NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal No. 30 of 2022
Reserved on 09/01/2024
Pronounced on 23/01/2024

Chhattisgarh Distilleries Limited Having Registered Office At 610 “O” Block, New Alipore, Kolkata, West Bengal- 700053 Acting Through Its Director Mr. Rama Kant Shukla S/o Mr. Badri Nath Shukla.

---- Appellant

Versus

Great Galleon Ventures Limited Bearing CIN U15520MP1985PLC002815 Having Registered Office At 160, Kanchan Bagh, Indore, Madhya Pradesh.

---- Respondent

For Appellant	:	Shri Manoj Paranjape, Shri Praveen Surange and Shri Arpan Verma, Advocates
For Respondent	:	Shri Kapil Wadhwa, Shri Suman Kumar and Shri Manay Nath Thakur, Advocates

Division Bench

Hon'ble Shri Justice Sanjay S. Agrawal &
Hon'ble Shri Justice Radhakishan Agrawal
CAV Judgment

Per Sanjay S. Agrawal, J.

1. This appeal has been preferred by the plaintiff – Chhattisgarh Distilleries Limited under Order 43 Rule 1 (a) of the Code of Civil Procedure, 1908 (for short ‘the CPC’) read with Section 13 of the Commercial Courts Act, 2015, questioning the legality and propriety of the order dated 21.12.2021 passed by the Commercial Court (District Level), Nava Raipur, Chhattisgarh in Civil Suit No.01-A/2020, whereby, the learned trial Court in exercise of the powers provided under Order 7 Rule 10 of CPC has directed for return of the plaint for its presentation before the competent court having its territorial jurisdiction.

2. Briefly stated, the facts of the case are that the plaintiff- Chhattisgarh Distilleries Limited, a registered company having its registered/principal office at Kolkata (West Bengal) engaged in the business of manufacturing alcoholic beverages (except beers), whiskey, brandy, gin, rum, vodka, distilled beverage, cocktails, liquors, spirits (beverages) and allied/cognate/related goods (henceforth referred to as 'the Business'), while using its trade mark/label "GOA SPECIAL", "GOA SPECIAL WHISKEY" (hereinafter referred to as "CDL LOGO" Embossed glass bottles). According to the plaintiff, the said business was being done with the said trade mark, while having its commercial operations at Khapri, Post- Kumhari, District Durg (CG) and has built up a world wide and globally valuable trade, goodwill and reputation, but the unscrupulous traders and manufacturers started counterfeiting its goods under the impugned trade mark. It is pleaded by the plaintiff that the defendant-company is using his trade mark in similar fashion while using "CDL LOGO" Embossed glass bottles, and the said fact came to its knowledge when an F.I.R. was lodged by the Excise Department at Police Station, Saragaon, District Janjgir Champa (CG) for unauthorized and/or illegal sale of the Whiskey manufactured by the defendant with similar to that of his trade, which impliedly confirms the unauthorized/illegal sale of defendant's product while committing an infringement of a registered trade mark of the plaintiff, which led to the institution of the suit claiming permanent prohibitory injunction and also for damages under Sections 134 and 135 of The Trade Marks Act, 1999 (hereinafter referred to as 'the Act of 1999') read with Section 55 of the Copy Rights Act, 1957 (hereinafter referred to as 'the Act of 1957').

3. While contesting the aforesaid claim, it was denied by the defendant in its written statement that they had ever used the alleged trade mark of the

plaintiff in the State of Chhattisgarh nor even intending to use the same as such, and during the pendency of the suit, moved an application under Order 7 Rule 11 of CPC seeking rejection of the plaint or its return by submitting, inter alia, that merely on the basis of lodging the alleged F.I.R. at Saragaon Police Station, District Janjgir Champa by the Excise Department against an unknown person, namely, Nankun Mahant and 4 others, would not be sufficient to hold that the cause of action, as pleaded by the plaintiff, has arisen in the State of Chhattisgarh, particularly, when there is no allegation has been levelled against the defendant for its selling in the said region.

4. In reply to the aforesaid application, it is stated by the plaintiff that since the product of the defendant has been found in the State of Chhattisgarh in violation of the registered trade mark of the plaintiff – Company, therefore, it cannot be said that the cause of action has not been arisen in the territorial jurisdiction of this Court. The aforesaid application, is therefore, liable to be rejected.

5. Although, the written statement was filed, but the trial Court upon due consideration of the aforesaid application, has chosen to decide the alleged preliminary objection vide its order dated 20.12.2021 pertaining to the territorial jurisdiction of the court as well as the question regarding the cause of action, as to whether the same has been arisen in the State of Chhattisgarh or not, before adjudicating the matter on merits.

6. After considering the rival submissions of the parties, it was observed by the trial Court vide its order impugned that since the plaintiff has failed to plead that it is actually and voluntarily resides or carries on its business or personally works for gain in the State of Chhattisgarh, therefore, it cannot be said that its factory is situated in Chhattisgarh region and its sub-

ordinate office is there in the said region, and thereby arrived at a conclusion that since the registered office of the plaintiff is at Kolkata (West Bengal), the Courts at West Bengal have, therefore, territorial jurisdiction to try the suit under Section 134 of the Act of 1999. It observed further that since the alleged charge-sheet for transportation of alleged article produced by the defendant was neither found to be lodged against him nor any document has been placed on record showing that the defendant has applied to the Excise Department for grant of licence to sell the liquor in the State of Chhattisgarh, therefore, it cannot be said that the cause of action has arisen in the Chhattisgarh region and accordingly, the plaint was directed to be returned for its presentation to the proper forum having its territorial jurisdiction to decide the suit. The order impugned has, thus, been passed in exercise of the powers enumerated under Order 7 Rule 10 of CPC which has been impugned by the plaintiff by way of preferring this appeal.

7. Learned counsel appearing for the appellant/plaintiff submits that the finding of the Court below holding that no cause of action has arisen within the territorial jurisdiction of this Court even in absence of framing an issue in this regard, is apparently contrary to law. It is contended further that since the cause of action is a bundle of facts, therefore, the Court below ought not to have decided this issue by merely reading the plaint averments. Further contention of him is that the trial Court without considering the plea taken in plaint para 1 in its proper manner, *vis-a-vis*, the documents pertaining to the registration certificate of the trade mark of the plaintiff issued on 15.07.2017 and 06.02.2019 showing that the plaintiff is carrying on its business within the territory of Chhattisgarh, has erred in holding that the plaintiff is not carrying on its business at the Chhattisgarh region. In support, he placed his reliance upon the decision

rendered in the matter of **Indian Performing Rights Society Limited Vs. Sanjay Dalia And Another**, reported in **(2015) 10 SCC 161; Ultra Home Construction Pvt. Ltd. Vs. Purushottam Kumar Chaubey & Ors., 2016 SCC OnLine Del 376; Dahiben Vs. Arvindbhai Kalyanji Bhanusali (Gajra), (2020) 7 SCC 366; Jageshwari Devi And Others Vs. Shatrughan Ram, (2007) 15 SCC 52; Shakti Bhog Food Industries Limited Vs. Central Bank of India and Another, (2020) 17 SCC 262; Suryakant Gupta Vs. B.L. Saraf and Ors., (2011) 3 CGLJ 177;** and **in the matter of Brilliant Public School Society, Seepat Road, Bhatarai, Bilaspur & Anr. Vs. Brilliant Public School, Sitamarhi**, decided by the Division Bench of this Court on **23.03.2020** in **MA No.79 of 2019**.

8. On the other hand, learned counsel appearing for the respondent/ defendant submits that a mere perusal of the averments made in the plaint, it cannot be said that any cause of action has arisen in the territorial jurisdiction of the Court, and therefore, the Court below has not committed any illegality in deciding the said issue without framing of the issues, as contended by the appellant herein. It is contended further that even the alleged F.I.R. has not been lodged against the defendant, therefore, it cannot be said that the defendant was involved in any manner in selling the alleged seized articles at Chhattisgarh region, so as to confer the territorial jurisdiction of this Court. It is contended further that the defendant has never applied for grant of licence to sell the liquor within the State of Chhattisgarh, therefore, the Court below in absence of arising the cause of action within the territorial jurisdiction of the court has not committed any illegality in returning the plaint for its presentation before the proper forum. In support, he placed his reliance upon the decision rendered in the matter of **Indian Performing Rights Society Limited Vs. Sanjay Dalia And Another**, reported in **(2015) 10 SCC 161**

and **Ultra Home Construction Pvt. Ltd. Vs. Purushottam Kumar Chaubey & Ors., 2016 SCC OnLine Del 376**.

9. We have heard learned counsel appearing for the parties and perused the entire record carefully.

10. In view of the contentions made by the parties, the questions which arise for determination in this appeal are :

(i) Whether the Court below was justified in holding that the plaintiff is not carrying out its alleged business within the territorial jurisdiction of the Court, as such, the registered office of the plaintiff situated at Kolkata (West Bengal) has territorial jurisdiction to decide the suit ?

(ii) Whether the finding of the Court below holding that the cause of action has not arisen within the territorial jurisdiction of the Court, is sustainable in the eye of law ?

11. Reference to question (i) :-

From perusal of the averments made in the plaint, it appears that the registered and the principal office of the plaintiff- Chhattisgarh Distilleries Limited is situated at Kolkata (West Bengal) and for carrying out its commercial operations/office appears to be at village Khapri, Post- Kumhari, District Durg (CG) as reflected and evidenced by the registration of trade marks certificates issued in its favour by the Registrar of Trade Marks, i.e. within the territorial jurisdiction of the Court. Therefore, the finding of the Court below holding that the plaintiff is not carrying out its business or personally works for gain in the territorial jurisdiction of the Court deserves to be and is hereby set-aside. The question is, thus,

answered in negative.

12. Now, before considering the question (ii), it is necessary to examine the averments made in the plaint in order to decide the application filed under Order 7 Rule 10 (as the Court has exercised the powers under Order 7 Rule 10 instead of Rule11 of CPC) as in view of the settled principles of law, the plaint averments alone are required to be seen. From perusal of the plaint, it appears that the plaintiff, a registered Company having its principal office at Kolkata (West Bengal), has been involved in liquor business since 1992 while having its trade mark as mentioned in the preceding paragraphs. According to the plaintiff, it has adopted the said impugned trade mark since 1992 and 2016 as evidenced by the certificates issued under Section 23 of the Act of 1999 by the competent authority, i.e. Registrar of Trade Marks. The alleged certificates and the averments made at paragraph 1 in the plaint, would show that for carrying out the alleged business, the plaintiff has its commercial office/operations at village Khapri, Post- Kumhari, District Durg (CG). It is alleged in the plaint that the defendant is using his trade mark in similar manner and the said fact came to its knowledge when an F.I.R. was lodged by the Excise Department at Saragaon Police Station for unauthorized sale of the Whiskey manufactured by the defendant. Relevant averments made to this effect at paragraphs 27 and 30 read as under :-

> "**27**. That the defendant is operating in the state of Madhya Pradesh, but is soliciting and selling its products as products of the plaintiff with the impugned marks on it in other states as well to make wrong full gain on the goodwill and reputation of the plaintiff. In an F.I.R logged by the Excise Department, Saragaon, Chhattisgarh, for unauthorized/ illegal sale of the whiskey manufactured by the defendant with the impugned mark was confiscated, which impliedly confirms the unauthorized/ illegal sale of the defendant's product with the impugned mark also in the territory of the plaintiff. Several time State Excise Department confiscated

the goods illegally sold by the defendant in the state of Chhattisgarh but despite of that defendant continue to sale the goods under the same or similar trade name/logo/mark with that of plaintiff.

30. The cause of the present suit has been set out in the preceding paras. That the cause of action arose when the plaintiff became aware of the defendants impugned adoption when the Excise department confiscated the CDL Logo Embossed Glass bottles with the impugned mark on 14.01.2020. The cause of action further arose in the month of January 2020 when the plaintiff came across the availability of the defendants impugned solicitation of its activities in relation to the impugned goods targeting various markets including Chhattisgarh by visiting the social media platforms including the defendants own platform in the name of "https://greatgalleonventures.com". The cause of action further arose on 10.4.2020 when liquor worth rupees forty lakhs was seized by local police which belongs to defendant. Cause of action further arose on 19.4.2020 when 800 (eight hundred) carton of GOA whisky was seized by Excise department valued at rupees thirty eight Lakhs which is still continuing and is accruing day by day and shall continue to so accrue till the defendant cease with their impugned adoption and user.

That, owing to above said illegal trade by using deceptively, similar trade name and packing material, the Defendant has been causing recurring losses and damages to the Plaintiff to the tune of Crores of Rupees. However, the Plaintiff hereby limits its claim for damages to the tune of Rs. One Crore till the instituting of the Suit. The Plaintiff is also entitled to recover Rs.10,00,000/- per day as future damages from the date of filing of this Suit till the complete closure of the above mentioned illegal trade by the Defendant."

13. Based upon the aforesaid plea, the plaintiff has instituted a suit claiming permanent injunction and damages under Section 134 and 135 of the Act of 1999 read with Section 55 of the Act of 1957. In order to consider the aforesaid questions, the provisions prescribed under Section 134 of the Act of 1999 and Section 20 of the CPC are to be seen which read as under :-

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.

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

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

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

14. The aforesaid provision has been interpreted by the Supreme Court in the matter of **Indian Performing Rights Society Limited Vs**. **Sanjay Dalia And Another**, reported in (**2015**) **10 SCC 161**, which has been relied upon by both the parties and, it has been observed therein while taking note of the expression used therein, i.e. "notwithstanding anything

contained in the Code of Civil Procedure, 1908", that the applicability of the provisions prescribed under Section 20 of CPC has not been excluded and accordingly, it has been held that an additional forum has been provided by including a District Court within whose limits, the plaintiff actually and voluntarily resides or carries on business or personally works for gain so as to enable him to institute a suit under Section 134 of the Act of 1999 for infringement of the trade mark. Section 20 of CPC which has not been excluded from its applicability recognizes the territorial jurisdiction of the Courts where the cause of action wholly or in part arises and, it has been observed further that the place where the cause of action has arisen would be the place for institution of the suit and not the principal place of business where the cause of action has not been arisen. Relevant observation made to this effect as reflected from paragraph 15 reads as under :-

> "15 ….. The linking of the place with the cause of action in the Explanation where subordinate office of the corporation is situated is reflective of the intention of the legislature and such a place has to be the place of the filing of the suit and not the principal place of business……"
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> And finally it has been held at para 52 as under :-
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> 52. In our opinion, the provisions of Section 62 of the Copyright Act and Section 134 of the Trade Marks Act have to be interpreted in the purposive manner. No doubt about it that a suit can be filed by the plaintiff at a place where he is residing or carrying on business or personally works for gain. He need not travel to file a suit to a place where the defendant is residing or cause of action wholly or in part arises. However, if the plaintiff is residing or carrying on business, etc. at a place where the cause of action, wholly or in part, has also arisen, he has to file a suit at that place, as discussed above."

15. While placing reliance upon the aforesaid principles, the Division Bench of the Delhi High Court in the matter of **Ultra Home Construction Pvt**. **Ltd**. **Vs**. **Purushottam Kumar Chaubey & Ors**., reported in **2016 SCC**

OnLine Del 376, which has been relied upon by both the parties considered the situations for determining the forum for institution of the suit by the plaintiff being a Corporation under the Act of 1999, when cause of action arises on different places and observed at paragraph 14 as under :-

> "**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 later 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."

16. In view of the aforesaid principles laid down by the Supreme Court in the matter of **Indian Performing Rights Society Limited Vs. Sanjay Dalia** (supra) and the situations as considered by the Delhi High Court in the above referred matter, it is, thus, evident that the plaintiff has to institute the suit at a place where he is residing or carrying on business or personally works for gain, where the cause of action, wholly or in part has also arises, irrespective of the fact that his registered/principal office is situated on a different place (where the cause of action has not arises). The place where the cause of action has arisen, is, thus, a decisive factor for the institution of the instant suit under Sections 134 and 135 of the Act of 1999.

17. Reference to question (ii) :-

It is alleged by the plaintiff as reflected from paragraphs 27 and 30 of the plaint that the defendant is using his trade mark in similar to that of him and the said fact has come to his knowledge when an F.I.R. was lodged by the Excise Department at Saragaon Police Station (CG), where the items/articles produced by the defendant with "CDL LOGO Embossed glass bottles" along with the alleged trade mark was confiscated on account of its unauthorized use. It is, however, to be noted at this juncture that nowhere in the plaint it has been alleged that the F.I.R. was made against any of the officers of the defendant-company. In such circumstances, merely on the bald statement and/or the seizure of the

alleged items/articles by the concerned Police authorities would not be sufficient to hold that it was sold by the defendant or any kind of cause of action has arisen within the territorial jurisdiction of the Court, as alleged by the plaintiff. Even as per the plaint averments, the defendant resides and carries on its business in Indore (M.P.) and it has not been pleaded that the defendant has moved any application before the Excise Department for grant of licence to sale its products within the territorial jurisdiction of Chhattisgarh. There is, thus, no iota of plea has been alleged by the plaintiff or even the materials have been placed along with the plaint that the defendant is involved in selling its goods under the impugned trade mark within the territorial jurisdiction of the Court, except the plea regarding the registration of F.I.R. by the Excise Department at Saragaon Police Station of District Janjgir Champa and that too against the persons, who are not even related or concerned with the defendant-company. In absence of any specific plea in this regard, it cannot be said that the defendant is involved in selling its product in the State of Chhattisgarh or has infringed the impugned trade mark of the plaintiff.

18. In view of the aforesaid background, the question (ii) is thus, answered in positive by holding that the Court below has no territorial jurisdiction to decide the *lis* and the Court below has not committed any illegality in directing for return of the plaint for its presentation before the competent Court having its territorial jurisdiction.

19. Before parting with the matter, it is to be noted that the principles laid down in various decisions, as relied upon by the counsel appearing for the appellant/plaintiff, are found to be distinguishable from the facts involved in the present suit, as in the matter of **Dahiben Vs. Arvindbhai Kalyanji Bhanusali (Gajra),** reported in **(2020) 7 SCC 366**, a suit instituted on 15.12.2014 questioning the registered deed of sale,

executed on 02.07.2009 after a delay of over 5 and half years was held to be rejected on the point of limitation under Order 7 Rule 11 of CPC. The principles have, thus, been laid down entirely on different footing. Likewise, the reliance placed upon the decision rendered in the matter of **Jageshwari Devi And Others Vs. Shatrughan Ram,** reported in **(2007) 15 SCC 52**, is also of no use as in the said matter, it was observed that the defective cause of action could be determined during the trial and the plaint cannot be rejected on the basis of vague and incomplete cause of action, however, that is not the issue involved in the present suit. Similarly, the principles laid down in the matter of **M/s. Shakti Bhog Food Industries Ltd. Vs. The Central Bank of India,** reported in **2020 (17) SCC 262**, is also of no use as the question regarding the rejection of plaint on the point of limitation under Order 7 Rule 11 (d) of CPC was directed to be considered along with other issues on the basis of the plea taken in the written statement. Likewise, the observations made by the Co-ordinate Bench of this Court in the matter of **Suryakant Gupta Vs. B.L. Saraf and Ors.,** reported in **2011 (3) CGLJ 177**, is also distinguishable from the facts involved herein, as in the said matter, the suit was held to be dismissed by the trial court on the ground that it had no territorial jurisdiction instead of returning the plaint, therefore, the said finding was reversed and the matter was remitted to the said court with a direction for return of the plaint in terms of the provisions prescribed under Order 7 Rule 10 of CPC. In so far as the observations made by the Division Bench of this Court in the matter of **Brilliant Public School Society, Seepat Road, Bhatarai, Bilaspur & Anr. Vs. Brilliant Public School, Sitamarhi**, passed on **23.03.2020** in **MA No.79 of 2019,** is concerned, the same is, however, not at all, even remotedly, applicable to the facts involved herein, as in the said appeal, the issue of temporary

injunction under Order 39 Rule 1 and 2 of CPC alone was, in fact, dealt with.

20. After analyzing the aforesaid decisions, it, thus, appears that the reliance upon those decisions has very casually been placed by the learned counsel for the appellant which, however, could have been avoided.

21. Consequently, the appeal being devoid of merit is dismissed.

No order as to cost(s).

Sd/-

(Sanjay S. Agrawal)
Judge

Sd/-

(Radhakishan Agrawal)
Judge

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