HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Revision Petition No. 19/2006

M/s Chouki Dhani, Near All India Radio Tower Village Taraghadi Rajkot, A Unit Of Kaveri Hotels Pvt. Ltd., Having Regd. Office At Hotel Kaveri Building Near Geb, Kanak Road, Rajkot 360 001 Gujrat

----Petitioner

Versus

M/s Choukhi Dhani Resorts Pvt. Ltd., 12 Miles, Tonk Road, Via Vatika, Jaipur Rajasthan, Having Its Regd. Office At Anjali Chambers, Raj Bhawan Road Civil Lines Jaipur 302006 Rajasthan

----Respondent

For Petitioner(s)	:	Mr. Mahesh Gupta Mr. Y.J. Jasani through VC Mr. Pratik Jasani through VC
For Respondent(s)	:	Mr. Ram Singh Bhati

HON'BLE MR. JUSTICE SUDESH BANSAL

Judgment

21/09/2023

1. Instant civil revision petition has been preferred by petitioner-defendant under Section 115 of Code of Civil Procedure, feeling aggrieved and dissatisfied with the order dated 10.01.2006 passed by the Additional District Judge No.2, Jaipur City, Jaipur in Civil Suit No.52/2005, dismissing an application dated 07.05.2005 filed by the petitioner-defendant, to reject the plaint or in alternative to return the plaint of respondent-plaintiff, for presentation to the appropriate Court, having territorial jurisdiction to try the suit. The fundamental and preliminary objection raised by the petitioner-defendant by way of filing the present application is that the civil suit filed by respondent-plaintiff for declaration, permanent & perpetual injunction, for passing off action of trade-mark before the district Court at Jaipur, does not

disclose accrual of cause of action within Jaipur City and as such, the district Court at Jaipur does not have the territorial jurisdiction to try the present suit. Hence, the suit either be rejected under Order VII Rule 11 CPC or in alternative be returned to the plaintiff under Order VII Rule 10 CPC, for presentation before the appropriate Court, having territorial jurisdiction to try the present suit i.e. the District Court at Rajkot, Gujrat, where petitioner-defendant carries on business of hotel & resort as also its registered office is situated.

2. Heard learned counsel for both parties and perused the record made available before this Court, including the plaint filed by respondent-plaintiff.

3. Learned counsel for petitioner-defendant has argued that the respondent-plaintiff filed a civil suit against the petitioner-defendant before the district Court of Jaipur City, in the year 2005, stating *inter alia* that the plaintiff is carrying on the business of hotels & resorts under the trademark/trade-name of "Chokhi Dhani" at Jaipur and this trade-name "Chokhi Dhani" was coined and invented in the year 1990 and in order to use and protect this trade-name exclusively, the plaintiff-Company has filed an application for registration of trademark "Chokhi Dhani" in Class 30, Schedule 4 of the Trade And Merchandise Marks Rules, 1959, in respect of hotels & resorts under provisions of the Trade And Merchandise Marks Act, 1958, on 11.01.2002, bearing registration No.1073208 before the Registrar of the Trade Marks. The application for seeking registration of such trademark is pending.

The details of various applications, allegedly filed by the plaintiff for seeking registration of trademark "Chokhi Dhani" in various classes, have been indicated in Para No.4 of the plaint. It has also been pleaded that the plaintiff's star category hotels & resorts in the trade-name of "Chokhi Dhani" are situated at various places in India.

In Para No.8 of the plaint, it has been pleaded that the defendant seems to be engaged in the business of hotels & resorts, having its business place at the address mentioned above i.e. at Rajkot, Gujrat as indicated in the cause-title and address of the defendant in the plaint.

In Para No.9 of the plaint, it has been pleaded that while looking into the tourist's website, the plaintiff was clicked with the defendant's website and came to know that the defendant has started hotels & resorts under the trade-name of "Chouki Dhani" along with copyright subsists in its logo.

It has been pleaded that the trade-name used by defendant i.e. "Chouki Dhani" for its hotels & resorts business at Rajkot, is phonetically and deceptively similar to the trade-name/trademark of the plaintiff i.e. "Chokhi Dhani" and since plaintiff has coined and invented this trademark as also is a prior user, the defendant is passing off using the trade-name of "Chouki Dhani", which is deceptively similar to the plaintiff's trade mark.

Thus, the plaintiff filed present civil suit for declaration, permanent & perpetual injunction, for passing off action of its trademark, against the defendant on 28.03.2005.

4. It has been pointed out by the learned counsel for petitioner that as per the averments of plaint, it is admitted case of plaintiff that its application for registration is pending and trademark "Chokhi Dhani" has not been registered, therefore, the present suit is not for infringement of a registered trademark of the plaintiff, but it is a suit for passing off the trademark, allegedly used by the plaintiff. Therefore, in such factual matrix, the territorial jurisdiction to file the civil suit would be governed by Section 134(c) of the Trade Marks Act, 1999 and not by Sections 134(a) and (b) of the Trade Marks Act. For invoking the jurisdiction under Section 134(c) in respect of cause of action for passing off, Section 20 of the CPC comes in operation and the civil suit shall be instituted in the Court, in whose jurisdiction, the defendant resides or carries on business or personally works for gains or where cause of action, wholly or in part, arises.

5. Learned counsel for petitioner-defendant has also argued that in Para No.10 of the plaint, it has been pleaded that defendant is deliberately cheating the public at large by passing off its goods and services as that of the plaintiff and reproduced the copyright of the plaintiff, which amounts to the passing off of copyright of the plaintiff. In this paragraph, it has been specifically pleaded by the plaintiff that the plaintiff is prior user of the trademark "Chokhi Dhani" along with copyright subsists in its artistic work and therefore, plaintiff is exclusively sole proprietor of the trademark, as per the rights conferred by the Trade Marks Act, 1999 and its artistic work in the logo under the Copyright Act, 1957. It has been pointed out that thus it is clear that though

plaintiff also make out a case of passing off his copyright, but as per the plaint, there is no pleadings that the plaintiff has any registration of its artistic work in the logo under the Copyright Act, 1957 and the injunction under the Copyright Act has also been prayed on the ground of passing off the copyright. In this way, the plaintiff is not entitled to invoke the jurisdiction of the Court at Jaipur, taking resort of Section 62 of the Copyright Act, 1957, where plaintiff's business place and registered office is situated.

6. Learned counsel for petitioner has drawn attention of this Court to Para No.15 of the plaint and has argued that in this paragraph, the plaintiff has averred in respect of accrual of cause of action within district Jaipur, but no particular facts and material is available on record to substantiate such cause of action and for which, it would be appropriate to reproduce Para No.15 of the plaint ad verbatim:-

> "15. The cause of action arose to file this suit along with an Injunction Application against the above named the defendant, when the plaintiff came to know very recently looking into tourist websites the plaintiffs was clicked website and shocked to see that the defendant have started Hotel & Resort under the Trademark/Trade Name CHOUKI DHANI along with copyright subsists in its logo, which is confusingly, structurally, phonetically and visually identical and/or deceptively similar to the plaintiff's mark CHOKHI DHANI along with copyright subsists, in its logo and when the plaintiff served notice through the plaintiff's advocate on 31-03-2002 to desist from using Trademark/Trade Name CHOUKI DHANI along with copyright subsists in its logo, which is confusingly, structurally, and visually identical and/or deceptively similar to the plaintiff's Tademark/Trade Name CHOKHI DHANI along with copyright subsists in its logo, and when the plaintiff have received reply on 24-4-2002 from the defendant's Advocate, the defendant was stating vague contentions for adopting impugned Trademark/Trade Name CHOUKI DHANI along with copyright subsists in its logo by the defendant. Therefore, the plaintiff moved before this Hon'ble Court. Moreover, artwork of the defendant is also identical and /or deceptively similar to the plaintiff's artwork, which amounts to the reproduction of copyright, as arrangement of word, get-up, style and layout is same as that of the plaintiff. The defendants have deliberately adopted writing style of word CHOUKI DHANI as that of the plaintiff's the word CHOKHI DHANI in the exact manner and style as that of the plaintiff that can been seen by comparing both marks in juxtaposition. Thus, the Cause of Action has arisen within the district of the Jaipur and therefore, this Hon'ble Court

> is having territorial jurisdiction and is empowered to try this Injunction Application as well as the Suit and to grant the relief as prayed for. Further, This court is also having jurisdiction under the provisions of The Copyright Act, 1956 and Code of Civil Procedure Act, 1908. The Plaintiffs have initiated the action against the Defendant at the earliest opportunity. There is no delay in filing the present suit. Hence, the suit is not barred by the law of limitation and the same is filed in time."

7. Learned counsel for petitioner-defendant has vehemently urged that in the entire plaint, plaintiff has nowhere pleaded that the defendant is carrying on its business of hotels & resorts within jurisdiction of district Jaipur or personally works for gains in Jaipur City. The pleadings are absolutely silent as to how cause of action, wholly or in part, arises in the jurisdiction of Jaipur Court. When it is an admitted case of plaintiff that business place of defendant is at Rajkot, Gujrat, where it is carrying on business, in that view, at the most, the plaintiff could have instituted the civil suit for passing off action against the defendant before the Court at Rajkot, Gujrat, in view of Section 20 of the CPC. The plaint instituted by the plaintiff in district Jaipur is not liable to be entertained in any circumstances and such plaint deserves to be rejected or in alternative deserves to be returned to the plaintiff for presentation before the appropriate Court, having the jurisdiction to try the same.

8. It has been argued that the learned trial Court, while passing the order impugned dated 10.01.2006 and dismissing the application filed by the petitioner-defendant, has committed grave illegality and jurisdictional error, as from perusal of pleadings of the plaint as a whole, the plaint does not whisper about accrual of any cause of action within the territorial jurisdiction of district

Jaipur and admittedly the business place and registered office of defendant is at Rajkot, Gujrat, more so the plaintiff's suit is not for infringement of any registered trademark or registered copyright, yet the trial Court has observed in the impugned order that the plaintiff has registration in its favour and the issue of territorial jurisdiction cannot be adjudicated at this stage. Such findings/observations of the trial Court as recorded in the impugned order, are highly perverse and the trial Court committed error in not allowing the application of petitioner-defendant. Learned counsel for petitioner has confined his arguments that at least if the trial Court was of the opinion that the plaint is not liable to be rejected under Order VII Rule 11 CPC, at least the plaint ought to have been returned to the plaintiff under Order VII Rule 10 CPC, since the district Court at Jaipur does not have any territorial jurisdiction to try the present civil suit. Thus, it has been prayed that the impugned order warrants interference to this extent and the civil suit filed by respondent-plaintiff deserves to be returned under Order VII Rule 10 CPC, to the plaintiff for presentation before the appropriate Court, having jurisdiction to try the same i.e. before the Court at Rajkot, Gujrat, which is the business place of defendant and where its registered Office is situated.

9. Learned Counsel for petitioner-defendant has also pointed out that in the present revision petition, vide order dated 18.05.2006, further proceedings of the present suit before the trial Court were stayed and during course of pendency of the revision petition, the name of petitioner-Company has been

changed to Chouki Dhani Motels (Gujrat) Private Limited from M/s Kavery Hotels Private Limited. It has been submitted that at the time of filing of the revision petition, the trademark registration applications filed by both the parties were pending before the Registrar of Trade Marks, Ahamdabad, and though the applications for registration filed by plaintiff on its application No.1073208 in Class 30 and other applications are still pending due to opposition by the petitioner-defendant, but petitioner's application to register the trademark (logo) "Choukidhani" under application No.1098372 dated 26.04.2002, in respect of goods included in Class 30 and application No.1358768, in respect of services including in Class 42, have been granted and registration in the name of the petitioner has been made. Copies of registration certificates, issued under the Trade Marks Act, 1999, in the name of petitioner-defendant have been placed on record. This application has not been replied/opposed by the respondent-plaintiff. Be that as it may, this Curt has only recorded these additional and subsequent facts, being material placed on record by the petitioner with misc. application, but the same has no concerned with the issue of territorial jurisdiction of the district Court at Jaipur, to try the present suit, which is under consideration in the present revision petition. Thus, the application stands disposed of accordingly, having no nexus with the issue under consideration.

10. In counter to the arguments put forth by counsel for petitioner-defendant as referred hereinabove, learned counsel for respondent-plaintiff has supported the impugned order passed by the learned trial Court and states that the present suit is pending

before the trial Court, at the stage of plaintiff's evidence. It may be noted here that learned counsel for respondent-plaintiff could not make it clear from the plaint that how the cause of action, wholly or in part, to file present suit has arisen within jurisdiction of the district Court at Jaipur. He has not disputed the fact that in the plaint, the business place and registered office of defendant is stated at Rajkot, Gujrat only and the plaintiff's suit is not for infringement of registered trademark or infringement of registered copyright, but is of passing off the trademark/trade-name of "Chokhi Dhani", along with copyright subsists in its artistic work by the defendant. He has prayed to dismiss the revision petition.

11. Having considered the rival contentions of counsel for both parties and from perusal of pleadings of the paint, this Court finds that it is an undisputed fact that in the plaint itself, more particularly in Para No.8, plaintiff has admitted the business place of defendant at Rajkot, Gujrat. This is also not in dispute that the registered office of defendant as indicated by the plaintiff in the cause title of plaint, is situated at Rajkot, Gujrat. This Court further finds that in the plaint, plaintiff has not come up with a case of infringement of its registered trademark/trade name. The plaintiff's suit for declaration, permanent & perpetual injunction is solely based on the passing off action of its trademark/trade name "Chokhi Dhani" as well as passing off copyright, allegedly subsists in the artistic work of the trade-name and logo of Chokhi Dhani. From pleadings of the entire plaint, it stands abundantly clear that plaintiff has pleaded to coined and invented the trademark/trade-name "Chokhi Dhani" and alleged to be prior user of this

trademark and seeking declaration as well as injunction against the petitioner-defendant, for not using the trademark/trade-name of "Chokhi Dhani" and copyright subsists in its artistic work as also not to use the impugned trademark "Chouki Dhani" along with copyright subsists in its artistic work by the defendant, which is stated to be phonetically and deceptively similar to the trademark of plaintiff. In the plaint, it is not the case of plaintiff that its trademark "Chokhi Dhani" and artistic work in this trademark and logo, are registered under the Trade Marks Act and under the Copyright Act, yet in the impugned order dated 10.01.2006, it has been mentioned that there is registration in the name of Chokhi Dhani in favour of the plaintiff. Such observation by the trial Judge in the impugned order, is wholly perverse and against pleadings of the plaint and record.

12. By perusal of Para No.15 of the plaint, as reproduced hereinabove, this Court finds that the plaintiff has invoked the jurisdiction of the district Court at Jaipur, on the ground that cause of action to file present suit has arisen within the district of Jaipur. Plaintiff has also taken resort to the provisions of the Copyright Act, 1956 to invoke the jurisdiction of the district Court at Jaipur. As far as accrual of cause of action, wholly or in part, for filing present suit within district Jaipur is concerned, there is no whisper in the plaint to substantiate the averments of accrual of such cause of action in Jaipur, except making a bald and casual averment that cause of action has arisen within district Jaipur. Learned counsel for respondent-plaintiff is also not able to point out any particulars in pleadings or material on record, to show

that the accrual of cause of action, wholly or in part, arises within the district of Jaipur. The averments made by the plaintiff, in the plaint, prima facie appears to be arbitrary, baseless & misleading and have been stated to make out an illusionary cause of action to invoke the jurisdiction of Court within territory of Jaipur.

13. In respect of invocation of infringement of any registered trademark, or claiming any right in relation to a registered trademark by the person, provision of Section 134 (a & b) of the Trade Marks Act, 1999 permits the person, to institute the suit or proceedings, where the person institutes the suit, actually or voluntarily resides or carries on business or personally works for gains. Similarly, in respect of infringement of copyright, Section 62 of the Copyright Act, 1957, permits the person, invoking the jurisdiction of district Court, where the person institutes the suit or other proceedings, actually or voluntarily resides or carrying on the business or personally works for gains. But, since in the present suit, it is not the case of plaintiff that the alleged trademark/trade name of "Chokhi Dhani" and artistic work are registered in the name of plaintiff under the Trade Marks Act or under the Copyright Act, rather as per pleadings of the paint, the case of plaintiff is based on passing off the trademark and copyright. Thus, in the present case, plaintiff cannot be allowed to invoke the jurisdiction of district Court at Jaipur, where plaintiff carries on its business of hotels & resorts, by using name of "Chokhi Dhani", taking resort to Section 134(a) & (b) of the Trade Marks Act, 1999 and Section 62 of the Copyright Act, 1957.

14. In the present civil suit, filed by the plaintiff, based on the passing off its trademark and copyright, the territorial jurisdiction for filing the suit is governed by Section 134(c) of Trade Marks Act along with Section 20 of the CPC. According to the Section 20 of the CPC, the suit shall be instituted by the plaintiff against the defendant before the Court, within the local limits of whose jurisdiction, the defendant or any of the defendants, where there are more than one defendant, at the time of commencement of the suit, actually and voluntarily resides or carries on business or personally works for gains or where the cause of action, wholly or in part, arises. It is not the case of plaintiff in the plaint as has been discussed hereinabove that the defendant carries on business of hotel & resort within the territory of Jaipur. Admittedly, the business place and registered office of defendant, as per the plaint is confined to Rajkot, Gujrat. The defendant too admits and does not dispute this factual aspect. In addition, it may also be observed that even the plaintiff too has not claimed jurisdiction of district Court at Jaipur, on the ground that defendant carries on business or personally works for gains within the jurisdiction of Jaipur, thus to this extent, the district Court at Jaipur has indisputably no jurisdiction to entertain and try the present suit against the defendant.

As far as accrual of cause of action, wholly or in part, within the territory of district Jaipur is concerned, prima facie there is no material and substantive pleadings on record to support such averments made in the plaint and mere bald and casual averment made by the plaintiff in the plaint, for accrual of cause of action

within district Court at Jaipur, may not be treated as suffice. It appears that such averments were made by the plaintiff, arbitrarily & casually, without any basis, just to invoke the jurisdiction of district Court of Jaipur. On facts of the present case, the cause of action alleged to be arisen in Jaipur seems to be illusionary, meaningless, misleading and unrealistic. In absence of any sufficient pleadings and other even prima facie material on record, the trial Court committed jurisdictional error in observing in the impugned order that the issue in respect of jurisdiction to entertain the present suit by the district Court at Jaipur cannot be adjudicated at this stage and would be considered after recording evidence. When at the initial stage and prima facie, from perusal of the plaint and material placed on record by the plaintiff, it is clear beyond doubt that no cause of action, wholly or in part, has arisen in favour of plaintiff and against the defendant to file the present civil suit within district Jaipur, the plaintiff cannot be allowed to maintain the present suit for declaration and injunction before the district Court at Jaipur. In that view of matter, this Court finds that the plaintiff miserably failed to show prima facie as to how and in what manner, the district Court at Jaipur has territorial jurisdiction to entertain and try the present civil suit.

15. Learned trial Court committed jurisdictional error in not appreciating the objection of defendant correctly, and it appears that neither the pleadings of plaint as a whole have been taken into consideration nor a meaningful reading or formal was made, by the trial Court before deciding the application. Rather, the trial Court has assumed by its own that plaintiff has registration in the

trade-name of "Chokhi Dhani" in its favour, which is not the case of plaintiff in the plaint at all. Therefore, the impugned order dated 10.01.2006 warrants interference by this Court in exercise of its jurisdiction under Section 115 of CPC and the same is set aside to the extent of not allowing the alternative prayer of defendant to return the plaint under Order VII Rule 10 CPC.

16. The upshot of discussions made hereinabove is that the District Court at Jaipur does not have the territorial jurisdiction to entertain and try the present civil suit filed by respondent-plaintiff, therefore, the objection raised by the defendant to this extent is sustainable and the instant revision petition is allowed to this extent. As a result, the impugned order is set aside and the present plaint is directed to be returned to the plaintiff, for presentation before the appropriate Court, having the territorial jurisdiction to try the same. No costs.

17. Interim stay order dated 18.05.2006, staying the further proceedings of the present suit before the trial Court stands come to an end.

18. Stay application and other pending application(s), if any, stands disposed of.

(SUDESH BANSAL),J

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