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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RFA-IPD 7/2022 & CM APPL. 378/2021**

CORONA REMEDIES PVT. LTD. Appellant
Through: Mr. Vikas Kheera, Mr. Vishal Sharan and Mr. Ved Prakash, Advs.

versus

UMAC PHARMACEUTICALS & ORS. Respondents
Through: None

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T (O R A L)
10.08.2023

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1. This is a first appeal under Section 96 of the Code of Civil Procedure 1908 (CPC), directed against the judgment dated 5 September 2020 passed by the learned Additional District Judge (“the learned ADJ”) South-East District, Saket. By the impugned judgment, the learned ADJ has returned CS(COMM) 328/2019 (*Corona Remedies Pvt. Ltd. v. Umac Pharmaceutical & Others*) to the appellant-plaintiff for being presented before the appropriate court, having territorial jurisdiction to deal with the plaint.

2. The memo of parties in the suit reads thus:

“MEMO OF PARTIES

1. Corona Remedies Pvt. Ltd.
Corona House, C-Mondeal Business Park,



Near Gurudwa`ra, S.G. Highway
Thaltej, Ahmedabad-380059
Gujarat, India

... Plaintiff

Versus

1. Umac Pharmaceuticals
Khasra No. 93/10, Vill. Mundka,
Nangloi, Delhi. Defendant No. 1
2. Hemkunt Medical Store,
332/4 & 5, Govindpuri
Kalkaji, New Delhi-110019 Defendant No. 2
3. Athens Life Sciences
Mauza Rampur Jattan, Nahan Road,
Kala Amb, District Sirmour
Himachal Pradesh-173030. Defendant No. 3”

3. The plaintiff and the defendants before the learned ADJ being the appellant and the respondent before this Court, I prefer to refer to them as per their status before me.

4. Summons were issued in the suit, by the learned ADJ, on 25 July 2018, on which date an *ex parte ad interim* order was passed in favour of the appellant and against the respondents. On 16 August 2018, it was noted that all respondents had been duly served.

5. On 24 September 2018, the respondents were proceeded *ex parte*. They remained *ex parte* till the passing of the impugned judgment. As such, there was no response from the respondents, and the averments in the plaint remained un rebutted.



6. The appellant is engaged in the manufacture of pharmaceuticals and medicinal veterinary preparations. The suit dealt with a combination drug, manufactured by the appellant, comprising Rabepazole Sodium and Domperidone SR sustained release, sold under the registered trade mark MAC-RD.

7. The appellant alleged that, by using the mark MAC-DSR in respect of a similar combination of Pantoparazole Sodium (EC) and Domperidone SR, the respondents were infringing the appellant's registered trade mark. As such, the appellant sought a decree of permanent injunction, restraining the respondents from using the mark MAC-DSR or any other mark which was deceptively similar to the appellant's registered mark MAC-RD in respect of any pharmaceutical preparations.

8. The respondents, as already noted, were set *ex parte*. The only witness who testified was Mr. Bhupender Kumar, the attorney of the appellant, as PW-1. Mr. Bhupender Kumar filed his affidavit in evidence and also relied on certain documents.

9. By the impugned judgment, the learned ADJ has held the appellant's suit to be bad for want of territorial jurisdiction and has, therefore, returned the suit to be presented before a competent court. The reasoning of the learned ADJ in this regard is to be found in paras 19 to 25 of the impugned judgment which read thus:

“19. It is evident from the perusal of the aforesaid section pertaining to territorial jurisdiction of the Court to try such suit that a suit for infringement or passing off can be instituted before a



District Court of the place where the plaintiff is residing or carrying on business or personally works for gain.

20. In the present case, the plaintiff is carrying its business at Ahmedabad, Gujarat.

21. The defendant No.1 is carrying its business or working for gain in Nangloi, Delhi. The defendant No.3 is carrying its business or working for gain in District Sirmour, Himachal Pradesh.

22. The defendant No.2 is a medical store. The plaintiff has relied on a copy of bill Mark 'A' issued by the defendant No.2 on 12.06.2018 regarding sale of 10' MAC-DSR' worth ₹ 850/- to 'Prashant Thakur' R/o D-154, Jaitpur Extn., Badarpur, New Delhi on the prescription of Dr. Anil Kumar. The plaintiff has impleaded the defendant No.2 on the averments that he is selling its medicinal products. The suit of the plaintiff is instituted by Dr. Atul Pansuria, Associate Vice President – Purchase and Procurement on the strength of Board Resolution dated 21.09.2017.

23. Dr. Atul Pansuria is having its office at the address of the plaintiff in Ahmedabad, Gujarat. He has not stated that he had purchased the said medicine from the defendant No. 2. The plaintiff has not made any averment in the plaint regarding the person who had purchased the said medicine from the defendant No.2. The plaintiff has not examined Mr. Prashant Thakur, purchaser of the said medicine from the defendant No.2. The plaintiff has not summoned any record from the defendant No.2 to the effect that the defendant No.1 was supplying him medicines under the impugned mark and he was selling the said medicines. The plaintiff has not even summoned the bill book containing Invoice No. 264 dated 12.06.2018 Mark 'A' from the defendant No. 2.

24. PW-1 Bhupender Kumar has not stated anything regarding sale of medicines bearing the impugned mark from the medical store of the defendant No.2. He has not made any averment regarding Mr. Prashant Thakur in the affidavit Ex.PW-1/A filed in evidence. Moreover, Invoice Mark 'A' is not mentioned in his affidavit.

25. This Court is of the opinion that the defendant No.2 was only impleaded to confer territorial jurisdiction upon this Court. There is no evidence that the defendant No.2 was indulging in supply and sale of the medicines bearing the mark of the plaintiff. A solitary copy of a medical bill is not sufficient to confer jurisdiction upon the Court. Moreover, the plaintiff has even failed



to prove that the defendant No.2 had sold medicines worth ₹ 850/- to Mr. Prashant Thakur on 12.06.2018 vide Invoice No. 264 dated 12.06.2018.”

10. Aggrieved thereby, the appellant has preferred the present appeal under Section 96 of the CPC.

Points for determination

11. In view of the fact that the learned ADJ has merely held that the appellant’s suit is bad for want of territorial jurisdiction, the only point which arises for determination is whether the appellant’s suit was territorially maintainable before the learned ADJ.

Decision and reason therefor

12. Having heard Mr. Khera for the appellant and perused the record, I am convinced that the learned ADJ has erred in returning the plaint on the ground that he did not possess the territorial jurisdiction to deal with it. The reasons follow.

13. The learned ADJ has held the suit of the appellant to be bad for want of territorial jurisdiction for three reasons; firstly, that the appellant was carrying its business in Ahmedabad; secondly, that Respondent 1 was working for gain in Nangloi and Respondent 3 was in Himachal Pradesh and, thirdly, that, though Respondent 2 was located within the territorial jurisdiction of the learned ADJ at Saket, the plaint contained no averment regarding the identity of the person who had purchased the appellant’s medicine from Respondent 2. The



alleged purchaser Mr. Prashant Thakur had not been examined by the appellant. No record had been summoned from Respondent 2, to the effect that Respondent 1 was supplying the impugned medicines to him and that he was selling them. Nor had the appellant summoned the invoice/bill book of Respondent 2. Respondent 1 had also, in his affidavit in evidence (Ex. PW-1/A) not advanced any submission regarding Respondent 2.

14. In these circumstances, the learned ADJ held that Respondent 2 had been impleaded only to confer territorial jurisdiction on the Saket District Court and that there was no evidence that Respondent 2 was indulging in supply and sale of the medicine bearing the impugned mark.

15. Clearly, therefore, the learned ADJ has examined the aspect of territorial jurisdiction only *vis-à-vis* Respondent 2.

16. It appears that the learned ADJ, in holding as he did, remained completely oblivious to paras 43 and 44 of the plaint, which read thus:

“43. That the cause of action for filing the present suit has been detailed in the preceding paragraphs. The cause of action for filing the present suit arose in or about in second week of June, 2018, when the plaintiff first came across the impugned goods of the defendants under the impugned trademark in the market of South East Delhi. The defendants are selling the impugned goods bearing the impugned trade mark within the jurisdiction of this Hon’ble Court on daily basis and thereby continuously violating the said trade mark of the plaintiff. Therefore, the cause of action for filing the present suit is accruing on daily basis and is subsisting till the defendants are restrained from carrying out the impugned activities under the impugned trademark.



44. I say that this Hon'ble Court has the territorial jurisdiction to try and adjudicate the present suit. The defendants are offering to sell and are supplying their impugned goods bearing the impugned marks to the dealers and distributors in the markets of inter alia South East Delhi. The defendants are committing the impugned acts of passing off within the jurisdiction of this Hon'ble by selling and soliciting trade, distribution and marketing networks in relation to the impugned goods under the impugned trade mark in Delhi including South East Delhi i.e. Okhla, Badarpur, Lajpat Nagar, Defence Colony, Kalkaji, Sarita Vihar, Govindpuri, Greater Kailash, Srinivaspuri, Ambedkar Nagar, Hazrat Nizamuddin, Chittaranjan Park, Kotla Mubarakpur etc. Infact, the Plaintiff procure the impugned products from defendant no.2 at 332/4 & 5, Govindpuri, Kalkaji, New Delhi-110019. Hence, a part of cause of action arose within the territorial jurisdiction of this Hon'ble Court thereby this Hon'ble Court has jurisdiction to entertain and try and adjudicate the present suit under Section 20 of the Code of Civil Procedure. Further, the Plaintiff is having their distributor and stockiest in Delhi and are selling the goods under the trademark/lable MAC-RD in South East Delhi i.e. Okhla, Badarpur, Lajpat Nagar, Defence Colony, Kalkaji, Sarita Vihar, Govindpuri, Greater Kailash, Srinivas Puri, Ambedkar Nagar, Hazrat Nizamuddin, Chittaranjan Park, Kotla Mubarakpur etc. through its authorised distributors Novopharm who supplies goods under the trademark MAC-RD. The plaintiff goods are sold inter alia at M/s Balaji Medicos, 943/3, Arjun Nagar, Kotla Mubarakpur, New Delhi-110003 which is within the jurisdiction of this Hon'ble Court. The plaintiff has tremendous goodwill and reputation in its said trademark within the jurisdiction of this Hon'ble Court on account of voluminous sales and distribution. This Hon'ble Court as such also has a jurisdiction to try and adjudicate the present suit by virtue of Section 134 of the Trademarks Act, 1999."

17. In the afore-extracted paragraphs 43 and 44, the plaintiff has clearly averred that the respondent's medicines, bearing the impugned mark, were being sold within the territorial jurisdiction of the Saket District Court. The plaintiff, in fact, claimed to have procured the goods from Respondent, situated at Govindpuri, Kalkaji, which was within the jurisdiction of the Saket District Court. The plaintiff also claimed to be carrying on business within such jurisdiction, by averring that it had its distributors and stockists in Delhi and was



selling goods under the trade mark “MAC-RD” in South East Delhi in Okhla, Badarpur, Lajpat Nagar, Defence Colony, Kalkaji through its authorised distributor Novopharm, as well as at Balaji Medicos, Kotla Mubarakpur. These areas also fell within the jurisdiction of the learned Saket District Court. As such, there were pointed averments in the plaint to the effect that the plaintiff as well as the defendants were both carrying on their business within the jurisdiction of the learned Saket District Court.

18. Moreover, in para 17 of the plaint, the plaintiff has also averred that the products of the plaintiff are available for sale on e-commerce websites which could be accessed, and across which transactions could be concluded, within the territorial jurisdiction of the learned Saket District Court. The said paragraph reads thus:

“17. The Plaintiff’s products under the trademark are also available on leading e-commerce portal such www.lmg.com, www.apollopharmacy.in, www.indiamart.com etc. Further, the search on www.google.in for the term MAC-RD reflect the products of the Plaintiff only and also leads to the Plaintiff’s website www.coronaremedies.com which indicates that the goods of Plaintiff under the trade mark MAC-RD are extremely popular in India. Moreover, the Plaintiff has its presence in all the metro cities of India.”

19. Section 134¹ of the Trade Marks Act permits an infringing suit to be instituted within the territorial jurisdiction of any court within

¹ 134. 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



which the plaintiff carries on business. Section 20² of the CPC permits a plaint to be instituted before any court within whose territorial jurisdiction, the defendant carries on business or the whole, or part, of the cause of action arises.

20. In *Ultra Homes Construction Pvt. Ltd. v. Purushottam Kumar Chaubey*³, the Division Bench of this Court, speaking through S. Ravindra Bhat, J. as he then was, has clearly held that Section 134 of the Trade Marks Act provides an additional forum before which infringing suit could be instituted, apart from the court which would have territorial jurisdiction to deal with the matter under Section 20 of the CPC. As such, an infringing suit could be instituted before any court which would have territorial jurisdiction either under Section 134 of the Trade Marks Act or under Section 20 of the CPC.

21. In the present case, the averments contained in paras 43 and 44 of the plaint conferred territorial jurisdiction on the learned Saket

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.

20. **Other suits to be instituted where defendants reside or cause of action arises.** – Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction –

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.

Explanation—A corporation shall be deemed to carry on business at its sole or principal office in India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

³ 227 (2016) DLT 320 (DB)



District Court to entertain a decide the plaintiff's suit both under Section 134 of the Trade Marks Act as well as under Section 20 of the CPC. The impugned judgment of the learned ADJ indicates that, in fact, the learned ADJ has not even addressed the issue of jurisdiction *vis-à-vis* Section 134 of the Trade Marks Act and has merely restricted his discussion to Section 20 of the CPC, with respect to which, too, the findings in the impugned judgment are not sustainable in law or on facts.

22. As such, I am convinced that the suit was competently instituted before the learned ADJ, Saket both by virtue of Section 134 of the Trade Marks Act as well as Section 20 of the CPC.

23. Accordingly, the impugned judgment cannot sustain on law or on facts.

Relief to which the appellant is entitled

24. As a result, the impugned judgment dated 5 September 2020 is quashed and set aside. CS(COMM) 328/2019 is remitted to the learned ADJ to be decided on merits.

25. Interim order dated, passed by 25 July 2018 the learned ADJ, is revived and shall remain in force pending further orders to be passed by the learned ADJ.



26. The appeal stands allowed accordingly with no order as to costs.

C. HARI SHANKAR, J.

AUGUST 10, 2023

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