



2025:DHC:10789-DB



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

Reserved on: 31 July 2025

Pronounced on: 3 December 2025

+ **FAO(OS) (COMM) 66/2025, CM APPL. 23741/2025, CM APPL. 32462/2025, CM APPL. 32554/2025 & CM APPL. 34522/2025**

**KOHINOOR SEED FIELDS INDIA
PVT LTD**

.....Appellant

Through: Mr. Saurav Agarwal, Mr. Shantanu Agarwal, Mr. Adarsh Ramanujan, Mr. Kapil Rustagi, Mr. Saurabh Seth, Ms. Chandreyee Maitra, Ms. Allaka M, Mr. Manas Arora, Mr. Raghav Thareja, Mr. Parth Singh and Mr. Ajay, Advts.

versus

VEDA SEED SCIENCES PVT LTD

.....Respondent

Through: Mr. Raj Shekhar Rao, Sr. Adv. with Mr. Kapil Wadhwa, Ms. Sindoor, Ms. Vishakha Gupta, Mr. Wamic Wasim, Ms. Thithiksha Padmam and Mr. Anish Jandial, Advts.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

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JUDGMENT

03.12.2025

C. HARI SHANKAR, J.



2025:DHC:10789-DB



Facilitative Index to the Judgment

S. No.	Subject	Para Nos
1	The <i>lis</i>	1
2	Facts	2 - 7
3	The Complaint	3 – 3.3
4	IA 20138/2022 under Order II Rule 2 of the CPC and order dated 12 July 2023 passed therein	4 – 4.2
5	(Miscellaneous para)	5
6	Rival Submissions before learned Single Judge	6 – 6.2
7	The Impugned Judgment	7 – 9
8	Re. Registration of asserted trade marks within jurisdiction of this Court	7
9	Issues identified by learned Single Judge as arising for consideration	8
10	Findings of learned Single Judge (i) Re. Issue 1 – whether the cause of action for filing the suit was also based on the Marketing Agreement? (ii) Re. Issue 2 – whether there was any cause of action in the suit which included listing of the infringement products on India Mart? (iii) Re: Issue 3 – if no part of the cause of action arose within the jurisdiction of this Court, whether jurisdiction could be exercised because the appellant has its head office in Delhi, even though the cause of action has arisen within the jurisdiction of the High Court where the subordinate office of the appellant is located?	9
11	(Miscellaneous paras)	10 – 11
12	Rival Contentions of learned Counsel before this Court	12 – 13
13	Submissions of Mr. Saurav Agarwal for the appellant	12
14	Submissions of Mr. Raj Shekhar Rao for the respondent	13
15	Analysis	14 – 21.4
16	Issue	14 – 14.2
17	The impugned judgment in a nutshell	15 – 15.2
18	(Miscellaneous para)	16
19	Whether the impugned judgment is correct in holding that the registration of the asserted trade marks of the appellant in Delhi would not confer jurisdiction on this Court	17 – 17.13
20	Whether the Marketing Agreement formed part of the cause of action for instituting the suit and, therefore, whether the suit was amenable to the territorial	18 – 18.8

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KUMAR
Signing Date: 03.12.2025
14:54:38

FAO(OS) (COMM) 66/2025

Page 2 of 69



2025:DHC:10789-DB



	jurisdiction of this Court	
21	Re. availability of the defendant's products on e-commerce websites	19 – 19.15
22	The decision in <i>Banyan Tree Holding</i>	19.4 – 19.4.6
23	The decision in <i>World Wrestling Entertainment</i>	19.5 – 19.5.5
24	The <i>Ultra Home Construction</i> principle, and reliance thereon	20 – 20.5
25	Re. the plea that learned Single Judge relied on material outside the plaint	21 – 21.4
26	Conclusion	22 - 25

The *lis*

1. CS (Comm) 828/2022 was instituted by the appellant Kohinoor Seed Fields India Pvt. Ltd against the respondent Veda Seed Sciences Pvt. Ltd, alleging infringement, by the respondent, of the appellant's registered trade marks. The respondent filed IA 2200/2023 under Order VII Rule 10 of the Code of Civil Procedure, 1908¹, contending that this Court does not have the territorial jurisdiction to entertain the suit. A learned Single Judge of this Court has allowed IA 2200/2023, and has directed return of the plaint to the appellant for presentation before the appropriate Court. The appellant is in appeal.

Facts

2. Inasmuch as an application under Order VII Rule 10 of the CPC has to be decided solely on the basis of the averments in the plaint, read with the documents filed therewith, it would not be necessary to refer to any of the pleadings before the learned Single Judge, except

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FAO(OS) (COMM) 66/2025



2025:DHC:10789-DB



the plaint instituted by the appellant.

3. The plaint

3.1 The appellant alleged, in its plaint, that by selling hybrid seeds, under the marks “VEDA TADAAKHA GOLD BG II”, “VEDA SADANAND GOLD BG II” and “VEDA BASANT GOLD BG II”, the respondent was infringing the registered trade marks TADAAKHA and SADANAND of the appellant and was also passing off its products as the products of the appellant. The marks TADAAKHA, SADANAND and BASANT of the appellant, and the marks “VEDA TADAAKHA GOLD”, “VEDA SADANAND GOLD” and “VEDA BASANT GOLD” were used for cotton hybrid seeds.

3.2 The appellant asserted, in its plaint, thus:

(i) The appellant was in possession of necessary statutory approvals to sell its cotton hybrid seeds in Madhya Pradesh, South Rajasthan, Gujarat, Maharashtra, Andhra Pradesh, Telangana and Karnataka.

(ii) The appellant was the proprietor of the registered word marks TADAAKHA and SADANAND, in Class 31, for agricultural seeds, w.e.f.² 24 March 2014 and 4 April 2014 respectively, under Section 23 of the Trade Marks Act, 1999.

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14:54:38
FAO(OS) (COMM) 66/2025



2025:DHC:10789-DB



(iii) The appellant had garnered enormous goodwill and reputation in the marks TADAAKHA, SADANAND as well as in the mark BASANT, though, in respect of the mark BASANT, it had no registration under the Trade Marks Act.

(iv) The appellant had also incurred considerable expenses towards promotion and advertising of its cotton hybrid seeds under the aforesaid marks.

(v) On 3 March 2014, the appellant entered into a non-exclusive co-Marketing Agreement with the respondent, which was renewed annually, the last iteration of which was in the form of Marketing Agreement dated 1 January 2022, which remained valid till 31 December 2022. Under the Marketing Agreement, the respondent was permitted to market and distribute cotton hybrid seeds of the appellant under the aforesaid trade marks SADANAND, TADAAKHA and BASANT. Paras 18 to 23 of the plaint contain the following assertions with respect to the Marketing Agreement:

“18. The Plaintiff had entered into a non-exclusive comarketing arrangement with the Defendant on 03.03.2014, which was renewed annually, for the purpose of marketing and distribution of five different cotton hybrids being KSCH-207 BG II, KSCH-211 BG II, KSCH-212 BG II, KSCH-232 BG II and KSCH-213 BG II. The arrangement was limited to the co-marking arrangement only since the hybrid seeds were being produced only by the Plaintiff to ensure quality control.



19. The Marketing Agreement dated 01.01.2022 executed in New Delhi, is the latest iteration of this arrangement which is valid up to 31.12.2022 ('Marketing Agreement').

Copies of the Marketing Agreements for the years 2018-19, 2019-20, 2020-21 and 2021-22 are enclosed with the list of documents filed with the plaint. The Plaintiff craves leave to produce the earlier iterations of the agreement if the Court so directs.

20. Under Clause 3 read with Recitals 2 and 3 of the Marketing Agreement it was agreed that the Plaintiff would produce, and the Defendant would market and distribute, *inter alia*, the following cotton hybrid seeds under the Plaintiffs Subject Marks:

- a. KSCH-207 BG II cotton hybrid under the brand name of TADAAKHA®
- b. KSCH-232 BG II cotton hybrid under the brand name of SADANAND®
- c. KSCH-212 BG II cotton hybrid under the brand name of BASANT™

21. The Plaintiffs ownership of the Plaintiffs Subject Marks, has been acknowledged by the Defendant in Clause 10(c) of the Marketing Agreement which states as following:

“10. Packaging:

...
(c) *VSSPL acknowledges and agrees that **KSFIPL** is the owner of all trademarks and VSSPL shall not misuse or misrepresent them in any manner. Usage of the trade mark of **KSFIPL** by VSSPL in conjunction with any other mark shall not create any IPR rights of whatsoever nature in favour of VSSPL and VSSPL shall not use any such mark after the termination or expiry of this agreement, or shall make any claim over such marks.”*

(Emphasis supplied)



2025:DHC:10789-DB



22. Clause 10(b) of the Marketing Agreement requires that the promotional materials for the Plaintiff's products marketed by the Defendant shall be pre-approved by the Plaintiff. It also obligated the Defendant to ensure that the packaging clearly indicated that the relevant hybrid seed had been developed, marketed, and packed by the Plaintiff and that the Defendant is only the marketer. Further, under Clause 10(d) of the Agreement, Defendant is required to refrain from any act or omission which would in any manner impair the Plaintiff's rights in above-mentioned trademarks.

23. Under Clause 5 of the Marketing Agreement, the Defendant explicitly undertook that it would not sell any other hybrid seeds under the Plaintiff's Subject Marks, other than the five hybrids mentioned in the Marketing Agreement. Clause 5 of the Marketing Agreement reads as following:

“VSSPL hereby agrees and undertakes that except in respect of the Collon hybrid Seeds it shall not sell any other hybrid seeds under the brand names permitted under this Agreement.”

(vi) On 27 September 2022, the appellant wrote to the respondent, stating that it did not intend to renew the Marketing Agreement any further. Following this, on 1 October 2022, the appellant wrote to its distributors, stating that w.e.f. the next *Kharif* season of 2023, it would not be selling its cotton hybrid seeds through the respondent but would be directly selling them in the market. On 25 November 2022, the appellant sent a notice of termination of the Marketing Agreement to the respondent in terms of Clause 14(c) thereof.

(vii) In October 2022, the appellant learnt that the respondent was promoting and accepting advance booking for the sale of BG-II cotton hybrid seeds for the kharif season 2023 under the

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FAO(OS) (COMM) 66/2025

Page 7 of 69



2025:DHC:10789-DB



brands “VEDA TADAAKHA GOLD BG II”, “VEDA SADANAND GOLD BG II” and “VEDA BASANT GOLD BG II”. Copies of these advance bookings were received by the appellant on WhatsApp from its traders/distributors.

(viii) The appellant, thereby, realized that the respondent was using the marks “VEDA TADAAKHA GOLD BG II”, “VEDA SADANAND GOLD BG II” and “VEDA BASANT GOLD BG II” in relation to hybrids not manufactured by the appellant. This use was, therefore, outside the permitted scope of the Marketing Agreement between the appellant and the respondent. Use of the appellant’s marks “TADAAKHA”, “SADANAND” and “BASANT” for cotton hybrids which were not manufactured by the appellant could not be regarded as permitted use of the marks by the respondent and amounted, therefore, to infringement of the appellant’s registered trademarks. In this context, it is relevant to reproduce paras 28, 29 and 30 of the plaint, thus:

“28. The Plaintiff was immediately concerned with the misuse of the Plaintiff’s Subject Marks because, shockingly, the Defendant was using the Plaintiff’s Subject Marks *in relation to hybrids not produced by the Plaintiff and were thus, outside the permitted scope of the Marketing Agreement.* ...

29. The hybrids mentioned in the above promotional material for advance bookings and the advance booking forms, being GK-224 BG II, YSC H-369 BG II and GK-238 BG II are not products of the Plaintiff. The Plaintiff is presently not aware of the provenance of these other hybrids but verily believes that these other hybrids possess very different characteristics from those of the Plaintiffs hybrids.



2025:DHC:10789-DB



30. *The inclusion of trademarks identical to the Plaintiff's Subject Marks i.e., 'TADAAKHA'® and 'SADANAND'® for the same goods in the same class, outside the permitted use (outside the Marketing agreement) amounts to statutory infringement of Plaintiff's rights per se by the Defendant."*

(Emphasis supplied)

(ix) The use, by the respondent, of the asserted marks of the appellant was deceptive and likely to cause market confusion. The marks were being used on goods which were of the same category, sold through the same channels of commerce and targeting the same consumers. The use, by the respondent, of the marks "TADAAKHA", "SADANAND" and "BASANT" was likely to induce the consumers who were largely illiterate farmers, to purchase the respondent's seeds believing an association between the respondent and the appellant.

(x) The respondent had never been using the marks "SADANAND" "TADAAKHA" or "BASANT", before coming into contact with the appellant. The appellant was the prior user and adopter of the said marks. The use of the said marks by the respondent, even after it came into contact with the appellant, was only in the context of specified hybrid seeds covered by the Marketing Agreement. There was no reason, therefore, for the respondent to use the marks "SADANAND" "TADAAKHA" and "BASANT" on products not produced by the appellant.

(xi) The respondent had also adopted an overall get-up and packaging for its products which was the same as that adopted by



2025:DHC:10789-DB



the appellant. This, too, indicated *mala fides* on the part of the respondent, to ride on the goodwill and reputation of the appellant.

(xii) The possibility of confusion was exacerbated by the fact that the respondent was the co-marketer of the appellant's specified hybrids under the asserted marks for several years. Use of the said marks by the respondent for products marketed by it was therefore likely to confuse consumers into believing that they were purchasing hybrids produced by the appellants.

(xiii) The use by the respondent of the marks "VEDA TADAAKHA GOLD", "VEDA SADANAND GOLD" and "VEDA BASANT GOLD", therefore, amounted to infringement of the appellant's registered trademarks "SADANAND" and "TADAAKHA" and passing off of the respondent's products as the products of the appellant.

(xiv) The above assertions, beyond para 29, were contained in paras 30 to 43 of the plaint, which read as under:

"30. The inclusion of trademarks identical to the Plaintiff's Subject Marks *i.e.*, 'TADAAKHA'® and 'SADANAND'® for the same goods in the same class, outside the permitted use (outside the Marketing agreement) amounts to statutory infringement of Plaintiff's rights per se by the Defendant.

31. The Defendant's inclusion of the Plaintiff's Subject Marks is deceptive and is likely to cause significant confusion in the market. The Defendant is using the Plaintiff's Subject Marks on goods of the same category



2025:DHC:10789-DB



sold through the same channels of commerce. The potential consumers for the Defendant's product are farmers who may not be literate and are not likely/able to read every aspect of the packet before purchasing the product. They are more likely to purchase seeds based on past associations/experiences and therefore such use of the Plaintiff's Subject Marks, whether with or without a prefix and/or suffix, by the Defendant for its products is likely to result in the consumer associating the products with those of the Plaintiffs.

32. Further, undisputedly, the Plaintiff is a prior adopter and user of SADANAND TADAAKHA and BASANT. Undisputedly, the Defendant's association with the Plaintiff's Subject Marks is limited to that of a co-marketer till date and that too only in the context of specified hybrid seeds covered in the Marketing Agreement. The Defendant was not selling any product using 'SADANAND', 'TADAAKHA', and 'BASANT' as part of its branding before becoming a co-marketer of the Plaintiff. Thus, the Defendant has no legitimate basis or reason to include Plaintiff's Subject Marks 'SADANAND'®, 'TADAAKHA'®, and BASANT on products not produced by the Plaintiff.

33. The mala fide nature of the Defendant's conduct and the intent to free ride on the goodwill/reputation of the Plaintiff is clear from the fact that the overall, get-up and packaging of the Defendant's hybrids is the same as the Plaintiff's products marketed by the Defendant.

34. It is submitted that the Defendant is using the Impugned Marks on hybrids not produced by the Plaintiff in a manner almost similar to the packaging used on the Plaintiff's products. For example, the essential feature 'SADANAND', 'TADAAKHA' and BASANT™ are prominently displayed in the same white and green colour scheme.

35. With respect to the package of the Plaintiff's product KSCH-232 BG II cotton hybrid and Defendant's product GK-224 BG II cotton hybrid the image of the cotton ball with leaf next to this name, the red banner on the right-hand side of the front packaging, the partial image of the sun in the background (light yellow colour rays in dark yellow background), and even the back side of the packaging, are all identical-looking.

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14:54:38

FAO(OS) (COMM) 66/2025

Page 11 of 69



2025:DHC:10789-DB



36. With respect to the package of the Plaintiff's product KSCH-207 BG II cotton hybrid and Defendant's product VSCH-369 BG II cotton hybrid, the image of the cotton ball with leaf next to this name, the red banner on the right-hand side of the front packaging, the partial image of light-green colour leaves woven into a basket in the background with a dark-green/yellow wave pattern, and even the back side of the packaging, are all identical-looking

37. With respect to the package of the Plaintiff's product KSCH-212 BG II cotton hybrid and Defendant's product GK-238 BG II cotton hybrid, the image of the cotton ball with leaf next to this name, the red banner on the right-hand side of the front packaging, the partial image of a cotton field at the top and the orange sun in the background, and even the back side of the packaging, are all identical-looking.

38. It is evident that the Defendant's product has identical packaging, colour range, material etc., used for identical range of products. The look of the Defendant's product, even from a distance, would give an unmistakable impression of the Plaintiff's product. Such adoption of identical-packaging is completely dishonest, and a malafide attempt to take advantage of the hard-earned market reputation built by the Plaintiff

39. Thus, the Defendant has clearly adopted the Impugned Mark in bad faith under the same category and identical range of products with full knowledge of the that Plaintiff's Subject Marks exist and are well-known, and with a singular purpose of making illicit gains by free riding on the goodwill and reputation of the Plaintiff. Such malafide use by the Defendant is likely to cause confusion or an association amongst the customers or members of the trade as to the origin of the said products and therefore cannot be permitted. It is apparent that the Defendant intends to take unfair benefit and advantage of the goodwill associated with Plaintiff's Subject Marks to sell its other hybrids.

40. The likelihood of confusion is even higher in the present case because the Defendant has been the co-marketer of Plaintiff's specified hybrids under the Plaintiff's Subject Marks for many years. Therefore, when the Plaintiff's Subject Marks are included in a product that is



2025:DHC:10789-DB



marketed by the Defendant, consumers are likely to be deceived into believing that they are purchasing hybrids produced by the Plaintiff.

41. This illegal conduct of the Defendant causes serious and irreparable damages to the Plaintiffs reputation since products not associated with the Plaintiff are being sold using the Plaintiff's Subject Marks. There is an imminent risk of serious and irreparable damage to the public because one is dealing with genetically modified crops. Even though the underlying technology may be the same, each hybrid even if incorporating the same technology will have vastly distinctive features, especially in the context of yield, longevity, and susceptibility to pests et cetera. Thus, the Defendant's mala fide intent to create an association between some other products with the Plaintiffs established products, can be potentially prejudicial to cultivators and farmers. It is also likely to tarnish the Plaintiffs reputation since the Defendant's products are not produced by the Plaintiff or quality tested by the Plaintiff. Accordingly, the Defendant's conduct dilutes the Plaintiff's Subject Marks in as much as it is taking away the distinctive quality associated with the marks and/or is likely to cause harm to the goodwill/reputation associated with these marks.

42. In the interest of full disclosure, the Plaintiff had applied for but had denied trade mark registration for 'BASANTH' on 29.04.2019 and for BASANT' on 26.09.2019. However, the Plaintiff submits that this does not detract from the Plaintiffs common law right to BASANT'TM.

43. Accordingly, a case of infringement and passing off of the registered trademarks being 'SADANAND' bearing no 2712050, and TADAAKHA®, bearing no. 2704422 is established. In addition, a case of passing off has been made out in the context of "SADANAND®, TADAAKHA® and BASANT'TM."

(xv) In paras 47 and 48 of the plaint, the appellant further asserted thus:

“RESERVATION OF RIGHTS *QUA* OTHER CAUSES OF ACTION

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Signing Date: 03.12.2025
14:54:38
FAO(OS) (COMM) 66/2025

Page 13 of 69



47. The present suit is limited to pursuing the statutory remedy of trademark infringement and common law rights with respect to passing off. The facts narrated may also give rise to other causes of action in favour of the Plaintiff and against the Defendant. The Plaintiff expressly reserves its rights and remedies in this respect and out of abundant caution, seeks leave of this Hon'ble Court to pursue such other causes of action at an appropriate time through an appropriate application.

48. In addition, and without prejudice, the Marketing Agreement anyway expires on 31.12.2022. If the Defendant fails to cure the breach of contract as specified in the terminated notice dated 21.11.2022 within the stipulated period of fifteen (15) days, the Marketing Agreement would stand terminated even earlier. In either event, the Defendant cannot sell Plaintiff's hybrids thereafter. Any existing packets of the Plaintiff's hybrid seeds are to be returned to the Plaintiff and the Defendant cannot use the Plaintiff's trademarks for selling Plaintiff's hybrids or any other product/hybrid for that matter. The Plaintiff expressly reserves its rights and remedies in the event the Defendant continues selling Plaintiff's products or uses the Plaintiff's marks after the Marketing Agreement expires on 31.12.2022 or stands terminated earlier. Out of abundant caution, the Plaintiff seeks leave of this Hon'ble Court to pursue such other causes of action at an appropriate time through an appropriate application.

The Plaintiff has not filed any other similar suit or petition with respect to present cause of action before this Hon'ble Court or any other court. The Plaintiff has never condoned or acquiesced in the unlawful acts of the Defendant."

(xvi) Paras 49 and 50 dealt with the cause of action and jurisdiction of this Court to entertain the plaint, and read as under:

"CAUSE OF ACTION

49. The cause of action for the present suit arose in October 2022 when the Plaintiff learnt that the Defendant was using the Plaintiff's Subject Marks to market and offer



for sale hybrids not produced by the Plaintiff. The cause of action further arose in October 2022 when the Plaintiff learned that the Defendant was offering for sale such infringing products through very easily accessible online marketplaces such as India Mart etc.

JURISDICTION

50. The present suit is a consolidated suit for infringement and/or passing off three Plaintiff's Subject Marks, by the same Defendant, arising out of the same course of transaction. This Hon'ble High Court has jurisdiction to entertain the present suit under Section 134 (2)³ of the Trade Marks Act, 1999 since the Plaintiff's registered address is within the jurisdiction of this Hon'ble Court, i.e., New Delhi, and the Plaintiff ordinarily carries on business in New Delhi. The two registered marks asserted in the present suit has been registered with the Delhi Trademarks Registry. Further, the seed packets of the impugned goods of the Defendant are available on various e-commerce platforms like India Mart etc., which are available for access within New Delhi, and in any event, are dynamic websites that permits communication and placement of orders. In addition, the relationship between parties to the suit arises out of the Marketing Agreement executed in New Delhi. As such, this Hon'ble High Court of Delhi has territorial jurisdiction to entertain the present suit. The suit is valued beyond the minimum pecuniary jurisdiction of this Hon'ble Court and is also a commercial suit within the meaning of the Commercial Courts Act, 2015."

3.3 Predicated on these assertions, the appellant, in its plaint, sought a decree of permanent injunction, restraining the respondent and all

³ 134. **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.



2025:DHC:10789-DB



others acting on the respondent's behalf from using, in any manner, the marks "TADAAKHA", "SADANAND" and "BASANT", with or without any prefix or suffix, or any product or service, other than the cotton hybrid seeds which were manufactured by the appellant under the trademarks "TADAAKHA", "SADANAND" and "BASANT".

4. IA 20138/2022 under Order II Rule 2 of the CPC and order dated 12 July 2023 passed therein

4.1 The appellant filed, with the plaint, IA 20138/2022 under Order II Rule 2 of the CPC, which we deem appropriate to reproduce *in extenso*, as it forms one of the main considerations in the passing of the impugned judgment by the learned Single Judge:

"The Plaintiff above-named, respectfully submits as follows:

1. The Plaintiff has instituted the captioned suit against the Defendant, inter alia for permanent injunction restraining the infringement and passing off of Plaintiff's registered trademarks 'SADANAND' and 'TADAAKHA' and also passing off of unregistered trademark 'BASANT'TM, damages, etc. ("Plaintiffs Subject Marks"). The Plaintiffs Subject Marks are used in relation to seeds of cotton hybrids sold to Indian farmers. The Plaintiff has credible apprehension that the Defendant in breach of the Marketing Agreement is offering for sale and taking advance bookings on certain other products, not envisaged under the said agreement.

2. At the time of the institution of the present proceedings, the Plaintiff is asserting exclusive rights to its registered trademarks "SADANAND®" and "TADAAKHA®" and its one unregistered trademark 'BASANT'TM. The Plaintiffs reserve their right under Order II of the Code of Civil Procedure, 1908 to amend the plaint and add claims for infringement of other trademarks/marks held and used by the Plaintiff at a later and appropriate stage of the present proceedings. Reliance is placed on paragraphs 4 7-48 of the Plaint.



3. As on the date of institution of the present lawsuit, the Plaintiffs have asserted a claim of infringement and passing off of 'SADANAND®' and 'TADAAKHA®' and passing off its one unregistered trademark 'BASANT'™. However, the said trademarks are not the only trademarks which is apprehended to be infringed/passed off by the Defendant. While infringement and/or passing off any such other trademark amounts to a different cause of action, out of abundant caution, through this application, the Plaintiff seeks leave of this Hon'ble Court to bring appropriate proceedings against the Defendant *qua* such other additional trademarks/marks, which may also have been infringed/passed off by the Defendant.

4. Similarly, the conduct of the Defendant as pleaded in the Plaint may also give rise to a separate cause of action of breach of contract. On the date of the suit, a terminate notice dated 25.11.2022 has been issued and is presently within the 15-day cure period. Out of abundant caution, through this application, the Plaintiffs seeks leave of this Hon'ble Court to bring appropriate proceedings against the Defendant *qua* such other cause of action.

5. Finally, the Marketing Agreement anyway expires on 31.12.2022. Further, if the Defendant fails to cure the breach of contract as specified in the terminated notice dated 25.11.2022 within the stipulated period of fifteen (15) days, the Marketing Agreement would stand terminated even earlier. In either event, the Defendant cannot sell Plaintiffs hybrids thereafter. Any existing packets of the Plaintiffs Hybrids are to be returned to the Plaintiff. Nor can the Defendant use the Plaintiffs trademark for selling Plaintiff's hybrids or any other product/hybrid for that matter. The Plaintiff expressly reserves its rights and remedies in the event the Defendant continues selling Plaintiffs products or uses the Plaintiffs marks after the Marketing Agreement expires on 31.12.2022 or stands terminated earlier. Out of abundant caution, seeks leave of this Hon'ble Court to pursue such other causes of action at an appropriate time through an appropriate application.

6. The application is filed bona fide, and it would be in the interests of justice if it is allowed by this Hon'ble Court. No prejudice shall be caused to the Defendant if the present application is allowed. However, grave injustice will be caused to the Plaintiff if the said application is disallowed and it is prevented from amending, adding claims in the present proceedings in the manner as specified above.

PRAYER



7. In light of above, the Plaintiff humbly prays that this Hon'ble Court may be pleased to:

- i. Grant leave to the Plaintiff to take appropriate proceedings in respect of a claim for infringement/passing off of additional trademarks/marks by the Defendant;
- ii. Grant leave to the Plaintiff to take appropriate proceedings in respect of a claim for breach of contract;
- iii. Grant leave to the Plaintiff to take appropriate proceedings in respect of a claim for infringement/passing off after 31.12.2022 or the earlier termination of the Marketing Agreement dated 01.01.2022; and
- iv. Any other orders which this Hon'ble Court may deem fit and proper in the facts and circumstances."

4.2 The aforesaid IA 20138/2022 was disposed of, by a learned Single Judge of this Court, by the following order passed on 12 July 2023:

"I.A.20138/2022 (u/O II Rule 2 CPC) in CS (COMM) 828/2022

3. This is an application under Order II Rule 2 CPC moved by the Plaintiff to seek further reliefs in respect of additional trademarks. The prayers in this application are as under:

- “(i) Grant leave to the Plaintiff to take appropriate proceedings in respect of a claim for infringement/passing off of additional trademarks/marks by the Defendant;
- (ii) Grant leave to the Plaintiff to take appropriate proceedings in respect of a claim for breach of contract;
- (iii) Grant leave to the Plaintiff to take appropriate proceedings in respect of a claim for infringement/passing off after 31.12.2022 or the earlier termination of the Marketing Agreement dated 01.01.2022;”

4. Insofar as the prayer (i) is concerned, if there is any infringement or passing off of other trademarks, the same would constitute a fresh cause of action and the Plaintiff would have to take steps for independent proceedings respect thereof.



5. Insofar as the prayer (ii) for breach of contract is concerned, leave is granted to the Plaintiff for seeking relief qua the breach of contract, if maintainable, in accordance with law.

6. Insofar as the prayer (iii) is concerned, the same is not pressed by Id. Counsel for the Plaintiff.

7. The application is disposed of in the above terms.”

5. The respondent moved IA 2200/2023 under Order VII Rule 10 of the CPC, alleging that this Court had no territorial jurisdiction to entertain the suit and, therefore, praying that the plaint be returned for presentation before the court having territorial jurisdiction. This is the application which has been allowed by the impugned judgment dated 16 April 2025 passed by the learned Single Judge, against which the present appeal has been filed.

6. Rival submissions before the learned Single Judge

6.1 The respondent, as the applicant in IA 2200/2023, contesting the jurisdiction of this Court to territorially entertain the suit, advanced the following submissions before the learned Single Judge:

(i) The pleadings in the plaint did not evince satisfaction of the twin conditions of existence of a cause of action, or of the place of business of the appellant being within the territorial jurisdiction of this Court, as envisaged in Section 20⁴ of the CPC

⁴ 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



2025:DHC:10789-DB



and Section 134(2)⁵ of the Trade Marks Act. Reliance was placed, in this context, on the judgment of the Supreme Court in *Indian Performing Rights Society v. Sanjay Dalia*^{6 7} and of the Division Bench of this Court in *Ultra Home Construction v. Purushottam Kumar Chaubey*⁸.

(ii) The appellant had subordinate/branch offices in Andhra Pradesh and Telangana and its head office at New Delhi.

(iii) Under the Marketing Agreement, the respondent was authorised to market and distribute the appellant's products only in Madhya Pradesh, Gujarat, Maharashtra, Andhra Pradesh, Telangana, Karnataka and Tamil Nadu. As such, there was no way in which the respondent could have targeted consumers in Delhi. Nor did the plaint plead any dynamic effect of the alleged

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.

⁵ 134. **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.

⁶ (2015) 10 SCC 161

⁷ "IPRS" hereinafter

⁸ 227 (2016) DLT 320 (DB)

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FAO(OS) (COMM) 66/2025

Page 20 of 69



2025:DHC:10789-DB



infringement on the part of the respondent, having been felt in Delhi.

(iv) The respondent did not have any license, under the Seeds (Control) Order, 1983, to sell the seeds in Delhi. As such, the respondent's products were not, and could not be, sold in Delhi.

(v) Apropos the appellant's contention that the respondent's products were available on the IndiaMart e-commerce platform, the respondent was not registered with IndiaMart and had not put up its products for sale on the said platform. Nor was it the appellant's case that there was any actual sale or purchase of the respondent's products on IndiaMart. The mere fact that the respondent's products may have been available for sale on the IndiaMart e-commerce platform could not, in these circumstances, clothe this Court with jurisdiction to entertain the suit. Reliance was placed, in this context, on the judgment of the Division Bench of this Court in *Banyan Tree Holding v. A Murali Krishna Reddy*⁹.

(vi) The suit had been filed before expiry of the Marketing Agreement. As such, the suit was a simpliciter suit for infringement and passing off and was not for enforcing any rights under the Marketing Agreement. The Marketing Agreement, and its execution, therefore, did not constitute any part of the cause of action for instituting the suit.



2025:DHC:10789-DB



6.2 In response to the respondent's challenge to the territorial jurisdiction of this Court to entertain the suit, the appellant contended thus:

(i) The appellant's principal place of business was Delhi. It ordinarily carried on business in Delhi.

(ii) The asserted marks were registered in Delhi.

(iii) Once the registered office of the appellant was in Delhi, the infringement suit instituted by it was maintainable before this Court. Reliance was placed, for this purpose, on the judgments of the Division Benches of this Court in *Provident Housing v. Central Park Estates*¹⁰, and *CP Century Hardware v. Skywood Interior Solutions*¹¹.

(iv) The appellant had its principal office as well as subordinate offices. Jurisdiction could not be limited to the Court within whose jurisdiction the subordinate office was located, even in terms of Section 20 of the CPC.

(v) The pleaded cause of action in the plaint arose within the jurisdiction of this Court.

(vi) The Marketing Agreement, which was a critical part of the cause of action for the plaint, was executed at Delhi. The

¹⁰ AIR 2022 Del 242

¹¹ 2024 (99) PTC 67



2025:DHC:10789-DB



plea of infringement was also based on violation of the Marketing Agreement.

(vii) The respondent had placed orders for hybrid seeds on the appellant, which were invoiced in Delhi. Where an infringement suit was filed during the currency of the permitted user agreement, use of the marks by the defendant in breach of such agreement amounted to infringement.

(viii) The respondent's seeds were available on e-commerce platforms such as IndiaMart, which were accessible within the territorial jurisdiction of this Court. The mere listing of the respondent's products on the IndiaMart platform was by itself sufficient to clothe this Court with territorial jurisdiction in the matter. Reliance was placed, for this purpose, on the judgments of this Court in *Marico Limited v. Mukesh Kumar*¹² and *Shakthi Fashion v. Burberry Limited*¹³.

(ix) In violation of the Marketing Agreement, the respondent was infringing the appellant's proprietary rights as it was collecting advance amounts. Evidence of such collections was available in the form of advance bookings forms and WhatsApp screenshots filed with the plaint. This infringement was taking place in multiple jurisdictions, including the jurisdiction of this Court.

¹² 2018 (76) PTC 168

¹³ 291 (2022) DLT 128



The Impugned Judgment

7. Re. registration of asserted trade marks within jurisdiction of this Court

The learned Single Judge has, in the impugned order, identified three issues as arising for consideration but has, before doing so, rejected the contention of the appellant that this Court has territorial jurisdiction in the matter, as the asserted trade marks were registered in Delhi. In rejecting this contention, the learned Single Judge has placed reliance on the judgment of the Supreme Court in ***Dhodha House v. S K Maingi***¹⁴. The findings of the learned Single Judge on this aspect are contained in paras 17 and 18 of the impugned judgment, which read thus:

“17. Before I proceed to address these issues, I may deal with the contention of the plaintiff that the jurisdiction of this Court is premised on the fact that the trademark registration in respect of the subject marks were obtained by the plaintiff in Delhi. This contention is completely contrary to the observations of the Supreme Court in ***Dhodha House v. S.K. Maingi***.

18. In ***Dhodha House (Supra)***, the Supreme Court has categorically held that cause of action arises only when a registered trademark is in use and not when the application is filed for registration of a trademark. Therefore, the plaintiff cannot claim jurisdiction on the basis that its marks were registered in Delhi.”

8. Issues identified by learned Single Judge as arising for consideration

Having rejected the aforesaid reliance, placed by the appellant on the fact that the asserted trademarks SADANAND and TADAAKHA had



2025:DHC:10789-DB



been registered in Delhi, the learned Single Judge has proceeded, in Para 19 of the impugned judgment, to identify the following issues as arising for consideration:

- “i. Whether the cause of action of filing the present suit is also based on the Marketing Agreement between the parties?
- ii. Whether there is any cause of action in the present suit, including the listing of the infringing products on India Mart, for filing the present suit in this Court?
- iii. If there is no cause of action arising in the present case within territorial jurisdiction of this Court, can jurisdiction be made out on the basis of plaintiff having its head office in Delhi, even though it has a subordinate office at the place where cause of action has arisen?”

9. Findings of learned Single Judge

9.1 The learned Single Judge has, thereafter, proceeded to return his findings on each of these issues, thus:

(i) Re. Issue 1 – whether the cause of action for filing the suit was also based on the Marketing Agreement?

(a) Para 49 of the plaint, which dealt with cause of action, made no reference whatsoever to the Marketing Agreement even though, in para 50 of the plaint, it was stated that the relationship between the parties to the plaint also arose out of the Marketing Agreement.

(b) Para 47 of the plaint acknowledged that the suit was limited to infringement and passing off. In fact, the



2025:DHC:10789-DB



appellant had sought leave of the Court to pursue other causes of action at the appropriate time via an appropriate application.

(c) In para 48 of the plaint, the appellant reserved his rights to take appropriate action in case the respondent continued to sell the appellant's products or use the appellant's product market after the expiry of the Marketing Agreement on 31 December 2022, or if the Marketing Agreement was terminated earlier.

(d) In furtherance of the aforesaid assertions in the plaint, the appellant had filed IA 20138/2022 under Order II Rule 2 of the CPC. In the said application, the appellant had specifically stated that the conduct of the respondent would give rise to a separate cause of action and, therefore, sought leave to bring proceedings against the respondent qua such other cause of action.

(e) The said IA 20138/2022 was disposed of, by this Court, granting leave to the appellant to take appropriate proceedings in respect of the claim for breach of contract.

(f) Thus, it was clear that the suit was not premised on any cause of action which was based on the Marketing Agreement or any breach thereof.



2025:DHC:10789-DB



(ii) Re. Issue 2 – whether there was any cause of action in the suit which included listing of the infringement products on IndiaMart?

(a) There was no averment, in the plaint, that the respondent was selling its products in Delhi. No document evincing any sale of the respondent's product in Delhi had been filed with the plaint.

(b) The only averment was that the respondent's products were available on e-commerce platforms like IndiaMart, which were accessible in Delhi. However, no details were given of sales of the respondent's products on any e-commerce platform other than IndiaMart. The only other e-commerce platform sale of the respondent was in the form of a third party listing of the respondent's product on the platform Kalgudi.

(c) The dealer info sheets and order forms of the respondent indicated that the respondent was carrying out its business only in Telangana, Andhra Pradesh and Karnataka and not in Delhi.

(d) The IndiaMart listing was not made by the respondent or at its instance, but by one Shiva Agro Agency in Karnataka. There was no allegation, in the plaint, that Shiva Agro Agency was delivering its products in Delhi. Nor did the listing of the respondent's



2025:DHC:10789-DB



products on IndiaMart by Shiva Agro Agency offer that the respondent's products could be delivered at Delhi.

(e) The listing on the Kalgudi platform was also by one Bhavani Seeds Centre in Andhra Pradesh. The plaintiff did not assert that Bhavani Seeds Centre was selling goods in Delhi.

(f) In these circumstances, there was no case for invoking the territorial jurisdiction of this Court, within the law laid down by the Division Bench of this Court in ***Banyan Tree Holdings***. The learned Single Judge culled out the following tests as emerging from the decision in ***Banyan Tree Holdings***:

i. Mere accessibility of the defendant's website in Delhi would not enable this Court to exercise jurisdiction.

ii. A passive website, not specifically targeting audience in the forum state would not vest the Court with jurisdiction.

iii. The jurisdiction would not get attracted merely on the basis of interactivity of the website which is accessible in the forum state. It would have to be shown that the website is specifically targeting viewers in the forum state for commercial transactions.

iv. For the purposes of passing off or an infringement action, the plaintiff would have to show that the defendant had an intention to conclude a commercial transaction with the user of the website.

v. The plaintiff must necessarily plead and



2025:DHC:10789-DB



show prima facie that the specific targeting of the forum state by the defendant resulted in injury or harm to the plaintiff within the forum state.”

There were no averments in the plaint evincing satisfaction of the afore-noted criteria emerging from the decision in ***Banyan Tree Holdings***. It was not the case of the appellant that the respondent has its own website over which it was selling its products. The listings on IndiaMart and Kalgudi were by third parties and the respondent could not be held responsible in that regard.

(g) There was no pleading or document which indicated any communication having been made with the respondent or placing of any orders, from Delhi, for the respondent’s products.

(h) There was no pleading, in the plaint, of the respondent having purposefully engaged in commercial activity in Delhi by targeting customers within the jurisdiction of this Court, or having any intention to do so.

(i) There was no pleading, in the plaint, of the appellant having felt the dynamic effect of the respondent’s sales at Delhi.

(j) The decision in ***Marico*** was distinguishable. Para 66 of the judgment in that case clearly noted that the



2025:DHC:10789-DB



goods of the defendant were sold in stores located within the jurisdiction of this Court. Besides, the order was a *prima facie* order in Order XXXIX proceedings.

(k) The judgment in ***Shakthi Fashion*** was also distinguishable, as the IndiaMart listing in that case had the same address as the defendant.

(l) The decisions in ***Marico*** and ***Shakthi Fashion*** could not be read as permitting jurisdiction to be invoked solely on the basis of listing of the defendant's products on e-commerce platforms.

(iii) Re: Issue 3 – if no part of the cause of action arose within the jurisdiction of this Court, whether jurisdiction could be exercised because the appellant has its head office in Delhi, even though the cause of action has arisen within the jurisdiction of the High Court where the subordinate office of the appellant is located?

(a) The issue stood covered by para 14 of the judgment of the Division Bench of this Court in ***Ultra Home Construction*** which, in turn, relied on and interpreted ***IPRS***, and read thus:

“14. It is evident from the above observations that the interpretation given to the expression "carries on business" in the context of a defendant under section 20 of the Code has also been employed in the context of a plaintiff under the said sections 134(2) and 62(2). Thus, in addition to the places where suits could be filed under section 20 of the Code, the plaintiff can also institute a suit under the Trade



Marks Act, 1999 and the Copyright Act, 1957, as the case may be, by taking advantage of the provisions of section 134(2) or section 62(2), respectively. Both the latter provisions are in *pari materia*. Under these provisions four situations can be contemplated in the context of the plaintiff being a corporation (which includes a company). First of all, is the case where the plaintiff has a sole office. In such a case, even if the cause of action has arisen at a different place, the plaintiff can institute a suit at the place of the sole office. Next is the case where the plaintiff has a principal office at one place and a subordinate or branch office at another place and the cause of action has arisen at the place of the principal office. In such a case, the plaintiff may sue at the place of the principal office but cannot sue at the place of the subordinate office. *The third case is where the plaintiff has a principal office at one place and the cause of action has arisen at the place where its subordinate office is located. In this eventuality, the plaintiff would be deemed to carry on business at the place of his subordinate office and not at the place of the principal office. Thus, the plaintiff could sue at the place of the subordinate office and cannot sue (under the scheme of the provisions of section 134(2) and 62(2)) at the place of the principal office.* The fourth case is where the cause of action neither arises at the place of the principal office nor at the place of the subordinate office but at some other place. In this case, the plaintiff would be deemed to carry on business at the place of its principal office and not at the place of the subordinate office. And, consequently, it could institute a suit at the place of its principal office but not at the place of its subordinate office. All these four cases are set out in the table below for greater clarity:

S. No.	Place of Plaintiff's Principal Office (Sole office in S.No.1)	Place of Plaintiff's Subordinate Branch Office	Place where cause of action arose	Place where plaintiff can additionally sue under Section 134(2) and section 62 (2)
1	A	--	C	A
2	A	B	A	A
3	A	B	B	B
4	A	B	C	A



15. The present case falls under S. No. 3 in the above table. The appellant/plaintiff has its principal office in Delhi (place A). Its subordinate office is at Deogarh, Jharkhand (place B) where it runs one of its hotels (Amrapali Clarks Inn), albeit in collaboration with Clarks Inn hotels. The alleged cause of action has accrued at Deogarh, Jharkhand (place B). Therefore, the appellant/plaintiff could, in respect of the alleged cause of action in this suit, institute a suit against the defendants at Deogarh, Jharkhand (place B) but not in Delhi. Thus, the conclusion arrived at by the learned single judge that this court did not have the territorial jurisdiction to entertain the suit cannot be faulted.”

(Emphasis supplied)

The facts of the present case squarely attracted the third category of cases envisaged in para 14 of *Ultra Home Construction*, in which, though the appellant had its principal office in New Delhi, no part of the cause of action had arisen within the jurisdiction of this Court and the entire cause of action had arisen outside it. In such a case, it was not open to the appellant to invoke the jurisdiction of this Court to institute the suit, in view of para 14 of *Ultra Home Construction*.

(b) Another Division Bench of this Court had, in *Radico Khaitan v. Nakshatra Distilleries & Breweries*¹⁵, followed *Ultra Home Construction*.

(c) The conclusion of the learned Single Judge on this issue, as contained in para 70 of the impugned judgment,



2025:DHC:10789-DB



reads thus:

“70. In the present case, even though the head office of the plaintiff is located in Delhi, no part of the cause of action has arisen in Delhi. *The cause of action appears to have arisen at place(s) where the plaintiff has its subordinate office(s).* Hence, applying the principles of *Sanjay Dalia* (Supra) and *Ultra Home* (Supra) in the present case, the plaintiff cannot maintain this suit in Delhi.”

(Emphasis supplied)

10. Aggrieved by the aforesaid judgment, the appellant has instituted the present appeal.

11. We have heard Mr. Saurav Agarwal, learned Counsel for the appellant and Mr. Rajshekhar Rao, learned Senior Counsel for the respondent, at length. Learned Counsel have also submitted their written submissions.

Rival Contentions of learned Counsel before this Court

12. Submissions of Mr. Saurav Agarwal for the appellant

Mr. Saurav Agarwal, appearing for the appellant, advanced the following contentions:

- (i) Section 134 of the Trade Marks Act independently entitles the appellant to institute the suit at the place of its principal place of business, which was New Delhi.



2025:DHC:10789-DB



(ii) The Marketing Agreement was also executed in Delhi.

(iii) The learned Single Judge had read paras of the plaint in isolation, without engaging in a holistic reading of the plaint or appreciating the reliance, in the plaint, on the Marketing Agreement as part of the bundle of facts on the basis of which the appellant was alleging infringement and passing off.

(iv) The fact that the listings on the IndiaMart and Kalgudi platforms were put up by third parties was irrelevant to the aspect of territorial jurisdiction. Even the possibility of concluding a commercial transaction, for purchasing the allegedly infringing goods across the platform, was sufficient to confer jurisdiction on this Court, as held by the Division Bench of this Court in *World Wide Wrestling Entertainment v. Reshma Collection*¹⁶.

(v) Moreover, it had been specifically pleaded in the plaint that the infringing products of the respondent were available on e-commerce platforms accessible within the jurisdiction of this Court and that these platforms were dynamic websites which permitted communication and placement of orders. These factors have consistently been held to be sufficient to clothe this Court with jurisdiction, as held in *Shakthi Fashion* and *Marico*.



2025:DHC:10789-DB



(vi) The learned Single Judge had erred in ignoring the fact that the infringing products of the respondent were available for purchase on the IndiaMart platform. The identity of the person who may have directed listing of the products on the platform was irrelevant. What mattered, especially for the purposes of Order VII Rule 10, was that the products were available for purchase, in Delhi, across the said platform. In fact, across the Kalgudi platform, product could be purchased pan-India.

(vii) The enunciation of the law, in para 14 of *Ultra Home Construction*, to the extent that if the Plaintiff had a registered office and a subordinate office, and the cause of action had arisen entirely within the jurisdiction of the Court within which the subordinate office was situated, the Plaintiff could not sue in the Court which had jurisdiction over the principal office, was incorrect. Alternatively, this proposition would be in conflict with the law laid down by a coordinate Division Bench in *Provident Housing*, which specifically allows the Plaintiff to sue in Delhi, solely because the registered office of the Plaintiff was situated in Delhi.

(viii) In fact, the judgment of the Supreme Court in *IPRS* required the plaintiff to sue in that Court which had jurisdiction over his principal place of business. That right could not, therefore, be divested.

(ix) Paras 56, 57 and 70 of the impugned judgment



2025:DHC:10789-DB



considered material outside the plaint, which was impermissible while adjudicating an application under Order VII Rule 10 of the CPC. Among other assertions in the written statement, which had been relied upon by the learned Single Judge, was the allegation that the appellant had subordinate offices in Andhra Pradesh and Telangana, which were not disclosed in the plaint.

(x) Moreover, the impugned judgment also rejected, as incorrect, certain assertions in the plaint, on the basis of what was stated in the written statement of the respondent. This was impermissible while adjudicating an application under Order VII Rule 10 of the CPC.

(xi) The ratio of para 14 of *Ultra Home Constructions* was invoked following a finding that the cause of action “appeared” to have arisen “at places where the appellant had its subordinate office(s).” The impugned judgment did not identify the location of the place where such subordinate office was situated.

(xii) In the plaint, the only such subordinate office of the respondent, which had been identified, was at Medchal, Telangana. The plaint did not, however, identify any part of the cause of action as having arisen at the said office. Nor was there any finding in the impugned judgment to the effect that all or any part of the cause of action arose within the jurisdiction of the Medchal office of the respondent.



2025:DHC:10789-DB



(xiii) At the highest, therefore, the issue of whether any part of the cause of action had arisen at any subordinate office of the respondent was a matter for trial, which could not constitute the basis to return the plaint under Order VII Rule 10 of the CPC.

(xiv) The learned Single Judge had erred in relying, in an isolated fashion, on the paras of the plaint which dealt with cause of action and jurisdiction. The absence of any reference to the Marketing Agreement in para 50 of the plaint did not, *ipso facto*, imply that this Court has no jurisdiction to adjudicate on the *lis*.

(xv) Attention was invited to the various assertions and averments in the plaint which were dependent on the Marketing Agreement executed between the appellant and respondent. In view of the said assertions, the learned Single Judge was clearly in error in holding that the suit was not premised on any cause of action based on the Marketing Agreement or the breach thereof.

(xvi) Reservation of rights to sue separately for breach of the Marketing Agreement did not in any manner indicate that the execution of the Marketing Agreement was not part of the cause of action for the claim in the present suit. Breach of the Marketing Agreement was one of the specific grounds urged by the appellant to plead its case of infringement and passing off. Use of the appellants' asserted trade marks in terms of the



2025:DHC:10789-DB



Marketing Agreement constituted permitted use within the meaning of Section 2(r)¹⁷ of the Trade Marks Act. To succeed in a claim for infringement of passing off, therefore, it was necessary for the appellant to allege and establish that the respondent's use of the infringing trade marks was in breach of the covenants of the Marketing Agreement. This was especially so as the suit had been instituted during the currency of the Marketing Agreement. In fact, the Marketing Agreement was a common factor for the plea of infringement/passing off as well as for any other claim for breach of contract which the appellant might choose to pursue. The reliance, by the learned Single Judge, on the application filed by the appellant under Order II Rule 2 of the CPC, and the grant of leave to the appellant in terms of the prayers in the said application, by this Court was, therefore, misplaced.

(xvii) Inasmuch as the Marketing Agreement had been executed in Delhi, part of the cause of action arose within the territorial jurisdiction of this Court.

13. Submissions of Mr. Raj Shekhar Rao for the respondent

Responding to the submissions of Mr. Agarwal, Mr. Rajshekhar Rao,

¹⁷ (r) “permitted use”, in relation to a registered trade mark, means the use of trade mark—

(ii) by a person other than the registered proprietor and registered user in relation to goods or services—

(c) by consent of such registered proprietor in a written agreement;



2025:DHC:10789-DB



appearing for the respondent, advanced the following contentions:

(i) What was required to be ascertained was whether any part of the cause of action, which formed the basis for instituting the suit, arose within the territorial jurisdiction of this Court.

(ii) If no cause of action arose at the registered office of the plaintiff, the right to institute the suit before the Court having jurisdiction over such registered office, otherwise available under Section 134(2) of the Trade Marks Act was taken away, as held by the Supreme Court in ***IPRS***.

(iii) The law declared in ***IPRS*** was further clarified by the Division Bench of this Court in ***Ultra Home Construction*** which held that, if no part of the cause of action arose within the principal or registered office of the plaintiff, and the entire cause of action arose within the jurisdiction of the subordinate office of the plaintiff, the suit would necessarily have to be instituted before the Court having jurisdiction over such subordinate office.

(iv) A bare perusal of the plaint, read with the documents filed therewith, demonstrated that no part of the cause of action in the present case has arisen within the jurisdiction of this Court.



2025:DHC:10789-DB



(v) On the contrary, the documents filed by the appellant established that it has a subordinate office in Telangana, where the Marketing Agreement was performed. The cause of action, therefore, arose within the jurisdiction of the branch office of the appellant at Telangana.

(vi) The fact that the appellant had a branch office at Medchal, Telangana, was clear from the invoices filed by the appellant with its plaint.

(vii) As the invoices filed by the appellant with the plaint reflected the subordinate office of the appellant as being at Medchal, Telangana, Mr. Agarwal was not correct in his contention that the learned Single Judge had relied on averments outside the plaint in paras 56, 57 and 70 of the impugned judgment.

(viii) The learned Single Judge was also justified in holding that the Marketing Agreement did not constitute any part of the cause of action for instituting the plaint. Though the Marketing Agreement was mentioned as a basis for the transactional relationship of the parties, the plaint did not advert to the Marketing Agreement as the basis for the cause of action on which it was founded.

(ix) Rather, breach of the Marketing Agreement constituted a separate cause of action, for which the appellant had expressly



2025:DHC:10789-DB



reserved its rights.

(x) The actual claim of infringement and passing off was not based on the breach of the Marketing Agreement. The learned Single Judge was correct in his finding, therefore, that the suit was not premised on any cause of action based on the Marketing Agreement or the breach thereof.

(xi) The appellant had failed to show how the alleged breach of the Marketing Agreement had necessarily to be proved by the appellant in order to support its right to an injunction on the ground of infringement and passing off.

(xii) In fact, the Marketing Agreement specifically recorded that the appellant had a license to sell the seeds only in the States of Madhya Pradesh, Gujarat, Maharashtra, Andhra Pradesh, Telangana, Karnataka and Tamil Nadu, which did not include Delhi.

(xiii) The appellant had also failed to establish any proof of sales of its products or of the allegedly infringing products in Delhi.

(xiv) In so far as the listing of the allegedly infringing products of the respondent on the IndiaMart and Kalgudi e-commerce platform was concerned, while the appellant had referred to the possibility of concluding the sale transaction over the said



2025:DHC:10789-DB



platforms, the appellant had failed to demonstrate even a solitary sale concluded thereby, either by itself or through a third party.

(xv) The documents filed by the appellant, too, did not disclose any dynamic effect of the listing of the respondent's products on IndiaMart and Kalgudi or interactivity in Delhi. Moreover, the listing of the respondent's products on the IndiaMart and Kalgudi platforms did not belong to the respondent but had been put up by a third party.

(xvi) The listing did not show any option for placing an order for delivery of the goods at Delhi.

(xvii) In these circumstances, the reliance by the appellant on the listing of the allegedly infringing products of the respondent on the IndiaMart and Kalgudi websites was contrary to the law laid down by the Division Bench of this Court in ***Banyan Tree Holding***.

(xviii) The appellant did not produce even a single document before the learned Single Judge evidencing specific targeting, by the respondent of the market in Delhi.

(xix) The averments in the plaint even when read on a demurer did not satisfy the criterion of purposeful avilment of the jurisdiction of this Court or, of the dynamic effect of the sales of



2025:DHC:10789-DB



the respondent's products being felt within such jurisdiction.

(xx) The fact that no such dynamic effect could be felt was also clear from the fact that in accordance with the licences held by it, the respondent could not have sold its products in Delhi.

(xxi) The decision in *World Wrestling Entertainment* was against the appellant as in the said decision, this Court had ruled that mere accessibility of a website and broadcasting in a specific place was insufficient to vest jurisdiction.

Analysis

14. Issue

14.1 The only issue for consideration is whether the learned Single Judge was correct in holding that this Court does not have territorial jurisdiction to entertain the suit and, thereby, in allowing the respondent's application under Order VII Rule 10 of the CPC.

14.2 It is elementary that if the suit would lie within the jurisdiction of this Court on any one ground, the suit would be maintainable before this Court.

15. The impugned judgment in a nutshell

15.1 The learned Single Judge has held the suit not to be



2025:DHC:10789-DB



maintainable before this Court on the following four grounds:

(i) The registration of the trade marks asserted by the appellant in Delhi could not clothe this Court with jurisdiction, in view of the law declared by the Supreme Court in ***Dhodha House***.

(ii) The Marketing Agreement did not form any part of the cause of action for filing the suit. As such, the fact that the Marketing Agreement had been executed in New Delhi could not clothe this Court with jurisdiction to entertain the suit.

(iii) The listing of the infringing products of the respondent on the Indiamart and Kalgudi e-commerce platforms did not clothe this Court with jurisdiction to entertain the suit.

(iv) As no part of the cause of action had arisen within the jurisdiction of this Court, and the entire cause of action appears to have arisen within the jurisdiction of Courts within whose jurisdiction the appellant's subordinate office was situated, the suit could not be instituted before this Court, in view of the law declared in ***Ultra Home Construction***.

15.2 Apart from the question of whether the learned Single Judge was correct in his findings on the above issues, we are also required to address the objection, of Mr. Agarwal, that the learned Single Judge relied on material outside the plaint, which was impermissible under



2025:DHC:10789-DB



Order VII Rule 10 of the CPC.

16. We proceed to address these issues *seriatim*.

17. Whether the impugned judgment is correct in holding that the registration of the asserted trade marks of the appellant in Delhi would not confer jurisdiction on this Court

17.1 The learned Single Judge has ruled against the appellant, on this issue, relying on the judgment of the Supreme Court in ***Dhodha House***.

17.2 We are unable to sustain this finding.

17.3 The Supreme Court, in ***Dhodha House***, decided two appeals, i.e., Civil Appeal No.6248/1997 (***Dhodha House v. S.K. Maingi***) and Civil Appeal No.16/1999 (***Patel Field Marshal Industries and Ors. v. P.M. Diesel Ltd.***). Of these, the decision in Civil Appeal No.6248/1997 is not of relevance for our purpose.

17.4 In paras 17 and 18 of the impugned judgment, the learned Single Judge has placed reliance on the exposition of law, in ***Dhodha House***, to the effect that the cause of action, to institute an infringement suit, arises only where when a registered trademark is used and not “*when the application is filed for registration of a trademark.*” In thus paraphrasing the *ratio decidendi* of ***Dhodha House***, the learned Single Judge is correct.



17.5 Where the learned Single Judge has erred, in our opinion, is in his failing to note that the appellant was not invoking the jurisdiction of this Court because its application for registration of the asserted marks, *was filed* within the jurisdiction of this Court, but because the asserted marks *were registered* within such jurisdiction.

17.6 *Dhodha House* holds, unexceptionably, that a mere filing of an application for registration does not give rise to a cause of action for infringement. *The registration of a trademark, on the other hand, unquestionably does.* This is apparent from Section 28(1)¹⁸ of the Trade Marks Act which confers, on the proprietor of a validly registered trademark, both the right to exclusively use the said trademark as well as for remedies against infringement of the mark. Infringement, throughout Section 29 of the Trade Marks Act, *presupposes* registration of the infringed trade mark, as each subsection of Section 29 commences with the words “A *registered* trade mark is infringed ...”

17.7 There can, therefore, be no infringement of an unregistered trade mark. *The very first criterion to be satisfied for a case of infringement to sustain is that the infringed mark is registered. The expression “cause of action” is defined, classically, as the bundle of facts which the plaintiff would have to prove to succeed in the action.*¹⁹ *Alternatively, it is defined as “every fact which, if traversed,*

¹⁸ **28. Rights conferred by registration. –**

(1) Subject to the other provisions of this Act, the registration of a trade mark shall, if valid, give to the registered proprietor of the trade mark the exclusive right to the use of the trade mark in relation to the goods or services in respect of which the trade mark is registered and to obtain relief in respect of infringement of the trade mark in the manner provided by this Act.

¹⁹ Refer **Gurdit Singh v. Munsha Singh, (1977) 1 SCC 791, A.V.M. Sales Corporation v. Anuradha**



it would be necessary for the plaintiff to prove in order to support his right to a judgement of the court”.²⁰ *Kusum Ingots & Alloys Ltd v. Union of India*²¹ comprehensively defined the expression “cause of action”, thus:

“6. Cause of action implies a right to sue. The material facts which are imperative for the suitor to allege and prove constitute the cause of action. Cause of action is not defined in any statute. It has, however, been judicially interpreted inter alia to mean that every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Negatively put, it would mean that everything which, if not proved, gives the defendant an immediate right to judgment, would be part of cause of action. Its importance is beyond any doubt. For every action, there has to be a cause of action, if not, the plaint or the writ petition, as the case may be, shall be rejected summarily.”

Viewed thus, it is obvious that the registration of the asserted mark is an indispensable part of the right to sue for infringement, and to succeed in the suit. If the defendant traverses the assertion of the plaintiff that the mark is registered, the plaintiff would have to prove the fact. The registration of the asserted mark is, therefore, in a way the *sine qua non* for maintaining an infringement action.

17.8 Among the remedies available against infringement, of a registered trademark is, moreover, the remedy of injunction, as per Section 135(1)²² of the Trade Marks Act. *The mere registration of a trademark, therefore, confers, on the proprietor of the registered*

Chemicals (P) Ltd, (2012) 2 SCC 315

²⁰ Refer *State of Rajasthan v. Swaika Properties*, (1985) 3 SCC 217, *ONGC v. Utpal Kumar Basu*, (1994) 4 SCC 711, *Blook Dekor Ltd v. Subhash Himatlal Desai*, (1994) 6 SCC 322

²¹ (2004) 6 SCC 254

²² **135. Relief in suits for infringement or for passing off. –**

(1) The relief which a court may grant in any suit for infringement or for passing off referred to in Section 134 includes injunction (subject to such terms, if any, as the court thinks fit) and at the option of the plaintiff, either damages or an account of profits, together with or without any order for the delivery-up of the infringing labels and marks for destruction or erasure.

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FAO(OS) (COMM) 66/2025



2025:DHC:10789-DB



trademark, the right to obtain an injunction, where the trademark is infringed. The registration of the trademark, therefore, unquestionably constitutes not just a part, but an indispensable part of the cause of action for an infringement suit.

17.9 The learned Single Judge, in holding that the registration of the asserted trademarks of the appellant in Delhi did not constitute part of the cause of action to institute the suit has, therefore, ruled contrary to Section 28(1) of the Trade Marks Act.

17.10 *Dhodha House* does not exposit any such proposition. What it holds is that territorial jurisdiction cannot be vested in a Court *merely because the advertisement of the application filed by the plaintiff seeking registration of the asserted marks was within such jurisdiction*. In this context, it is relevant to extract paras 30 and 31 of the decision in ***Dhodha House***, thus:

“30. The said decision has no application in the instant case for more than one reason. For the purpose of registration of a trade mark, an application must be filed in the branch office of the Registrar of Trade Marks. It is not in dispute that under Section 5(3) of the 1958 Act, the Central Government has issued a notification in the Official Gazette defining the territorial limits within which an office of the Trade Marks Registry may exercise its functions. The office of the Trade Marks Registry at New Delhi exercises jurisdiction over the States of Haryana, Himachal Pradesh, Jammu and Kashmir, Punjab, Rajasthan and Uttar Pradesh and the Union Territory of Chandigarh and the National Capital Territory of Delhi. Whereas in ***Dhodha House v. S.K. Maingi*** no such application has been filed, admittedly in ***Patel Field Marshal Industries v. P.M. Diesels Ltd.*** the Delhi office has no jurisdiction as parties are residents of Rajkot and an application was filed by the appellant for registration of its trade mark at Bombay. If an objection is to be filed, the same has to be filed at Bombay. *An advertisement by itself in a journal or a paper would not confer*

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FAO(OS) (COMM) 66/2025

Page 48 of 69



jurisdiction upon a court, as would be evident from the following observations of this Court in ***Oil and Natural Gas Commission v. Utpal Kumar Basu***:

“Therefore, broadly speaking, NICCO claims that a part of the cause of action arose within the jurisdiction of the Calcutta High Court because it became aware of the advertisement in Calcutta, it submitted its bid or tender from Calcutta and made representations demanding justice from Calcutta on learning about the rejection of its offer. The advertisement itself mentioned that the tenders should be submitted to EIL at New Delhi; that those would be scrutinised at New Delhi and that a final decision whether or not to award the contract to the tenderer would be taken at New Delhi. Of course, the execution of the contract work was to be carried out at Hazira in Gujarat. Therefore, merely because it read the advertisement at Calcutta and submitted the offer from Calcutta and made representations from Calcutta would not, in our opinion, constitute facts forming an integral part of the cause of action. So also the mere fact that it sent fax messages from Calcutta and received a reply thereto at Calcutta would not constitute an integral part of the cause of action.”

31. A cause of action will arise only when a registered trade mark is used *and not when an application is filed for registration of the trade mark*. In a given case, an application for grant of registration certificate may or may not be allowed. The person in whose favour a registration certificate has already been granted (*sic*) indisputably will have an opportunity to oppose the same by filing an application before the Registrar, who has the requisite jurisdiction to determine the said question. In other words, *a suit may lie where an infringement of trade mark or copyright takes place but a cause of action for filing the suit would not arise within the jurisdiction of the court only because an advertisement has been issued in the Trade Marks Journal or any other journal, notifying the factum of filing of such an application.*

(Emphasis supplied)

17.11 Thus, even in ***Dhodha House***, the application for registration of the trademark was filed at Bombay. The advertisement, advertising the filing of the application, was, *inter alia*, issued in Delhi. It was on the ground that the advertisement of the application was also issued in



2025:DHC:10789-DB



Delhi that the jurisdiction of this Court was sought to be invoked. The Supreme Court held that the mere fact that the advertisement of the filing of the application for registration of the mark, was also issued in Delhi, when the application itself was filed in Bombay, could not confer jurisdiction on this Court to entertain the suit.

17.12 The appellant, in the present case, never sought to invoke the jurisdiction of this Court on the ground that the application for registration of the asserted trade marks was *advertised* within the jurisdiction of this Court, but that the registrations were *granted* by the Trade Mark Office at Delhi.

17.13 The Supreme Court has clearly held, in para 31 of ***Dhodha House***, that the suit would *lie* where infringement of the trademark takes place. Infringement of trademark, per definition, is dependent on the registration of the mark. Thus, in para 31, the decision in ***Dhodha House*** *in fact* emphasizes the jurisdiction of the Court where the asserted mark is registered to entertain an infringement action. We are, therefore, of the opinion that the fact that the marks asserted by the appellant in the present case were registered within the jurisdiction of this Court was by itself a factor which entitled the appellants to institute the suit before this Court. The learned Single Judge, in our considered opinion, is not correct in having held otherwise.

18. Whether the Marketing Agreement formed part of the cause of action for instituting the suit and, therefore, whether the suit was amenable to the territorial jurisdiction of this Court



2025:DHC:10789-DB



18.1 The finding, of the learned Single Judge, that the Marketing Agreement dated 1 January 2022 executed between the appellant and the respondent did not form part of cause of action in the suit is, to our mind, clearly fallacious. The learned Single Judge has extensively relied, in arriving at this finding, on the fact that the appellant had moved IA 20138/2022 under Order II Rule 2 of the CPC, seeking leave to separately sue the respondent for breach of the Marketing Agreement and that leave, as sought, had been granted by a learned Single Judge of this Court by order dated 12 July 2023. The learned Single Judge has also relied on the fact that, in paras 49 and 50 of the plaint, which dealt with cause of action and jurisdiction, there is no reference to the Marketing Agreement.

18.2 We are not able to concur with the learned Single Judge on any of these findings.

18.3 Firstly, a bare reading of the plaint makes it clear that the plaintiff had asserted, at more points than one, that the manner of use, by the respondent, of the infringing marks, was in breach of the Marketing Agreement executed between the appellant and the respondent. *Inter alia*, these assertions are to be found in paras 28 to 30 of the plaint, which already stand reproduced in para 3.2(viii) *supra*.

18.4 Section 29 of the Trade Marks Act, in its various sub-sections, defines “infringement”. Each sub-section commences with the words, “A registered trade mark is infringed by a person who, not being a



2025:DHC:10789-DB



registered proprietor *or a person using by way of permitted use ...*”
Ergo, infringement has necessarily to be by a person who has no authority to use the allegedly infringing mark either as its registered proprietor *or by way of permitted user*. A person who uses the mark as a permitted user cannot, therefore, be an infringer of the mark.

18.5 It is for this reason that the appellant has specifically asserted, in the plaint, that the user of the infringing mark by the respondent was in breach of the Marketing Agreement and the extent to which the respondent had been permitted to use the appellant’s mark thereunder. User of the appellant’s mark in breach of the Marketing Agreement was, therefore, specifically alleged in the plaint, to buttress the assertion that the respondent was not using the infringing mark as a permitted user within the meaning of Section 29 of the Trade Marks Act.

18.6 The learned Single Judge has failed to take stock of these assertions in the plaint, which more than amply demonstrate that the Marketing Agreement, and its covenants, constitute an essential part of the cause of action on which the plaint is based.

18.7 Once the Marketing Agreement and its covenants constitute a part of the cause of action on which the plaint is based, courts having jurisdiction over the place of execution of the Marketing Agreement would *ipso facto* have jurisdiction to adjudicate on the suit. On the



2025:DHC:10789-DB



aspect of cause of action founded on breach of a contract, the Supreme Court has held, in *A.B.C. Laminart (P) Ltd v. A.P. Agencies*²³, thus:

“15. In the matter of a contract there may arise causes of action of various kinds. In a suit for damages for breach of contract the cause of action consists of the making of the contract, and of its breach, so that *the suit may be filed either at the place where the contract was made or at the place where it should have been performed and the breach occurred. The making of the contract is part of the cause of action. A suit on a contract, therefore, can be filed at the place where it was made.* The determination of the place where the contract was made is part of the law of contract.”

(Emphasis supplied)

In a similar vein, *Prakash Kaur v. K.G. Ringshia*²⁴ holds that “in cases where cause of action consist of breach of contract, *a suit can be filed at the place where contract is made or to be performed and also where breach occurs.*”

18.8 As the plaint of the appellant was premised on the ground that the use, by the respondent, of the allegedly infringing marks breached the Marketing Agreement between them, the Marketing Agreement constituted part of the cause of action on which the suit was based and, therefore, this Court, being the Court within whose jurisdiction the Marketing Agreement was admittedly executed, would be possessed of territorial jurisdiction to entertain the suit and adjudicate on the *lis*.

19. Re. availability of the respondent's products on e-commerce websites

²³ (1989) 2 SCC 163
²⁴ MANU/DE/2036/2007



2025:DHC:10789-DB



19.1 One of the grounds on which the appellant asserted that this Court has territorial jurisdiction in the matter, was that the respondent's products are available on e-commerce websites, which can be accessed in Delhi. The learned Single Judge has observed that there are only two e-commerce websites to which specific allusion is to be found in the plaint, which are IndiaMart and Kalgudi.

19.2 The impugned judgment holds that availability of the respondent's marks on the IndiaMart and Kalgudi websites could not confer jurisdiction on this Court, as the listings of the products on the IndiaMart and Kalgudi websites was not at the instance of the respondent, but at the instance of some third parties.

19.3 The learned Single Judge has also relied on the judgment of the Division Bench of this Court in ***Banyan Tree Holding*** to hold that as there was no evidence of any orders having been placed on IndiaMart or Kalgudi for purchasing the allegedly infringing products of the respondent, the listing of the said products on the said platforms could not constitute a basis for this Court to exercise jurisdiction.

19.4 The decision in ***Banyan Tree Holding***

19.4.1 Banyan Tree Holding²⁵, the plaintiff before the Division Bench of this Court in the said case, sued the defendants for having used the mark "BANYAN TREE RETREAT" with a device of a Banyan Tree which, according to BTH, infringed its registered trademark. The

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FAO(OS) (COMM) 66/2025



Division Bench notes, in para 5 of its judgment, the recital, in the judgment of the learned Single Judge of this Court on the aspect of territorial jurisdiction, as pleaded by BTH, thus:

“5. The learned single Judge has, in the referral order dated 11.8.2008, noticed that the plaintiff has in para 30 of the plaint claimed that this Court has the territorial jurisdiction under Section 20 of the Code of Civil Procedure, 1908 (CPC) to entertain the suit. According to the Plaintiff the Defendants solicit business through use of the impugned mark “BANYAN TREE RETREAT” and the Banyan device in Delhi. It is stated that “the Defendants have presence in Delhi through their website <http://www.makprojects.com/banyantree.htm> which is accessible in Delhi.” It is further contended that “the said website is not a passive website. It not only provides contact information but also seeks feedback and inputs from its customers through an interactive web-page.” Further, the Plaintiff submits that the services of the Defendants are being offered to the customers in Delhi “also because of the ubiquity, universality and utility of the features of the Internet and the World Wide Web and hence the cause of action has arisen within the jurisdiction of this Court.”

19.4.2 The Division Bench formulated three questions as arising before it for consideration, of which the first two are relevant, and may be reproduced thus:

“(i) For the purposes of a passing off action, or an infringement action where the Plaintiff is not carrying on business within the jurisdiction of a court, in what circumstances can it be said that the hosting of a universally accessible website by the Defendants lends jurisdiction to such Court where such suit is filed (“the forum court”)?

(ii) In a passing off or infringement action, where the defendant is sought to be sued on the basis that its website is accessible in the forum state, what is the extent of the burden on the Plaintiff to prima facie establish that the forum court has jurisdiction to entertain the suit?”



2025:DHC:10789-DB



19.4.3 The Division Bench observed, at the outset of its discussion, that the suit before it was not one for infringement, but for passing off. It observed that, if the suit was one for infringement, this Court would in any event have territorial jurisdiction in the matter, in view of Section 134(2) of the Trade Marks Act, as BTH was carrying on business within the jurisdiction of this Court. In a case of passing off, however, Section 134 would not be applicable and jurisdiction would have to vest in the Court in terms of Section 20 of the CPC.

19.4.4 The defendants before this Court were situated at Hyderabad. As such, Section 20(a) would not apply. BTH sought to invoke the jurisdiction of this Court on the basis of Section 20(c) of the CPC, contending that, as the defendants had an interactive website which could be accessed within the jurisdiction of this Court, this Court had jurisdiction in the matter.

19.4.5 The Division Bench of this Court embarked on an exhaustive analysis of the entire law relating to territorial jurisdiction in the case of e-commerce, in this country as well as across the globe. Following the said analysis, questions (i) and (ii) as framed by it were answered thus, by the Division Bench:

“42. This Court holds that *jurisdiction of the forum court does not get attracted merely on the basis of interactivity of the website which is accessible in the forum state. The degree of the interactivity apart, the nature of the activity permissible and whether it results in a commercial transaction has to be examined. For the ‘effects’ test to apply, the Plaintiff must necessarily plead and show prima facie that the specific targeting of the forum state by the Defendant resulted in an injury or harm to the Plaintiff within the forum state. For the purposes of a passing off or an*



infringement action (where the plaintiff is not located within the jurisdiction of the court), the injurious effect on the Plaintiff's business, goodwill or reputation within the forum state as a result of the Defendant's website being accessed in the forum state would have to be shown. Naturally therefore, this would require the presence of the Plaintiff in the forum state and not merely the possibility of such presence in the future. Secondly, to show that an injurious effect has been felt by the Plaintiff *it would have to be shown that viewers in the forum state were specifically targeted*. Therefore the 'effects' test would have to be applied in conjunction with the "sliding scale" test to determine if the forum court has jurisdiction to try a suit concerning internet based disputes.

43. The question no. (i) is accordingly answered.

Question (ii) : In a passing off or infringement action, where the defendant is sought to be sued on the basis that its website is accessible in the forum state, what is the extent of the burden on the Plaintiff to prima facie establish that the forum court has jurisdiction to entertain the suit?

44. This brings us to the question as to the extent of burden of proof on the Plaintiff to prima facie show that the Defendant has purposefully availed of the jurisdiction of this court. In the present case, it is argued that by enabling customers to go on the website and get a copy of its brochure and make enquiries, the Defendant must be held to have purposefully availed of the jurisdiction of this court. The question that arises is for the purposes of Section 20 (c) CPC, in such circumstances, is what is the extent of the burden on the Plaintiff to show prima facie that a part of the cause of action arose within the jurisdiction of the forum court.

45. This court holds that *in order to prima facie establish that the Defendant purposefully availed of the jurisdiction of this court, the Plaintiff would have to show that the Defendant engaged in some commercial activity in the forum State by targeting its website specifically at customers within that State*. This is consistent with the law laid down in *Cybersell*²⁶ and reiterated later in *Toys R Us*²⁷. It is also consistent with the application of the 'tighter' version of the 'effects' test which is 'targeting'. In any action for passing off or infringement, it would have to be shown that the Defendant by using its mark intended to pass off its goods as that of the Plaintiff's. A mere hosting of a website which can be accessible from anyone from within the jurisdiction of the court is not sufficient for this purpose. Also a mere posting of an

²⁶ *Cybersell Inc. v. Cybersell Inc.*, 130 F. 3d 414 (1997)

²⁷ *Toys "R" US v. Step Two*, 318 F. 3d 446 (2003)



advertisement by the Defendant depicting its mark on a passive website which does not enable the Defendant to enter into any commercial transaction with the viewer in the forum state cannot satisfy the requirement of giving rise to a cause of action in the forum state. Even an interactive website, which is not shown to be specifically targeted at viewers in the forum state for commercial transactions, will not result in the court of the forum state having jurisdiction. In sum, for the purposes of Section 20 (c) CPC, in order to show that some part of the cause of action has arisen in the forum state by the use of the internet by the Defendant, the Plaintiff will have to show *prima facie* that the said website, whether euphemistically termed as “passive plus” or “interactive” was specifically targeted at viewers in the forum state for commercial transactions. The Plaintiff would have to plead this *and produce material to prima facie show that some commercial transaction using the website was entered into by the Defendant with a user of its website within the forum state and that the specific targeting of the forum state by the Defendant resulted in an injury or harm to the Plaintiff within the forum state.* Question no. (ii) is answered accordingly.”

(Emphasis supplied)

19.4.6 The learned Single Judge is, therefore, correct in his view that, as per the law declared in ***Banyan Tree Holding***, the mere existence of an interactive website of the defendant, accessible within the territorial jurisdiction of this Court, would not be sufficient for the suit to be maintainable here. It would additionally have to be shown that some commercial transaction was concluded within the jurisdiction of this Court.

19.5 The decision in *World Wrestling Entertainment*

19.5.1 *Banyan Tree Holding* was, however, subsequently diluted to an extent by the judgment of the Division Bench of this Court in ***World Wrestling Entertainment***.



19.5.2 World Wrestling Entertainment was a case which involved Section 134 of the Trade Marks Act. The plaintiff World Wide Wrestling Entertainment²⁸ sought to invoke the jurisdiction of this Court on the ground that it “carried on business” within the jurisdiction of this Court. In other words, WWE pressed into service Section 134(2) of the Trade Marks Act. **Banyan Tree Holding** was cited against the stand of the WWE.

19.5.3 The *Division* Bench proceeded to answer this issue thus :

“23. Let us now apply these principles to the type of transaction over the internet, which we have explained above. The website of the appellant/plaintiff refers to various goods and services. It is not an offer but an invitation to an offer, just as a menu in a restaurant. The invitation, if accepted by a customer in Delhi, becomes an offer made by the customer in Delhi for purchasing the goods “advertised” on the website of the appellant/plaintiff. When, through the mode of the software and the browser, the transaction is confirmed and payment is made to the appellant/plaintiff through its website, the appellant/plaintiff accepts the offer of the customer at Delhi. Since the transaction between the two takes place instantaneously, the acceptance by the appellant/plaintiff is instantaneously communicated to its customer through the internet at Delhi. Therefore, in such a case, part of the cause of action would arise in Delhi.

21.²⁹ But, we are not concerned with the question of cause of action between the appellant/plaintiff and its customers in Delhi because the defendants are not such customers and they are, in any event, all residents of Mumbai. What we are examining is whether the third condition specified in ***Dhodha House (supra)*** is satisfied or not. In other words, if the contracts and/or transactions entered into between the appellant/plaintiff on the one hand and its customers are being concluded in Delhi, can it not be said that the essential part of the business of the appellant/plaintiff, insofar as its transactions with customers in Delhi are concerned, takes place in Delhi? The offers are made by customers at Delhi. The offers are subject to confirmation/acceptance of the appellant/plaintiff

²⁸ “WWE” hereinafter

²⁹ (as numbered in the SCC OnLine copy of the judgment)



through its website. The money would emanate or be paid from Delhi. Can it not then be considered that the appellant/plaintiff is, to a certain extent, carrying on business at Delhi? In our view, it would be so. *Because of the advancements in technology and the rapid growth of new models of conducting business over the internet, it is possible for an entity to have a virtual presence in a place which is located at a distance from the place where it has a physical presence. The availability of transactions through the website at a particular place is virtually the same thing as a seller having shops in that place in the physical world. Let us assume for the sake of argument that the appellant/plaintiff had a shop in Delhi from where it sold its various goods and services. In that case, it could not be denied that the plaintiff carried on business in Delhi. This is apart from the fact that the appellant/plaintiff may also have been regarded as having voluntarily resided in Delhi. When the shop in the 'physical sense' is replaced by the 'virtual' shop because of the advancement of technology, in our view, it cannot be said that the appellant/plaintiff would not carry on business in Delhi.*

22. Therefore, in our view, although the learned Single Judge had made a correct reference to the decision of the Supreme Court in the case of **Bhagwan Goverdhandas Kedia (supra)**³⁰, the full ramifications of that decision were not perceived by him. When the two decisions of the Supreme Court in **Bhagwan Goverdhandas Kedia (supra)** and **Dhodha House (supra)** are considered in the manner indicated above, it would appear that, on the averments made by the appellant/plaintiff in the plaint, the Delhi High court would, on a demurrer, have jurisdiction to entertain the suit inasmuch as the appellant/plaintiff would be regarded as carrying on business in Delhi within the meaning of the expression under Section 134(2) of the Trademarks Act, 1999 and Section 62(2) of the Copyright Act, 1957. Consequently, the learned Single Judge ought not to have returned the plaint under Order 7 Rule 10 CPC. As a result, the impugned order is set aside and the suit is restored to its original number and the same be placed before the Roster Bench for further steps therein on 28.10.2014, in the first instance. This, however, would not preclude the defendants from raising the plea of jurisdiction on facts which, if raised, could be considered by the court based on the evidence and upon the law explained above. The appeal is allowed, as above.”

19.5.4 The *existence* of a website of the plaintiff, over which a commercial transaction *could be concluded* was, therefore, regarded



2025:DHC:10789-DB



by the Division Bench in *World Wrestling Entertainment* as sufficient to amount to “carrying on a business” by WWE within the jurisdiction of this Court. The *actual conclusion* of a transaction was, therefore, no longer indispensable, after *World Wrestling Entertainment*.

19.5.5 *World Wrestling Entertainment* undoubtedly is not an authority for understanding the expression “cause of action” as contained in Section 20(c) of the CPC. However, it *is* an authority for the understanding of the expression “carries on business” in an era in which business is considerably carried on over e-commerce websites. The Division Bench has held, in *World Wrestling Entertainment*, that, even if the website of the plaintiff was interactive and one over which a commercial transaction *could* be concluded, that would suffice to constitute “carrying on of business by the plaintiff”, as, in the e-commerce universe, every place where the website of an entity would be accessible for the purpose of concluding a commercial transaction would amount to a place where the entity has a market place. If, therefore, WWE had a website over which commercial transactions could be concluded at Delhi, it was equivalent to WWE having a brick and mortar store in Delhi, resulting in this Court having territorial jurisdiction in the matter. Thus, the requirement of actual concluding of a commercial transaction over the website stands diluted in *World Wrestling Entertainment*.

19.6 Section 20(a) of the CPC permit a plaintiff to sue a defendant wherever the defendant *carries on business*. The law declared by this



2025:DHC:10789-DB



Court in *World Wrestling Entertainment* with respect to the carrying on business by the plaintiff, in an e-commerce regime, for the purpose of Section 134(2) of the Trade Marks Act, would equally apply to carrying on a business by the defendant for the purpose of Section 20(a) of the CPC. Wherever, therefore, the defendant would have an interactive website, over which a commercial transaction could be concluded, any Court having jurisdiction over every place where this could be done would have jurisdiction to entertain the suit.

19.7 But then, submits Mr. Raj Shekhar Rao, there *is* no interactive website of the respondent, over or across which the allegedly infringing goods could be purchased at Delhi. At least, the plaint does not so aver. The placement of the goods for sale over e-commerce websites by third parties, without the concurrence or authorization of the respondent, tacit or express, could not create a cause of action for the appellant, for the purposes of territorial jurisdiction.

19.8 The submission is unquestionably weighty. After all, the tort of infringement is not infringer innocent. Section 29 of the Trade Marks Act envisages infringement only *vis-à-vis* an infringer, who must be using the infringing marks without proprietorial or permissive right to do so. The finding of the learned Single Judge that, if the respondent has nothing to do with the listing of the allegedly infringing products on the IndiaMart and Kalgudi websites, the respondent cannot be held to account therefor is, therefore, *prima facie* correct.



2025:DHC:10789-DB



19.9 Where, however, the learned Single Judge, in our considered opinion, has erred on this issue is in the observation, in para 42 of the impugned judgment, that the listing of the products on the IndiaMart and Kalgudi websites was *not* at the instance of the respondent. In so observing, the learned Single Judge, in our considered opinion, failed to realize the fact that the issue before him was the *right of the appellant to sue*. Insofar as the appellant was concerned, the allegedly infringing goods were available, for sale and purchase, across e-commerce websites, over which a transaction could be concluded within the territorial limits of the jurisdiction of this Court. *There is no admission, in the plaint, that the listing of the products on the IndianMart or Kalgudi websites was not at the instance of the respondent.* It would be for the respondent to so aver, and that averment, which could emerge at the earliest in the respondent's written statement, could not be considered while examining the aspect of territorial jurisdiction under Order VII Rule 10, which has to be limited to the assertions in the plaint. At the highest, therefore, the issue of whether the respondent had anything to do with the listing of the allegedly infringing goods over the IndiaMart or Kalgudi websites would be a matter of trial. Arguendo, if the appellant were able to establish, in trial, that the entities who placed the respondent's goods for sale and purchase on the IndiaMart and Kalgudi websites did so at the instance of the respondent, or with its knowledge, the respondent might still be answerable therefor.

19.10 That the goods were, in fact, available for purchase across the IndiaMart and Kalgudi websites, is not disputed. That the goods



2025:DHC:10789-DB



could be purchased across the said websites within the jurisdiction of this Court, is equally not disputed. Whether the respondent, directly or indirectly, was involved in the said listings, is, at best, a matter of trial. The learned Single Judge could not, therefore, have held that the appellant could not sue the respondent in this Court, even when the allegedly infringing goods could be purchased, across the IndiaMart and Kalgudi websites, within its jurisdiction, on the premise that the respondent was innocent of the listings.

19.11 For the purposes of an application under Order VII Rule 10 of the CPC, these assertions, in the absence of anything to the contrary either in the plaint or in the documents filed with the plaint, had to be treated as correct.

19.12 The assertion that the allegedly infringing goods of the respondent were available on the IndiaMart and Kalgudi websites, and that orders could be placed on these websites within the territorial jurisdiction of this Court were, therefore, sufficient to confer jurisdiction on this Court to adjudicate on the suit.

19.13 We are in agreement with Mr. Agarwal that the issue of whether the listings on the IndiaMart and Kalgudi e-commerce platforms, of the allegedly infringing goods of the respondent, for sale, were at the instance of the respondent or of some other party, is extraneous to the aspect of territorial jurisdiction. Once the infringing goods were available for sale, the tort of infringement, which predicates use of the infringed mark, or a mark which is



2025:DHC:10789-DB



deceptively similar thereto, for trade, stood committed. The suit, seeking relief thereagainst, could be filed before every Court having territorial jurisdiction over the situs of sale of such goods. ***World Wrestling Entertainment*** extends, in a case of e-commerce, the situs to include every place where a commercial transaction could be concluded and the goods bought or sold. Every Court having jurisdiction over such place can, therefore, adjudicate on the aspect of infringement, or passing off. The decision of the learned Single Judge is clearly contrary to this principle.

19.14 There is no dispute about the fact that the allegedly infringing products of the respondent were available on IndiaMart and Kalgudi. It was specifically asserted, in the plaint, that the IndiaMart and Kalgudi websites were accessible in Delhi. In paras 49 and 50 of the plaint, it was further specifically pleaded that, as orders could be placed across these websites, the dynamic effect of the availability of the respondent's goods on the said e-market platforms was felt within the jurisdiction of this Court.

19.15 The findings of the learned Single Judge with respect to the listing of the products on the IndiaMart and Kalgudi platforms is also, therefore, not sustainable in law.

20. The *Ultra Home* Construction principle, and reliance thereon

20.1 The learned Single Judge has further relied on para 14 of the judgment of the Division Bench of this Court in ***Ultra Home***



2025:DHC:10789-DB



Construction to hold that, as the respondent has subordinate offices in Andhra Pradesh and Telangana, and no part of the cause of action has arisen within Delhi, this Court could not exercise territorial jurisdiction in the matter. The situation, according to the learned Single Judge is covered by the third category of cases envisaged in para 14 of *Ultra Home Construction*.

20.2 It is true that, in para 14 of *Ultra Home Construction*, the Division Bench of this Court has held that, if the principal place of business of the plaintiff is situated at place A, and the subordinate office of the plaintiff is at place B, and no part of the cause of action has arisen at A, the entire cause of action having arisen at B, the plaintiff has necessarily to sue the defendant before the Court having territorial jurisdiction over place B, and could not sue the defendant at place A.

20.3 We need not delve too deep into this aspect, as, in our view, a substantial part of the cause of action in the present case *does* arise within the territorial jurisdiction of this Court, because (i) the asserted trade marks of the appellant stand registered within the jurisdiction of this Court, (ii) the Marketing Agreement was executed at Delhi and (iii) the allegedly infringing goods of the respondent are available for sale and purchase, across e-commerce websites, at Delhi. As such, no occasion arises to invoke the *Ultra Home Construction* doctrine.

20.4 In our view, therefore, the appellant's right to sue the



respondent before this Court does not stand divested by the law declared in *Ultra Home Construction*. We are constrained to hold that the learned Single Judge was in error in deciding otherwise.

20.5 With greatest respect to the learned Authors of the judgment of the Division Bench in *Ultra Home Construction*, we have some reservations regarding the correctness of this proposition, as expounded in para 14 of the said decision. To our mind, Section 134 of the Trade Marks Act confers an absolute right on a plaintiff to sue the defendant at the place where the plaintiff has its principal office of business. To hold that, even if the plaintiff has its principal office of business at place A, it has to sue the defendant at place B where it has its subordinate office of business, because the cause of action has arisen at place B, would, in our view, be re-writing Section 134 of the Trade Marks Act, which a Court cannot do.

21. Re. the plea that learned Single Judge relied on material outside the plaint

21.1 Mr. Agarwal has also sought to contend that the learned Single Judge has, in paras 56, 57 and 70 of the impugned judgment, relied on material outside the plaint and documents filed therewith, and has, therefore, traversed the limits of Order VII Rule 10 of the CPC.

21.2 Paras 56, 57 and 70 of the impugned judgment read thus:

“56. The Plaintiff has filed the present suit stating that its registered office is in Delhi and that is enough to best jurisdiction in this Court. Per contra, it has been contended on behalf of the



defendant that since Plaintiff has subordinate offices at places where the cause of action has arisen, jurisdiction cannot be claimed on the basis of location of plaintiff's head office, where no cause of action has arisen.

57. It has correctly been pointed out on behalf of the defendant that Plaintiff has failed to disclose in the plaint that Plaintiff also has subordinate offices elsewhere in India including a subordinate office in Telangana, where the defendant is based. Invoices filed with the plaint (pages 159-185 of the Plaintiff documents filed along with the plaint and pages 18-28 of the additional documents filed by the Plaintiff along with the plaint) clearly suggest that the Plaintiff has a branch office at Medchal, State of Telangana. This position is also not disputed by the Plaintiff.

70. In the present case, even though the head office of the Plaintiff is located in Delhi, no part of the cause of action has arisen in Delhi. The cause of action appears to have arisen at place(s) where the Plaintiff has its subordinate office(s). Hence, applying the principles of *Sanjay Dalia (supra)* and *Ultra Home (supra)* in the present case, the Plaintiff cannot maintain this suit in Delhi."

21.3 We cannot agree with Mr. Agarwal that, in returning these observations and findings, the learned Single Judge has travelled beyond the plaint and the documents filed therewith. The learned Single Judge has nearly recorded the contention of the Respondent regarding suppression, by the Appellant, of the existence of a subordinate office of the Appellant outside Delhi, in Telangana. In *prima facie* accepting the said submission, the learned Single Judge has relied on invoices filed with the plaint. He was entitled to do so.

21.4 We, therefore, do not accept Mr. Agarwal's contention that the learned Single Judge has erred in relying on material outside the plaint, and the documents filed therewith, while passing the



2025:DHC:10789-DB



impugned judgment.

Conclusion

22. For all these reasons, we are of the opinion that the plaint, as instituted by the appellant, was maintainable before this Court. The learned Single Judge has, in our considered opinion, erred in holding otherwise.

23. The impugned judgment of the learned Single Judge, adjudicating IA 2200/2023 filed by the respondent under Order VII Rule 10 of the CPC, is not, therefore, in our view, sustainable on facts or in law. It is accordingly quashed and set aside.

24. Resultantly, IA 2200/2023 filed by the respondent would also stand dismissed. The suit itself would stand restored to the file of the learned Single Judge for further proceedings in accordance with law.

25. The appeal stands allowed in the aforesaid terms with no order as to costs.

C. HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

DECEMBER 3, 2025

AR/DSN/AKY/YG

Signature Not Verified

Digitally Signed By: AHT
KUMAR
Signing Date: 03.12.2025
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FAO(OS) (COMM) 66/2025

Page 69 of 69