

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

Civil Revision No.5854 of 2022

Date of Decision: 08.05.2023

M/s Shiv Shanker Plywood & Veneer House

...Petitioner

Versus

Shree Ram Steel Industries & Anr.

...Respondents

CORAM: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present:- Mr. Sehar Navjeet Singh Sandhu, Advocate,
for the petitioner.

Mr. Raj Kaushik, Advocate,
for respondent No.1.

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MEENAKSHI I. MEHTA, J.

By way of this revision petition, the petitioner-defendant No.1 -Firm (here-in-after to be referred as 'defendant No.1') has laid challenge to the order dated 26.08.2022 (Annexure P-10) handed down by learned Additional District Judge, Yamuna Nagar (for short 'the trial Court'), whereby the application (Annexure P-6), moved by it under Order 7 Rule 11 CPC for seeking the rejection of the plaint in Civil Suit No.13 of 2021 and another application (Annexure P-7), filed by it under Order 7 Rule 10 read with Section 151 CPC with a prayer to return the plaint in the said Civil Suit, have been dismissed.

2. Shorn and short of unnecessary details, the facts leading to the filing of the present revision petition, are that respondent No.1-plaintiff (here-in-after to be referred as 'the plaintiff') has filed the above-referred

Suit against defendant No.1 and respondent-defendant No.2 (here-in-after to be referred as ‘defendant No.2’) for seeking a decree for permanent injunction to restrain them (defendants) as well as their servants, agents, distributors, dealers and other persons acting on their behalf, from processing, using, marketing, selling, soliciting, displaying, advertising, dealing in or using the trade-marks including the words “GRACEINPRO/GRACEINPRIME” (for short ‘the impugned trade-marks’) or any other trade-mark deceptively similar to its registered trade-mark “GRASSIM” in respect of the goods including the plywood board, wood-pulp block board, flush doors etc and also from doing any other act or deed amounting to or likely to amount to passing-off and from enabling others to pass-off their (defendants’) goods (for short ‘the impugned goods’) as its (plaintiff’s) goods by using the impugned trade-marks. Defendant No.1 appeared in the said Civil Suit and moved applications Annexures P-6 & P-7 which have been dismissed vide the impugned order (Annexure P-10).

3. I have heard learned counsel for the petitioner-defendant No.1 as well as learned counsel for respondent No.1-plaintiff in this revision petition, at the preliminary stage and have also perused the file carefully.

4. Learned counsel for defendant No.1 has contended that in the afore-said Civil Suit, the plaintiff has simply sought the relief of injunction to restrain the defendants from passing-off their goods as its (plaintiff’s) goods as envisaged under Section 134(1)(c) of the Trade Marks Act, 1999 (for short ‘the Act’) and hence, the Court of competent jurisdiction to deal with such like matters, has to be ascertained in the light of the provisions as contained in Section 20 CPC and since the defendants are neither located

nor carrying on their business in the area falling within the jurisdiction of the District Court at Yamuna Nagar, therefore, this Court has no territorial jurisdiction to try and decide the said Suit and in these circumstances, the plaint is liable to be returned for being presented in the competent Court and moreover, defendant No.2 has no concern with defendant No.1 and thus, the Suit is also bad for misjoinder of the parties. He has, further, contended that the defendants did not ever sell their goods in Yamuna Nagar and it being so, the plaintiff has no cause of action to file the Suit against them and hence, the plaint is liable to be rejected as well. To buttress his contentions, he has placed reliance upon the observations made in **Indovax Pvt. Ltd. vs. Merck Animal Health and Ors. (2017) 71 PTC 647(Delhi); Burger King Corporation vs. Techchand Shewakramani & Ors. (2018) 76 PTC 90 (Delhi)** and **Banyan Tree Holding (P) Limited vs. A Murali Krishna Reddy & Anr. (2010) 42 PTC 361 (Delhi).**

5. Per-contra, learned counsel for the plaintiff has argued that though the plaintiff has made averments in the plaint regarding the passing off of their goods by the defendants as its (plaintiff's) goods but it has also categorically alleged therein that they (defendants) were trying to infringe its rights qua its registered trade-mark and therefore, the said Civil Suit is also squarely covered under the provisions of Section 134(1)(a) and (b) as well as (c) of the Act and undisputedly, the plaintiff is manufacturing the goods and is running its business at Yamuna Nagar and hence, the Court at Yamuna Nagar has the jurisdiction to try and decide the said Suit.

6. It goes undisputed between the parties that the plaintiff is the registered proprietor of the trade-mark "GRASSIM" and is engaged in the

business of manufacturing, marketing and selling different varieties of the plywood and defendant No.1 is also running the business of similar goods by using the trade-marks “GRACEINPRIME/GRACEINPRO” and it has sought the return as well as the rejection of the plaint on the grounds that the Court at Yamuna Nagar has no territorial jurisdiction to try and decide the above-said Suit and the same is bad for the misjoinder of parties and the plaint also does not disclose any cause of action to file it.

7. So far as the contention regarding the territorial jurisdiction is concerned, the same does not hold any water because a bare perusal of the copy of the plaint (Annexure P-5) reveals that in Para No.15 therein, the plaintiff has specifically averred that the impugned trade-marks are deceptively identical/similar to its afore-mentioned trade-mark and the same create confusion for the retailers, dealers, distributors as well as the ordinary purchasers and that the defendants have infringed its right qua its registered trade-mark by adopting and using the impugned trade-marks and they have also passed-off their goods as its goods and are continuing to do so and then, in Para No.39, it (plaintiff) has sought the relief of permanent injunction to restrain the defendants from doing so. Thus, the plaintiff has levelled categoric allegations against the defendants qua the infringement of its rights, in respect of its above-said trade-mark, by them and also regarding their having been indulging in the passing-off of their goods as its (plaintiff's) goods. Therefore, it is explicit that besides Section 134(c) of the Act, the present matter also falls under the provisions of Section 134(1)(a) and (b) thereof. Further, Section 134(2) of the Act reads as under:-

“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”.

As discussed earlier, the plaintiff is carrying on its business at Yamuna Nagar and in view of the afore-quoted provisions, it is crystal clear that the District Court at Yamuna Nagar has the territorial jurisdiction to entertain, try and decide the said Civil Suit.

8. As regards the contentions qua the misjoinder of parties and the cause of action, it is pertinent to mention here that in Para No.13 of the plaint, the plaintiff has specifically averred that both the defendants are engaged in the business similar to one as being run by it, i.e manufacturing and marketing of the ‘plywood and the products made therefrom’ and that they have also been using the trade-mark, deceptively similar/identical to its registered trade-mark. Further, in Para 35 therein, the plaintiff has averred that the cause of action to file the Suit arose in its favour in the month of April, 2021 on its coming to know from the website of the Registrar of Trade Marks that defendant No.1 had got the impugned trade-marks registered and also in the month of November 2021, when it came

across the advertisement of the impugned trade-marks by defendant No.2 on the website of 'Indiamart.com' for the sale of the impugned goods and also on discovering that such goods were being sold in the markets and online as well. Even otherwise, the questions as to whether both the defendants have any business relations and are working together or not and as to whether the goods of the defendants, with the impugned trade-marks, are being sold in Yamuna Nagar in the market and online or not, can and shall be looked into and adjudicated upon by the trial Court at the appropriate stage after appreciating and evaluating the evidence as may be led by both the parties on the record in support of their respective contentions in this regard and the same cannot be decided at the stage of dealing with the instant petition.

9. The observations made in **Indovax Pvt. Ltd.(supra)**, **Burger King Corporation (supra)** and **Banyan Tree Holding (P) Limited (supra)**, are of no avail to defendant No.1 as the facts and circumstances of the present case are distinguishable from those of the cited above because in **Indovax Pvt. Ltd.(supra)**, the report of the Local Commissioner showed that the defendant's vaccine was not available for sale in Delhi whereas there is no such report in the instant case. In **Burger King Corporation (supra)** also, all that has been observed is that the jurisdiction of the Court, in a trade mark action, could be invoked where there was use "*upon*" or "*in relation to*" the goods and phrase '*in relation to*' has been interpreted to include advertising, promotion and publicity etc and in the present case also, the plaintiff has specifically alleged in para No.36 in the plaint that the defendants are clandestinely and surreptitiously supplying the goods

with the impugned trade-marks to the distributors and the dealers in the markets at Yamuna Nagar. Further, in **Banyan Tree Holding (P) Limited** (*supra*), the plaintiff and defendants No.1 & 2 were neither running the business nor were located in Delhi and even the dispute between them pertained to the passing-off of the goods only whereas in the instant case, the plaintiff Firm has been running its business at Yamuna Nagar.

10. As a sequel to the fore-going discussion, it follows that the impugned order (Annexure P-10) does not suffer from any illegality, infirmity, irregularity or perversity so as to warrant any interference by this Court. Resultantly, the revision petition in hand, being *sans* any merit, stands dismissed.

11. However, it is clarified that nothing contained here-in-before shall be construed be an expression of the opinion of this Court on the merits of the above-referred Civil Suit, pending before the trial Court.

May 08, 2023
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(MEENAKSHI I. MEHTA)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>Yes</i>