2026:HHC:45767

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

OMP No. 324 of 2023 in COMS No. 7 of 2023

Order reserved on: 15.09.2026

Date of Decision: 15.10.2026
Uploaded on: October 15, 2026

SML Limited .…….Applicant/plaintiff

Versus

Mohan & Company and Anr. … Respondents/Defendants

Coram:

Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting? [1]

For the Applicant: Mr. Ashok Aggarwal, Senior Advocate with Dr. Sanjay Kumar, Ms. Arpita Sawhney, Mr. Atul Jhingan, Mr. Priyansh Sharma, Mr. Ankit Thakur and Mr. Sanket Singh Sengar, Advocates.

For the Respondents: Mr. Ashil Bhushan, Advocate vice Mr. Rajesh Kashyap, Advocate for Defendant No. 1.

Mr. Neeraj Gupta, Senior Advocate with Ms. Shradha Karol and Mr. Vaibhav Singh Chauhan Defendant No. 2.

Sandeep Sharma, Judge

Order at hand shall dispose of an application filed by the applicant/plaintiff under Order XXXIX Rule 1 and 2 read with Section 151 Code of Civil Procedure, 1908 seeking therein direction to restrain the defendants by themselves, their directors, partners, licensees, stockiest

[1] *Whether the reporters of the local papers may be allowed to see the judgment?*

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and distributors, agents and /or anyone claiming through any of them jointly and severally from infringing the patent rights of the applicant under Indian Patent No. 282092 by advertising, launching, making, using, offering for sale, selling, importing and/or exporting any product including "ZeekaSulf^{TM} " or any other product covered by the suit patent IN 282092 granted in March 30, 2017 to the Applicant/ Plaintiff.

2. Afore prayer made on behalf of the applicant/plaintiff has been seriously opposed by the defendant no. 2 by filing detailed reply to the application. Before ascertaining the correctness of the rival contentions raised at the behest of the parties to the *lis*, this Court finds it necessary to take note of certain facts, which may be relevant for adjudication of the application at hand, which reads as under:

a. The Applicant/Plaintiff, which is a company incorporated under the Companies Act, 1956, claims itself to be a research-driven organization involved in developing and promoting the use of advanced high-performance, end to end solutions in crop nutrition, crop protection, bio-stimulants and bio-fertilizers, with a turnover of around INR 1464 crores for FY 2022-23.
b. Plaintiff is owner of various patents *inter alia* Indian Patent No. 282092, which was granted to the plaintiff on 30.03.2017 under Section 43 of the Patents Act, 1970 (hereinafter referred to as 'the Act'), for agricultural composition entitled "Agricultural Composition" for twenty years. Plaintiff also claims to have received rights qua suit patent through assignment agreement from one Mr. Deepak Pranjivandas Shah.

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c. It is also averred in the application that as many as 13 countries have granted corresponding patents in respect of suit patent. As per the plaintiff, while its prayer for grant of patent in question was being considered no pre or post grant oppositions were filed by defendants.

d. Two entities had filed pre-grant oppositions under Section 25(1) of the Act, however, same were dismissed vide order dated 30.03.2017. Thereafter, two post-grant oppositions under Section 25(2) of Act were filed by two entities, which were also dismissed on 16.06.2023.

e. Defendant no. 1 is an agricultural store primarily engaged in retail sale of agricultural products in Tehsil Theog. Defendant no. 1 has not filed reply to written statement as well as reply to applications, including instant application under Order XXXIX Rules 1 and 2, CPC. Vide Affidavit dated 23.03.2024, Defendant No. 1 has tendered unconditional apology, while undertaking that he will not sell the impugned product in the future.

f. Defendant no. 2 is an agrochemical company engaged in the business of manufacturing, distributing and marketing of a wide range of agro chemical formulations such as insecticides, fungicides, herbicides, plant growth regulators, micro fertilizers and antibiotic.

g. It is alleged by Defendant no. 2 that company was established in 2015 and exports its products to more than 20 countries. Defendant no. 2 claimed that it has obtained 527 registrations for agrochemical formulations from the Central Insecticide Board and Registration Committee, out of which 295 agrochemical formulations are for sale in India and exports, 219 agrochemical formulations are exclusively for exports and 13 registrations for technical formulations.

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h. Plaintiff has alleged that infringing acts on the part of defendants by offering to sell the suit patent under the brand name, "ZeekaSulf™" and thus alleged infringement of rights of the plaintiff qua the suit patent. With the aforesaid material averments, suit has been filed seeking permanent injunction against the defendants from infringing the patent rights of plaintiff qua suit patent. The plaintiff has also sought direction for the removal of infringing product from all websites and online platforms, a decree for damages of Rs.1.02 Crores alongwith additional costs and an order directing defendants to destroy the stocks of infringing product.

3. Alongwith suit, plaintiff also filed an application under Order XXXIX, Rules 1 and 2 read with Section 151 of the Code of Civil Procedure seeking therein interim injunction against the defendants to the effect, as detailed hereinabove. It is averred in the application that unauthorized launch, advertisement, manufacture, market use, sale, offer for sale and/or export of the infringing product covered by the suit patent in the Indian market within the territorial jurisdiction of this Court by the defendants is ongoing and therefore, there is an urgency to restrain the defendants from infringing the patent rights of plaintiff qua suit patent by making, advertising, launching, using, offering for sale, selling, importing and/or exporting of the infringing product, sold under brand name "ZeekaSulf™" or any other product under any brand. Vide order dated 24.07.2023, this Court granted ad-interim injunction in favour of the plaintiff, thereby restraining the defendants from infringing the Patent right of the plaintiff. The order was passed ex-parte restraining the defendants

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from directly or indirectly dealing in its products, including "ZeekaSulf™" which allegedly infringes the Suit Patent.

4. Having heard counsel for the parties and perused the material available on record, this Court finds that plaintiff was granted suit patent on March 30, 2017 under Section 43 of the Patents Act, 1970 under Indian Patent No. 282092 (IN'092) for agricultural composition entitled 'AGRICULTURAL COMPOSITION', for a term of 20 years and the product was launched in the market under brand name 'TECHNO Z' in August, 2018. However, subsequently it came to the notice of applicant/plaintiff that the suit patent has been infringed by the defendants by manufacturing, marketing, selling and offering for sale product under the brand name "ZeekaSulf™".

5. Mr. Ashok Aggarwal, learned Senior Advocate duly assisted by Dr. Sanjay Kumar, Ms. Arpita Sawhney, Mr. Atul Jhingan, Mr. Priyansh Sharma, Mr. Ankit Thakur and Mr. Sanket Singh Sengar learned counsel representing the applicant/plaintiff vehemently argued that by virtue of Section 48 of the Act, a Patent granted under this Act, shall confer an exclusive right upon the patentee to prevent third party, who do not have its consent from the act of making, using, offering for sale, selling or importing such product in India and, therefore, applicant/plaintiff, being exclusive patent holder, is entitled to file and maintain present suit against infringement of Patent granted in its favour along with application for interim directions. While making this Court peruse Patent Certificate

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(Annexure- E) and Patent Specification (Annexure-F) as granted by Patent Office, Mr. Aggarwal, learned Senior Counsel argued that plaintiff alone, from the date of its being granted patent *qua* the product in question, has the exclusive right to make, use, offer for sale, sell, import and/or export the product covered by the suit patent and as such, acts of defendants of infringing the Plaintiff's suit patent are causing and will continue to cause substantial financial loss to the plaintiff and in case defendants are not restrained from their acts of infringement of patent, irreparable injury would be caused to the plaintiff.

6. Mr. Aggrawal, learned senior counsel submitted that "TECHNO Z" is an invention under Section 2(1)(j) of the Act, which is comprised of an effective amount of sulphur, an effective amount of zinc oxide and at least one agrochemically acceptable excipient, having a particle size of 0.1 micron to 50 microns, which provides a higher yield and improves plant's physiology. He further argued that composition demonstrates excellent dispersion, readily usable for micro irrigation systems, which is not known to interested individuals and is a product of years of research and development. To substantiate his aforesaid submissions, he specifically placed reliance upon the affidavit of Dr. Phool Kumar Patanjali, (Annexure-O) who is a technical expert/scientist in the field of agrochemical formulations, who after having perused the complete specifications, including claims of Suit Patent No. IN'092 opined that defendants no. 2's product "ZeekaSulf^{TM}" falls within the scope of claims of

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IN'092, out of which claims 11 and 12 have been found with essential features which have been infringed by Defendant No. 2. Para No. 11 of the afore Affidavit is reproduced as under:

> "11. I find that the **DHARMAJ** Product is a fertilizer composition comprising of Sulphur and Zinc Oxide. The **DHARMAJ** Test Report concludes that:
>
> a. The Sulphur in the **DHARMAJ** Product is 67.7% (w/w) and falls within the range of 30% to 87% as set out in Claim 11.
> b. The Zinc Oxide in the **DHARMAJ** Product is 22.8% (w/w) and falls within the range of 3% as set out in Claim 11.
> c. There is at least one excipient (surfactant) whose content is 6.5% (w/w) and falls with the range of 3% to 65% as disclosed on page 8 at paragraph 4 of the specification.
> d. The **DHARMAJ** Product is in the form of Broadcast granules as mentioned in Claim 11 wherein approximately 65.87% of the granules are in the range of 0.75 mm to 4.75 mm which falls out within the scope of the range 0.75 mm to 5 mm as set out in Claim 12.
> e. 100% of the particles are in the range of 0.1 microns to 50 microns as set out in Claim 11.
>
> In view of the above analysis, I opine that the essential features of Claims 11 and 12 are present in the DHARMAJ Product and therefore, the DHARMAJ Product falls within the scope of Claims 11 and 12 of the Indian Patent No. 282092"

7. Learned senior counsel for the plaintiff submitted that suit patent is an old patent in its 16th year (out of 20 years) of patent term which has stood the test of multiple pre-grant and post-grant oppositions, and has successfully worked for significant number of years. He further argued that defendants could have filed pre-grant or post-grant oppositions qua the suit patent, but such procedure was never adopted. He further argued that

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pre-grant and post-grant oppositions filed by other parties were disposed of by the competent authority taking note of all the evidence, prior art documents, written submissions, reply and arguments advanced by the opposition. He further argued that no revocation petition has been filed before the erstwhile Intellectual Property Appellate Board (now dissolved) or High Courts by the defendants on account of their being aggrieved by the grant of patent in favour of the plaintiff. Additionally, no application for obtaining a valid licensee has been made by Defendant No. 2.

8. Learned Senior Counsel further submitted that even a single act of sale is sufficient to constitute patent infringement. He stated that each 'act' constitutes infringement independently under Section 48 of the Act.

9. To the contrary, Mr. Neeraj Gupta, learned Senior Advocate duly assisted by Ms. Shradha Karol, learned counsel appearing for Defendant No. 2, argued that Court lacks territorial jurisdiction to entertain the present suit and by now it is well settled that prayer of interim injunction can be denied in case Court arrives at conclusion that it has no territorial jurisdiction to try the suit. In support of his aforesaid submission, Mr. Neeraj Gupta, learned Senior counsel representing Defendant No. 2 placed reliance upon the judgment passed by Hon'ble Apex Court in case titled ***Asma Lateef and another vs. Shabbir and others, (2024) 4 SCC, 696***, wherein it came to be held that question of jurisdiction assumes significant importance even at the stage a Court considers the question of grant of interim relief.

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10. Mr. Neeraj Gupta, learned Senior counsel vehemently argued that since suit at hand is based solely on four invoices of purported isolated purchases of defendant no. 2's product from a single retailer i.e. defendant no. 1 in Tehsil Theog on 15/16.04.2023 (Annexure M-Colly), these purchases are trap purchases from an unauthorized dealer and cannot be made basis to create jurisdiction. He submitted that the infringing product "ZeekaSulf™" is a commodity regulated by Fertilizer (Control) Order, 1985 (hereinafter, FCO and separate state-level authorizations are required to sell the product. Since Defendant no. 2 does not have any licence for the State of Himachal Pradesh and does not sell in the State of Himachal Pradesh, same could not have been sold by defendant No. 1, a retailer, without first obtaining authorization for sale from the local Notified Authority. He submitted that to get such authorization, the retailer is required to submit a memorandum of intimation in Form A-1 alongwith an authorization from the source Certificate of Source in Form O as prescribed in FCO [Clause 8(2)]. He submitted that if a retailer obtains fertilizers for sale from different sources, then certificate of source is required from each such source as provided under forth proviso to Clause 8(3) of FCO. He submitted that Defendant no. 2 had never authorized Defendant no. 1 to sell "ZeekaSulf™" nor it supplied "ZeekaSulf™" to Defendant no. 1. He submitted that these trap purchases were orchestrated just to create jurisdiction where same does not exist, thus, prayer of interim injunction deserves to be rejected.

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11. Mr. Neeraj Gupta, learned senior counsel, submitted that since afore product was being sold unauthorizedly without there being any authority, coupled with the fact that there is no evidence adduced on record suggestive of the fact that product "ZeekaSulf™" was made available by defendants No. 2 to defendant No. 1 for sale, this Court cannot be said to have territorial jurisdiction to entertain the suit filed by the plaintiff *qua* infringement of suit patent. He submitted that sham and unlawful transactions which are either of a counterfeit product or are false transactions cannot be made basis to create jurisdiction. While placing reliance upon the judgment passed Hon'ble Delhi High Court in case titled ***Indovax Private Limited vs. Merck Animal Health and others, 2017 SCC OnLine Del 9393***, Mr. Neeraj Gupta, learned Senior Counsel argued that isolated trap purchases cannot be used to procure jurisdiction, and sales by defendant at commercial scale within the territorial jurisdiction must be shown. He further submitted that listings of product on the e-commerce website of Defendant no. 2 do not show that the product could be purchased in Himachal Pradesh. He submitted that defendant No. 2 is authorized to sell in eleven States- Gujarat, M.P., Chattisgarh, Haryana, Uttrakhand, U.P., Maharashtra, Rajasthan, Punjab, West Bengal and Jammu & Kashmir and could therefore, sell the product only in these States. He submitted that only a person situate in these States could place orders for "ZeekaSulf™ on Defendant no. 2's website. He submitted that Defendant No. 2 does not have any office in the State of Himachal

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Pradesh, rather the Corporate Office, Registered Office and Factory of Defendant No. 2 is in Ahmedabad, Gujrat. Furthermore, it was submitted on behalf on defendant no. 2 that no online transactions have occurred through its official website or any other e-commerce website.

12. While further elaborating upon his submissions with regard to territorial jurisdiction, Mr. Neeraj Gupta, further submitted that defendants No. 2 is situate outside the territorial jurisdiction of this Court and in cases where several defendants are impleaded and only some reside within the territorial jurisdiction of the Court, Section 20 (b) CPC mandates that plaintiff has to seek leave of the Court to proceed against all the defendants, whereas in the instant case, no such leave has been sought by the plaintiff to proceed with the present suit.

13. While responding to the purported listing on defendant no. 2's website, Mr. Neeraj Gupta, learned Senior Counsel vehemently argued that a mere listing on website does not by itself account for any sort of business being conducted by defendant no. 2 in the State of Himachal Pradesh. In the case at hand, nothing has been placed on record to show that there was any actual transaction effected between any buyer and Defendants No. 2 in Himachal Pradesh through the website. In support of his aforesaid submissions, he placed reliance upon the judgments passed by Hon'ble High Court Delhi, in case *titled* ***Banyan Tree Holding Private Limited vs. A. Murali Krishna Reddy and another, 2009 SCC OnLine Delhi 3780*** and ***Vikrant Chemico Industries Private Limited vs. Shri***

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Gopal Engineering and Chemical Works Private Limited and others, 2025 SCC OnLine Delhi, 5562.

14. Though, learned Senior counsel representing defendant no. 2, in addition to his aforesaid submissions with regard to territorial jurisdiction, also made detailed submissions/rebuttal to persuade this Court that no prima facie case of infringement is made out, but having taken note of the judgment passed by Hon'ble Apex Court in ***Asma Lateef*** *(supra)*, wherein it specifically came to be ruled that where interim relief is claimed in a suit before a civil court and party to be affected by grant of such relief, or any other party to suit, raises a point of maintainability thereof or that it is barred by law and also contends on that basis that interim relief should not to be granted, grant of relief in whatever form, if at all, ought to be preceded by formation and recording of at least a prima facie satisfaction that suit is maintainable or that it is not barred by law, this Court at first instance finds it appropriate to deal with the question of lack of territorial jurisdiction raised at the behest of the defendant no. 2.

15. Precisely, the claim of the plaintiff is that infringement of the plaintiff's suit patent has taken place within the jurisdiction of this Court. To prove aforesaid claim, heavy reliance is placed upon invoices available at pages 203-206 of the plaintiff's document, whereby allegedly defendant No. 1 has sold the infringing product "Zeekasulf^{TM}" manufactured and marketed by defendant No.2. In addition to afore, it is also claimed by the plaintiff that infringing product is being marketed, offered for sale and sold

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across the country online, thus the cause of action has substantively arisen within the jurisdiction of the present Court. It is also claimed by the plaintiff that since defendant No. 1's Administrative Office as well as other offices falls within the jurisdiction of this Court, coupled with the fact that GST details of defendant No. 1's principal place of business falls within the jurisdiction of this Court and that it works for gain within the territorial jurisdiction of this Court, this Court has territorial jurisdiction to entertain the case at hand.

16. While refuting the assertion of defendant No. 2 that they are unrelated entities and that defendant No. 1 is not its authorized seller/dealer, it is clarified that only relevant fact in this context is that the cause of action has arisen within the jurisdiction of this Court. It is also claimed at the behest of the plaintiff that as per documents of defendant no. 2 (Annexure C-Colly of Written Statement), on 21.06.2021, the Directorate of Agriculture, Gandhinagar, has granted 'No Objection Certificate' to Defendant no. 2 to sell the infringing product within State of Himachal Pradesh thereby conferring jurisdiction upon this Court. It is also claimed by the plaintiff that even assuming that defendant No. 1 sold the goods without the express authorization of defendant No. 2, it is for defendant No. 2 to demonstrate that the same occurred despite their having exercised due diligence and comprehensive oversight, all of which are a matter of trial in such proceedings.

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17. Specific objection with regard to territorial jurisdiction has been raised by the defendant No. 2. It is averred in the reply to the application as well as written statement that (a) defendants No. 2 does not reside in the State of Himachal Pradesh, (b) it is not selling in the State of Himachal Pradesh, (c) it has not sold the infringing product to defendant No. 1 or any other dealer in the State of Himachal Pradesh and (d) even if defendant No. 1 sold the allegedly infringing product in Himachal Pradesh, it was an illegal sale by an unauthorized person with no permission or license to market or distribute or sell defendant No.2's product and (e) defendant No. 1 has been falsely implicated in the present suit only to invoke the jurisdiction of this Court.

18. At first instance, this Court vide order dated 24.07.2023, proceeded to grant ad interim injunction in favour of the plaintiff, thereby restraining the defendants. Since defendant no. 1 neither filed reply to the instant application, nor filed written statement to the main suit, this Court is persuaded to agree with Mr. Neeraj Gupta, learned Senior counsel representing defendants No.2 that it stands established on record that defendant No.2 had not sold the infringing product to defendant No. 1 and sale of the infringing product, if any, by defendant No. 1 is an illegal sale by an unauthorized person with no permission or license to market, distribute or sell defendants No.2 and 3's product. Though Learned Senior Counsel for the plaintiff attempted to argue that as per documents of defendant no. 2 (Annexure C-Colly of Written Statement), on 21.06.2021,

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the Directorate of Agriculture, Gandhinagar, had granted 'No Objection Certificate' to Defendant no. 2 to sell the infringing product within State of Himachal Pradesh thereby conferring jurisdiction upon this Court, however, this Court is not convinced with this submission as there is not even a single transaction on record suggestive of the fact that Defendant no. 2 has actually effected a sale in Himachal to defendant no. 1 or any other retailer.

19. No doubt, it can be determined during trial whether invoices qua the sale of infringing product were actually issued by defendant No. 1 or not, however, even if it is assumed that the invoices were issued by defendant No. 1, mere production thereof would not, by itself, be sufficient to confer territorial jurisdiction upon this Court until it is established that the impugned products were supplied by Defendant no. 2 to Defendant no. 1 for sale in the territory of Himachal Pradesh. Mere production of invoices, as detailed hereinabove, would not be sufficient to conclude territorial jurisdiction of this Court to entertain the instant application.

20. Territorial jurisdiction of this Court has been sought to be invoked on the basis of four alleged isolated purchases of the product of Defendant no. 2 from Defendant 1's shop in Tehsil Theog. However, having carefully perused aforesaid invoices, this Court at this stage is persuaded to infer that these four alleged purchases appear to have been created with a view to create jurisdiction of this Court.

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21. Besides above, fertilizers being regulated commodities cannot be sold by defendant No. 1, a retailer, without obtaining authorization for sale from the Notified Agency. Clauses 8(2) and 8(3) of FCO reveal that every person, including a manufacturer, importer, pool handling agency, wholesaler or retail dealer, intending to sell or offer for sale fertilizers is required to submit a Memorandum of Intimation in Form A1, along with the prescribed fee and a certificate of source in Form O, to the Notified Authority. Upon receipt of such Memorandum, the Notified Authority is obliged to issue an acknowledgement in Form A2, which is deemed to be an authorization letter, thereby recognizing the concerned person as an authorized dealer for the purposes of the Fertilizer (Control) Order. If a retailer obtains fertilizers for sale from different sources, then certificate of source is required from each such source (Forth Proviso to Clause 8(3) of FCO). Neither Defendants no. 2 has authorized Defendant no. 1 to sell "ZeekaSulf™" by issuing a Certificate of source in Form O to Defendant no. 1, nor there is any material to show that defendant No. 2 has supplied infringing product to defendant No. 1.

22. Documents adduced on record by the plaintiff suggest that infringing product is listed on the website of defendant No. 2, but there is nothing on record to prove that afore product has been or is being sold by defendant No. 2 in the State of Himachal Pradesh. No such evidence of transaction/delivery in Himachal Pradesh has been produced by the plaintiff, therefore, mere listing of infringing product on the website of

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defendant No. 2 may not be sufficient to invoke jurisdiction of this Court. Reliance in this regard is placed upon the judgment rendered by Hon'ble Delhi High Court in case titled ***Helsinn Healthcare SA Vs. AET Laboratories Private Limited and Ors.*** *passed in CS(Comm.) 1188/2024*, wherein it has been held that mere accessibility of a website, within the territorial jurisdiction of this Court would not amount to specific targeting of customers/consumers in territorial jurisdiction of that Court in the absence of any commercial transaction executed through the said website. Relevant paras of the judgment are reproduced as under:-

> "45. In the present case, even after filing additional documents, the plaintiff has failed to show that an order for any of the products of the defendants has been placed on their website or IndiaMart and that the same has been delivered in Delhi. Mere accessibility of a website within the territorial jurisdiction of this Court would not amount to specific targeting of customers/consumers in Delhi in the absence of any commercial transaction executed through the said website. Thus, the test of 'purposeful availment' of customers/consumers within the jurisdiction of this Court, as laid down in Banyan Tree (supra) has not been satisfied in the present case.
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> 46. In New Life Laboratories v. Dr. Ilyas New Life Homoeo and Herbals relied on behalf of the defendants, a coordinate bench of this Court declined to grant an interim injunction in favour of the plaintiff on the ground that the plaintiff has failed to place any material on record to show that the defendants are selling their products within the jurisdiction of this Court. Hence, on a prima facie view, territorial jurisdiction of this Court was not made out and an interim injunction was denied.
>
> 47. The observations made by the coordinate bench in New Life Laboratories (supra) is squarely applicable in the present case. The plaintiff has failed to place on record any material to show that any of the products of the defendants are available for sale within the jurisdiction of this Court or they have any customers in Delhi.

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> 48. Therefore, in my prima facie view, the plaintiff has failed to make out a case for the territorial jurisdiction of this Court."

23. At this stage, it is also apt to take note of order dated 06.06.2025 passed by this Court in ***SML Limited vs. Mohan & Company and Another***, passed in ***OMP No.320 of 2023*** in ***COMS No.6 of 2023***, which was heavily relied upon by the plaintiff in the case at hand. In afore order, this Court dealt with the issue of territorial jurisdiction in para-55, but bare perusal of the same reveals that there was no admission by retailer i.e. defendant No. 1 that manufacturer i.e. defendant No. 2, in that case, had either authorized the retailer or supplied the product to the retailer. Moreover, in afore case defendant No.2 was shown to have manufacturing unit in Himachal Pradesh. Most importantly in afore judgment, this Court did not deal with provision of FCO pertaining to grant of authorization to sell to a retailer based on submissions of Certificate of Source in Form O received from the manufacturer or wholesaler. Aforesaid order was laid challenge in appeal before the Division Bench of this Court i.e. ***COMAP No. 2 of 2025***, titled ***Safex Chemicals Private Limited vs. SML Limited and another*****,** wherein Division Bench of this Court though did not go into the findings given by this Court with regard to alleged infringement of the patent granted in favour of the plaintiff in that case, but set aside the finding given by this Court that it has territorial jurisdiction to entertain the suit. While placing reliance upon the judgment passed by Hon'ble Apex Court in ***Asma Lateef*** *(supra)*, Division Bench of this Court arrived at a conclusion that

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there is no cause of action/wrong done to invoke the territorial jurisdiction of this Court insofar as appellant/defendant No.2 is concerned. The alleged cause of action/wrong done by appellant/defendant No.2 is a triable issue, as a consequences whereof, the impugned order was vacated. At this stage, it would be profitable to reproduce paras No. 36 to 43 of the judgment passed by Division Bench of this Court in ***Safex Chemicals Private Limtied*** *case(supra)* herein below:-

> "6. From a perusal of the aforesaid order dated 08.01.2026, it is evident that respondent No.2 (defendant No.1) had no authorization, express or implied to sell the infringing product "Aladdin", as per the authorization on the basis of which the said respondent No. 2 is carrying on his business.
>
> 37. The possibility of one being dragged into litigation, by adducing flimsy material, cannot be ruled out as it is easy for the present appellant to be dragged into litigation if the only material necessary to give jurisdiction to a court is a few invoices issued by an entity, who is not an authorised representative of the appellant, to some third parties. Since the only material placed on record is in the form of four transactions entered into by respondent No.2 (defendant No.1), they would have to be shown to be obtained using fair means (prima- facie). **Rieter AG and another vs. Kavassery Narayanaswamy Venkatasubramanian, 2025 SSC Online, Del 4379 and Kubota Corporation vs. Godabari Agro Machinery Services Private Limited and others, I.A. No.1778/2024**, decided on 12.08.2025 relied upon by respondent No.1 (plaintiff) were cases of infringement of a patent. In **Rieter AG** the plaintiff's investigator had placed an order for the defendant's goods and in **Kubota Corporation** offer for sale had been made by the defendant therein to the plaintiff's investigator. Hence in both the aforesaid cases it was shown to the court by fair, authentic transactions that the infringement of their patent was happening within the territorial jurisdiction of the court either by an actual sale or by an offer for sale. Such is not the situation in the case at hand.
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> 38. Reliance placed upon **Great Galleon Venture Limited vs. Champa Prema Tandel Sole Proprietor of Dharmesh Distiller & Another, C.S. (CoMM) No.343/2023,** decided on 01.05.2024 by respondent No.1 is

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also of no avail. The said case pertains to an infraction of a Trademark and a copyright. Attention during the course of arguments had been invited to Section 134(2) of the Trademark Act, by respondent No.1, to show that under the Trademark Act suit can be filed at a place wherein the person instituting the suit actually and voluntarily resides or carries on business or purposely works for gain. In **Great Galleon Venture Limited** the plaintiff had a subordinate office in Delhi. Besides the infringing product therein was liquor being manufactured by the defendant allegedly being sold through peddlers in Delhi. Therein on account of the nature of goods involved commercial documentation i.e cash memos, tax invoices could not have existed for alleged illicit sale of liquor. Hence, based on both accounts i.e Section 134(2) of the Trademark Act and averments made in the plaint qua alleged illicit sale of liquor suit filed in Delhi was held to be maintainable.

39. Besides the aforesaid, **Rieter AG and Kubota Corporation** were cases wherein an application under Order 7 Rule 10 of the Code, seeking return of plaint on the ground of lack of territorial jurisdiction, was being considered. In this respect it would be appropriate to refer to the apex court judgement in **Exphar Sa v. Eupharma Laboratories Ltd., (2004) 3 SCC 688**. Relevant extract whereof reads as under:

> "9. Besides, when an objection to jurisdiction is raised by way of demurrer and not at the trial, the objection must proceed on the basis that the facts as pleaded by the initiator of the impugned proceedings are true. The submission in order to succeed must show that granted those facts the court does not have jurisdiction as a matter of law. In rejecting a plaint on the ground of jurisdiction, the Division Bench should have taken the allegations contained in the plaint to be correct."

40. At this juncture, it would be relevant to refer to the decision of the Delhi high Court, in **M/s Allied Blender & Distillers Pvt. Limited vs. Prag Distillers Private Limited and another, 2017 SCC Online Del 7225** (FAO (OS) No.49/2017, decided on 01.03.2017), wherein, it has been clarified that the consideration with regard to territorial jurisdiction in the context of Order 7 Rule 10 of the Code are entirely different from those in an application under Order 39 Rules 1 and 2 of the Code. The relevant extract, whereof, is being reproduced here-in-under:-

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"14. It must be clarified that the considerations with regard to territorial jurisdiction in the context of Order VII Rule 10 of the Code are entirely different from those in an application under Order XXXIX Rules 1 & 2 of the Code or when a finding is to be returned on the issue of territorial jurisdiction. Under Order VII Rule 10 of the Code, only the averments in the plaint are to be seen and that, too, on the assumption that they are correct. While considering an application under Order XXXIX Rules 1 & 2 of the Code, not only the averments in the plaint but also other material including the defendant's reply and written statement are to be seen. For establishing the existence of a prime facie case (a condition precedent for an ad interim injunction order), the plaintiff would obviously have to demonstrate, albeit at a prima facie level, that the apprehension was reasonable and credible. Here, a mere averment in the plaint would not do. And, the assumption that the averments in the plaint are correct would also not be available. Where the issue of jurisdiction is to be decided at the trial, the standard of proof would be even higher. Therefore, while for the purposes of an examination under Order VII Rule 10 of the Code, the court may 'conclude' that it has territorial jurisdiction, this would not come in the way of the defendant in raising a question as to territorial jurisdiction, both, when the issue of temporary injunction under Order XXXIX Rules 1 & 2 of the Code is being considered and when an issue as to territorial jurisdiction is being decided in the trial of the suit. In other words, while a plaintiff may succeed in demonstrating, for the purposes of Order VII Rule 10 of the Code that this court has territorial jurisdiction and that the plaint ought not to be returned, he may fail in obtaining an order of interim injunction on the ground that the plaintiff's case is itself shaky because the issue of territorial jurisdiction is highly debatable and prima facie not tenable. Therefore, the decision of the court in rejecting the objection of the defendant and in refusing the defendant's prayer for return of the plaint under Order VII Rule 10 of the Code, would not come in the way of the defendant raising the question of territorial jurisdiction, both as an objection to the grant of an

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interim injunction as also at the time of decision of the issue of territorial jurisdiction, if framed, at the trial of the suit."

41. Similarly, in **OSA No.38, 40 and 42 of 2020 titled Sulphur Mills Limited vs. M/s Dayal Fertilizers Private Limited**, (DB Madras High Court) decided on 11.11.2020, an application seeking revocation of leave granted to the appellant (plaintiff) therein, was being considered. The same was a case of a patent infringement. Therein it was held that a suit could be maintained on the basis of a lone "trap order" and further whether the defendants/respondents therein were offloading their product within the jurisdiction of the court or not was to be decided at trial and not in the application seeking revocation of leave.

42. Last but not the least it has been contended on behalf of the respondent No.1/plaintiff that since in the suit filed in the case at hand one of the reliefs sought is for grant of damages, therefore, for the purpose of territorial jurisdiction in the aforestated factual matrix whereby infringement is alleged to have taken place within the jurisdiction of this Hon'ble court section 19 CPC which pertains to suits for compensation for wrongs to person or movables would be applicable. Section 19 CPC reads as under;

19. Suits for compensation for wrongs to person or movables.— Where a suit is for compensation for wrong done to the person or to movable property, if the wrong was done within the local limits of the jurisdiction of one Court and the defendant resides, or carries on business, or personally works for gain, within the local limits of the jurisdiction of another Court, the suit may be instituted at the option of the plaintiff in either of the said Courts.

Illustrations

(a) A, residing in Delhi, beats B in Calcutta. B may sue A either in Calcutta or in Delhi.

(b) A, residing in Delhi, publishes in Calcutta statements defamatory of B. B may sue A either in Calcutta or in Delhi.

From the reasons recorded supra prima-facie it is evident that the alleged wrong in the case at hand has not been committed by the appellant/defendant No.2.

43. For the aforesaid reasons, the appeal is allowed as prima-facie this Court is convinced that in the facts and attending circumstances of the case at hand, there exists no cause of action/wrong done to invoke the territorial jurisdiction of

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> this Court insofar as appellant/defendant No.2 is concerned. The alleged cause of action/wrong done by appellant/defendant No.2 is a triable issue. As a consequence whereof, the impugned interim order dated 06.06.2025, passed in OMP No.320/23 in COMS No.6/2026, insofar as it pertains to appellant/defendant No.2, shall stand vacated. Needless to say, the present observation herein are only for deciding the issue of the injunction at this stage and will not influence the learned Single Judge to come to a contrary finding on the basis of additional material, if any, brought on record by the parties."

24. In view of the detailed discussion made hereinabove as well as law taken into consideration, on the parameter of territorial jurisdiction the plaintiff has failed to make a prima-facie case for grant of interim injunction, as has been held in ***Asma Lateef*** *(supra)* reproduced hereinabove. Since this Court for the reason and law taken into consideration hereinabove, is convinced that this Court has no territorial jurisdiction, there appears to be no occasion to go into the other aspects of the matter with regard to alleged infringement of suit patent.

25. Consequently, in view of the above, this Court finds no merit in the present application and accordingly same is dismissed.

26. Any observation made herein above shall not be construed to be a reflection on the merits of the case and shall remain confined to the disposal of the present application alone.

COMS No.07 of 2023

Be listed on 06.01.2027 for admission and denial of the documents before the Registrar (Judicial).

(Sandeep Sharma),
Judge

October 15, 2026
(vikrant/sunandini)

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