertisement dated 28.04.2015 and 02.05.2015 are annexed herewith as Annexure P-6 and P-6/1, respectively. In order to save the reputation of the company, the plaintiffs issued public notices in various local newspapers. The public notices dated 05.02.2016 and 06.02.2016 are annexed herewith as Annexure p-7 and P-7/1 (colly). The plaintiffs have been vigilant and have acted with due diligence and it is a settled principle of law enshrined under the legal maxim ‘**bibilantibus et non dormientibus, jura subveniunt**’ which means that the policy of law is to assist the vigilant.”*

5. Faced with the situation, learned counsel for the contesting respondents very fairly submits that let the plaint be returned in terms of Order 7 Rule 10 CPC, to be presented to the Court of jurisdiction at Bathinda i.e. District Court/District Judge.

6. In view thereof, let the plaint be returned to the respondents within a period of two weeks from today for it being presented before the Court of competent jurisdiction at Bathinda, within a period of two weeks thereafter, serving due intimation to the petitioners as well as their counsel before this Court on their e-mail informing them of the date of presentation of plaint at Bathinda. In this situation, to avoid procedural delay, the

transferee Court shall not be required to serve notices upon the petitioners and shall entertain & proceed with the suit from the stage of its presentation before it, especially in the circumstances when merely application under Order 39 Rules 1 & 2 has been decided and the trial is yet to commence.

7. Accordingly, the present petition is disposed of in the aforesaid terms.

11.10.2023
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(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/ No