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

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Date of Decision: 09.04. 2024

+ **FAO (COMM) 227/2023 & CM No.56950/2023**

CP CENTURY HARDWARE PVT. LTD.

..... Appellant

Through: Mr. Satish Kumar, Mr. Vishal Patel,
Mr. Nishant Dwivedi & Mr. Ashutosh
Shukla, Advs.

Versus

M/S. SKYWOOD INTERIOR SOLUTIONS

..... Respondent

Through: Mr. Harish Kumar, Mr. Mukund Yadav
& Mr. Shivam Kumar, Advs.**CORAM:****HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MS. JUSTICE TARA VITASTA GANJU****VIBHU BAKHRU, J. (Oral)**

1. The appellant has filed the present appeal impugning an order dated 26.09.2023 (hereafter *the impugned order*), whereby the application filed by the respondent (defendant in the suit) under Order VII Rule 10 (2) of the Code of Civil Procedure, 1908 (hereafter *the CPC*) in CS(COMM) No.179/2023 captioned *CP Century Hardware Pvt. Ltd. v. M/s Skywood Interior Solutions*, was allowed by the learned Commercial Court.

2. The learned Commercial Court found that it lacked the territorial jurisdiction to entertain the suit and consequently passed the impugned order directing return of the plaint to be presented before a court of competent jurisdiction.

3. The appellant had filed the above-captioned suit under Sections 134 and 135 of the Trade Marks Act, 1999 (hereafter *the TM Act*) seeking



permanent injunction restraining the respondent from infringing its trade marks, passing off, delivery and rendition of accounts. The appellant claims that it is engaged in the business of manufacturing of all kinds of hardware goods, kitchen hardware, cabinet hardware including metal locks, nuts, bolts, screw, metal washers etc. under the trademarks 'CP CENTURY' and 'CWPL CENTURY'. The details of the said trademarks are set out below:



4. The appellant claims that the respondent is also using the trade marks / labels, which are deceptively similar to the appellant's registered trademarks. The appellant also asserted that the learned Commercial Court had the territorial jurisdiction to adjudicate the suit, as according to the appellant, the respondent had made clandestine and surreptitious sales by delivering the goods within the territorial jurisdiction of the learned Commercial Court. Paragraph no. 33 of the plaint is relevant and is set out below:

"33. That this Hon'ble Court has the requisite territorial jurisdiction to try and adjudicate the present suit as the Registered Offices of the Plaintiff are situated at B-3/8C, Pocket-B, Ashok Vihar-III, Delhi-110052 and B2/25 Ashok Vihar, Phase-II, Main Road, Opposite Police Station, Delhi-110052 where the Plaintiff works for gain/profit and in accordance with Section 134(2) of Trademarks Act, 1999, this Hon'ble Court has the requisite territorial jurisdiction to try and adjudicate the present suit. The Defendant is making clandestine and surreptitious sales and is supplying its impugned goods bearing the impugned mark to the dealers and distributors in the markets of North-West Delhi



including markets at Ashok Vihar etc. The Defendant is committing the impugned acts within the jurisdiction of this Hon'ble Court by conducting, soliciting, advertising, selling and marketing his impugned goods and business under the impugned trademark/label through interactive web-sites which are accessible to the trade and public at large from all over India including North-West Delhi. The Defendant is committing the impugned acts of infringement in the markets of Delhi including Ashok Vihar etc. within, the jurisdiction of this Hon'ble Court by soliciting, displaying and marketing networks in relation to the impugned business and services under the impugned mark/label. The Plaintiffs said proprietary rights are being prejudicially affected or likely to be so affected in New Delhi due to the Defendant's impugned activities.

Further, the plaintiff's goods are sold to consumers in North-West Delhi through dealer and distributors within the jurisdiction of this Hon'ble Court. The plaintiff has tremendous goodwill and reputation in its said trade mark in North-West Delhi area which is being tarnished by impugned activities of the defendant in North-West Delhi area, besides other parts of country. The plaintiffs said proprietary rights are being prejudicially affected in North-West Delhi area due to the defendant's impugned activities. This Hon'ble Court, as such, has the jurisdiction to try and adjudicate the present suit by virtue of 134 (2) of the Trade Marks Act 1999 & Section 20 CPC."

5. The respondent disputes the averment that it had made any sale in the markets of North-West Delhi or had carried out any trading activities within the territorial jurisdiction of the learned Commercial Court. The respondent also claims that the appellant does not carry on any business activities within the territorial jurisdiction of the learned Commercial Court and the averments made in the plaint to the said affect are incorrect.

6. In the aforesaid context, the learned Commercial Court referred to the decision of this Court in ***Ultra Home Construction Pvt. Ltd. v. Purushottam Kumar Chaubey and Ors.: 2016 SCC OnLine Del 376*** and had emphasized that if the plaintiff has a principal office at one place and a subordinate office or a branch at another place and the cause of action has arisen at the place



where the principal office of the plaintiff is situated, then the plaintiff cannot sue at the place of the subordinate office. The learned Commercial Court found that the appellant's registered office is at Ghaziabad and the cause of action had also arisen within the territorial jurisdiction of the Courts at Ghaziabad. Thus, in terms of the decision in ***Ultra Home Construction Pvt. Ltd. v. Purushottam Kumar Chaubey & Ors.*** (*supra*), the learned Commercial Court held that the Courts at Ghaziabad alone would have the jurisdiction to adjudicate the disputes. The learned Commercial Court further observed that the appellant had not been able to show that any part of the cause of action had arisen within the territorial jurisdiction of the learned Commercial Court. Thus, although the appellant had an office within the territorial jurisdiction of the learned Commercial Court it could not file the suit before the learned Commercial Court. The learned Commercial Court also imposed a cost of ₹50,000/- on the appellant.

7. It is settled law that an application under Order VII Rule 10 of the CPC is required to be examined solely on the basis of the averments made in the plaint and the documents filed by the plaintiff. At the stage of considering an application under Order VII Rule 10 of the CPC, there is no scope for examining the defendant's defence or evaluating the correctness of the averments made in the plaint. The application is required to be examined on a demurrer, that is, accepting the averments made in the plaint to be correct.

8. In ***Expfar SA & Anr. v. Eupharma Laboratories Ltd. & Anr.***: (2004) 3 SCC 688 the Supreme Court held as under:

“9. Besides, when an objection to jurisdiction is raised by way of demurrer and not at the trial, the objection must proceed on the basis that the facts as pleaded by the initiator of the impugned proceedings are true. The submission in order to succeed must show that granted



those facts the court does not have jurisdiction as a matter of law. In rejecting a plaint on the ground of jurisdiction, the Division Bench should have taken the allegations contained in the plaint to be correct.”

9. A Division Bench of this Court in *Allied Blenders & Distiller Pvt. Ltd. v. Prag Distillery Pvt. Ltd. & Anr.: 2017 SCC OnLine Del 7225* had considered the case where the plaintiff made a statement apprehending that the defendant would launch his product within the territorial jurisdiction of the Court. Apart from the said statement, there was no averment in the plaint which even remotely suggested that a cause of action has arisen within the territorial jurisdiction of that Court. In the aforesaid context, this Court had observed as under:

“13. In these circumstances, we are of the view that considering the plaint on a demurrer, it will have to be accepted, for the purposes of considering an application under Order VII Rule 10 of the Code that the averment of the plaintiff of the imminent and credible threat or apprehension that the defendants would launch the product in Delhi, is correct. If this be the case, then, surely a part of the cause of action has allegedly arisen in Delhi. But, this is only for the purposes of considering whether a plaint should be returned or not.

14. It must be clarified that the considerations with regard to territorial jurisdiction in the context of Order VII Rule 10 of the Code are entirely different from those in an application under Order XXXIX Rules 1 & 2 of the Code or when a finding is to be returned on the issue of territorial jurisdiction. Under Order VII Rule 10 of the Code, only the averments in the plaint are to be seen and that, too, on the assumption that they are correct. While considering an application under Order XXXIX Rules 1 & 2 of the Code, not only the averments in the plaint but also other material including the defendant's reply and written statement are to be seen. For establishing the existence of a *prime facie* case (a condition precedent for an *ad interim* injunction order), the plaintiff would obviously have to



demonstrate, albeit at a *prima facie* level, that the apprehension was reasonable and credible. Here, a mere averment in the plaint would not do. And, the assumption that the averments in the plaint are correct would also not be available. Where the issue of jurisdiction is to be decided at the trial, the standard of proof would be even higher. Therefore, while for the purposes of an examination under Order VII Rule 10 of the Code, the court may 'conclude' that it has territorial jurisdiction, this would not come in the way of the defendant in raising a question as to territorial jurisdiction, both, when the issue of temporary injunction under Order XXXIX Rules 1 & 2 of the Code is being considered and when an issue as to territorial jurisdiction is being decided in the trial of the suit. In other words, while a plaintiff may succeed in demonstrating, for the purposes of Order VII Rule 10 of the Code that this court has territorial jurisdiction and that the plaint ought not to be returned, he may fail in obtaining an order of interim injunction on the ground that the plaintiff's case is itself shaky because the issue of territorial jurisdiction is highly debatable and *prima facie* not tenable. Therefore, the decision of the court in rejecting the objection of the defendant and in refusing the defendant's prayer for return of the plaint under Order VII Rule 10 of the Code, would not come in the way of the defendant raising the question of territorial jurisdiction, both as an objection to the grant of an interim injunction as also at the time of decision of the issue of territorial jurisdiction, if framed, at the trial of the suit."

10. As is apparent from the above, the court had clarified that whilst, for the purposes of considering an application the averments made in the plaint were required to be accepted as correct, the standard for considering an application under Order XXXIX Rules 1 and 2 of the CPC is materially different. The question whether the Court has jurisdiction will also be material while deciding whether deciding an application under Order XXXIX Rules 1 and 2 of the CPC. And, for deciding the said application, the averments made by the defendant are required to be considered.



11. In view of the settled law, if the averments made in Paragraph 33 of the plaint are examined, it is clear that the appellant has asserted that a cause of action had arisen within the territorial jurisdiction of the learned Commercial Court. It is also asserted that it has a corporate office within the said jurisdiction. If the said averments are accepted as correct, the learned Commercial Court would have jurisdiction to entertain the suit.

12. In view of the above, the impugned order cannot be sustained. The same is, accordingly, set aside.

13. The suit is restored before the learned Commercial Court at the stage as obtaining on 26.09.2023.

14. The parties shall appear before the learned Commercial Court on 07.05.2024 for further proceedings.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

APRIL 09, 2024

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