

Delhi High Court

M/S Rspl Ltd. vs Mukesh Sharma & Anr. on 5 April, 2016

Author: Vipin Sanghi

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 14.03.2016

% Judgment delivered on: 05.04.2016

+ I.A. No.11034/2015 in C.S. (OS) No.124/2015

M/S RSPL LTD ..... Plaintiff

Through: Mr. S.K. Bansal, Advocate

versus

MUKESH SHARMA & ANR ..... Defendants

Through: Mr. Kirti Uppal, Senior Advocate  
along with Mr. N.K. Kantawala,  
Mr.Prakhar Sharma & Ms. Sahiba,  
Advocates.

CORAM:  
HON'BLE MR. JUSTICE VIPIN SANGHI

#### JUDGMENT

VIPIN SANGHI, J.

1. This application has been moved by the defendant under Order 7 Rule 10 CPC to seek the return of the plaint to the plaintiff for filing the same in the proper court having jurisdiction, on the premise that this court lacks territorial jurisdiction to entertain and try the present suit.

2. The plaintiff has filed the present suit under section 134 and 135 of the Trade Marks Act, 1999 and the Copy Right Act, 1957 alleging infringement of the plaintiffs registered trademark as well as infringement of the plaintiffs copyright, and passing off. The plaintiff also seeks rendition of accounts etc. from the defendant. The case of the plaintiff is that the plaintiff M/s. RSPL Limited, which has its registered office at Kanpur and corporate office at Pitampura, New Delhi is engaged in the business of manufacturing and marketing of soaps and detergents. The plaintiff claims to have honestly and bonafidely adopted the trademark GHARI/WATCH/ CLOCK since 1975. The plaintiffs mark GHARI label is registered with the Registrar of Trademarks in several classes. Several applications of the plaintiff for registration of the trademark GHARI label are also stated to be pending.

3. The plaintiff claims to hold a copyright in the original art work in GHARI label, which is also stated to be registered. The plaintiff claims that its mark/ label is well known. In para 26 of the plaint, the plaintiff avers as follows:-

"26. That to the best of knowledge of the plaintiff, the defendant no.1 namely Mr. Mukesh Sharma is the lawyer and proprietor of his law firm namely GHARI TRADE MARK COMPANY (referred to as the impugned trade name) situated at 64, Kailashpuri, Bulandshahar (U.P.) and is engaged in providing legal and advisory services in relation to IPR matters (referred to as the impugned services). The word/name GHARI is the most important part of the impugned trade name".

(emphasis supplied)

4. The plaintiff claims that by adopting the firm name GHARI TRADE MARK COMPANY, the defendant is infringing the plaintiffs trademark. In para 35 of the plaint, the plaintiff states that in the third week of November 2011, the plaintiff received the caveat petition filed by the defendant in different district courts at Delhi. The plaintiff claims in para 37 of the plaint that this court has territorial jurisdiction to try and adjudicate the present suit as:

"... The defendants are committing the impugned acts within the jurisdiction of this Hon'ble Court by conducting, soliciting, rendering the impugned services within the impugned trade name within the territorial jurisdiction of this Hon'ble Court. The plaintiff is having its corporate office at 3rd Floor, C-1, 2 and 3, Netaji Subhash Place, Wazirpur District Centre, Pitampura, New Delhi-110034 which is nerve center of the plaintiff's said business and from where the plaintiff has been carrying on with its important aspects of its business including marketing, distribution and finance and is carrying on its said goods and business under the said trademark/ label within the territorial jurisdiction of this Hon'ble Court ...."

(emphasis supplied)

5. The submission of counsel for the defendant/applicant is that this court does not have territorial jurisdiction to entertain the present suit. This submission is premised on the fact that the plaintiffs registered office is situated at Kanpur. Though the corporate office of the plaintiff is situated at New Delhi - within the jurisdiction of this court, the applicant states that no part of cause of action has arisen within the jurisdiction of this court.

Consequently, it is stated that this court does not have the territorial jurisdiction to deal with the suit in the light of judgment of the Supreme Court in *Indian Performing Right Society v. Sanjay Walia & Ors.*, (2015) 10 SCC 161.

6. The submission of Mr. Bansal, learned counsel for the plaintiff to justify the filing of the present suit in this court is, firstly, that the defendant had filed caveats in different district courts of Delhi, which itself shows that the defendant is carrying on his legal profession within the jurisdiction of this court. He submits that the filing of the caveat itself constitutes a part of the cause of action. Mr. Bansal states that in para 36, the plaintiff has averred that cause of action arose, inter alia, in the third week of November 2014 when the plaintiff received the caveat filed by the defendant at the

district courts in Delhi. He has also referred to one of the caveats, wherein the defendant has stated he is engaged in the business of carrying on its profession under the trademark GHARI trademark company. Mr. Bansal submits that the plaintiff has specifically averred in para 38 that the defendant is carrying on his profession within the jurisdiction of this court by conducting, soliciting, rendering his services with the impugned trademark within the territorial jurisdiction of this court.

7. Mr. Bansal submits that the averments made in para 37 of the plaint have to be accepted as true on a demurer to decide the said issue of jurisdiction, at this stage. He submits that the said averment of the plaintiff would have to be tested on the anvil of evidence that the parties may lead at the trial of suit. Mr. Bansal also refers to para 2 of the preliminary objections in the written statement of the defendants. The defendants have merely stated that they are "not residing or carrying on their business in Delhi. It is hereby submitted that the defendants are operating and providing their services for registration of trade marks from Bulandshahar, Uttar Pradesh only, thus no cause of action can be said to have arisen in Delhi, and therefore, the suit is not maintainable within the territorial jurisdiction of this Hon'ble Court in Delhi as neither the defendants are residing or carrying on their business in Delhi nor any cause of action has arisen in Delhi".

8. Mr. Bansal submits that there is no denial of the specific averment made by the plaintiff in para 37 of the plaint to the effect that the defendants are soliciting work within the jurisdiction of this court. The only denial pertains to the defendants residing or carrying on their business within Delhi. Mr. Bansal submits that soliciting work within the jurisdiction of this court also gives rise to cause of action to the plaintiff as the said activity is being undertaken under the impugned mark.

9. In support of this submission, learned counsel for the plaintiff has sought to place reliance on *Govardhan Motels & Restaurants v. I. Subramanyam & Anr.*, 2008 (36) PTC 513 (Del). In this case, the defendant, an ex-employee of the plaintiff - who was carrying on the business of running vegetarian restaurant under the mark 'Govardhan', had adopted the mark 'Goverdhan' in respect of a similar trade. The submission of the defendants was that their activity was being conducted in Gurgaon in the State of Haryana, i.e. outside the jurisdiction of the court. It was the case of the defendants that defendant no.2's restaurant was owned by a third party, and not by defendant no.1 the ex-employee. Thus, the submission of the defendants was that no part of cause of action had arisen within the jurisdiction of this court. The plaintiff had invoked Section 62(2) of the Copyright Act as the plaintiff claimed copyright in the stylized form in which the mark 'Govardhan' was displayed. The plaintiff's principle place of business was within the jurisdiction of this Court. Territorial jurisdiction was also claimed by the plaintiff on the premise that part of cause of action has arisen within the jurisdiction of the court by resort to Section 20(c). The jurisdiction was claimed by the plaintiff by claiming that:

"The defendant no. 1 resides in Delhi at 140-G, 1st Floor, Gautam Nagar, New Delhi and works for gain at Delhi. ... Both defendants no. 1 & 2 individually or in unison are soliciting customers, clients and trade of the plaintiff in Delhi. The defendants are carrying on, promoting and soliciting trade under the impugned GOVERDHAN trade mark/trade name in Delhi inter alia by circulating trade & promotional material, packed foods etc. and through the word of mouth in Delhi thereunder. The

defendants are catering to customers/clients based and residing in Delhi. Numerous residents of Delhi are availing of the impugned goods & business of the defendants. ... The plaintiff's said goods & business under its said trade mark/trade name and the goodwill and reputation thereof is being adversely effected in Delhi due to the defendants impugned activities. The defendants impugned acts of passing off and violation and infringement of copyright are taking place in Delhi. The cause of action in whole and/or in part has arisen within the jurisdiction of this Hon'ble Court. ... in Delhi from its aforesaid two restaurants, which are its nerve center and from where the plaintiff has been controlling and carrying on each and every aspect of its said goods & business under its said trade mark/trade name, respectively in Adchini and Kashmiri Gate in Delhi. This Hon'ble Court, in addition, also has the jurisdiction to try and adjudicate the present suit by virtue of Section 62(2) of the copyright Act."

10. The Court while rejecting the objection to the territorial jurisdiction of this court observed as follows:

"16. From the aforesaid it is evident that it is, inter-alia, claimed by the plaintiff that the defendants are soliciting customers, clients and trade of the plaintiff in Delhi. It is claimed that they are promoting and soliciting business under the impugned trademark/trade name in Delhi by circulating trade and promotional material, packed food and by word of mouth in Delhi. It is claimed that the defendants are catering to customer residing in Delhi. The plaintiff also claims adverse effects on, inter-alia, its reputation in Delhi. The aforesaid actions, to my mind, constitute a part of the cause of action which the plaintiff claims have arisen in its favour.

17. Even if one were to ignore the other averments made by the plaintiff, which, according to him, constitute a part of the cause of action, at least the averments culled out in the previous paragraph would in my view, constitute a part of the cause of action since the plaintiff would have to prove the aforesaid conduct and actions of the defendants to support its claim for injunction and damages on the ground that it causes prejudice to the business of the plaintiff. The averment of the plaintiff that the defendants are soliciting prospective customers of the plaintiff also finds support from the report of the Local Commissioner appointed by this court which shows that the defendant is distributing its food packets by providing home delivery to its customers. The argument of the defendants that the free home delivery service is restricted within a radius of 5 Kms, cannot be taken to mean that it does not deliver its food packets beyond the limit of 5 Kms free or otherwise for a charge. Moreover, these averments would have to be tested at the trial of the suit. As aforesaid, the averments made in the plaint have to be assumed to correct, if the issue of jurisdiction is to be decided by this court at this preliminary stage".

11. Mr. Bansal further submits that the defendants have filed their opposition to the application of the plaintiff before the Registrar of Trademark in Delhi, which itself gives cause of action to the plaintiff.

12. Mr. Bansal submits that the settled position of law is that if a part of cause of action has arisen within the jurisdiction of this court, this court would have territorial jurisdiction to deal with the suit. In support of this submission, he has placed reliance on Pfizer Products Sarl v. Cipla Ltd., 2009 (39) PTC 358 (Del.) (DB). For the same purpose, reliance is also placed on Intas Pharmaceuticals Ltd. v. Allergan Inc., 2006 (32) PTC 272 (Del.) (DB). I may here itself observe that there could be no quarrel with the said proposition. However, the issue remains whether any part of cause of action has arisen within the jurisdiction of this court.

13. On the other hand, the submission of learned senior counsel for the defendants is that no part of cause of action can be said to have arisen within the jurisdiction of this court. It is pointed out by Mr. Uppal that the plaintiff has not disclosed any address of the defendant wherefrom the defendant is alleged to be carrying on its professional activities in Delhi. Pertinently, the plaintiff sought the appointment of a local commissioner to visit the premises of the defendant situated at Kailashpuri, Bulandshahar, U.P. and at no address in Delhi. Mr. Uppal submits that the averment of the plaintiff that the defendant is carrying on its business, soliciting work etc. within the jurisdiction of this court is completely vague and devoid of particulars, and such an averment cannot be accepted in the absence of relevant particulars.

14. After the hearing was concluded, the plaintiff has tendered in court the following decision in support of his submission:

- i) Pfizer Products, Inc v. Rajesh Chopra & Ors., 2006 (32) PTC 301 (Del.);
- ii) Bhatia Industries & Ors. v. Pandey Industries & Ors., 2011 (45) PTC 343 (Del.);
- iii) LG Electronics India Pvt. Ltd. v. Bharat Bhogilal Patel & Ors., 2012 (51) PTC 513 (Del.);
- iv) St. Ives Laboratories Inc. v. Ives Drugs (I) Pvt. Ltd., in IA No.17479/2011 in CS (OS) 27/2005 decided on 08.10.2013;
- v) Mayar (H.K.) Ltd. & Ors v. Owners & Parties, Vessel M.V. Fortune Express & Ors., AIR 2006 SC 1828;
- vi) Laxman Prasad v. Prodigy Electronics Ltd. & Anr., 2008 (37) PTC 209 (SC).

15. I have heard learned counsels and considered their respective submissions. I have also perused the plaint and the documents filed by the plaintiff and the decisions relied upon by the plaintiff.

16. In Indian Performing Rights Society Limited (supra), the Supreme Court while placing reliance on Jones v. Scottish Accident Insurance Co. Ltd. (1886) LR 17 QBD 421 (DC), observed that, 'the domicile of the company is fixed by the situation of its principal place of business.....In the case of companies registered under the Companies Act, the controlling power is, as a fact, generally

exercised at the registered office, and that office is therefore not only for the purposes of the Act, but for other purposes, the principal place of business.....". In this regard, reliance was placed on *Watkins v. Scottish Imperial Insurance Co.* (1889) LR 23 QBD 285 (DC).

17. In paragraph 19, the Supreme Court observed that:

"19. ....The provisions of Section 62 of the Copyright Act and Section 134 of the Trade Marks Act never intended to operate in the field where the plaintiff is having its principal place of business at a particular place and the cause of action has also arisen at that place so as to enable it to file a suit at a distant place where its subordinate office is situated though at such place no cause of action has arisen. Such interpretation would cause great harm and would be juxtaposed to the very legislative intent of the provisions so enacted."

(Emphasis supplied)

18. Para 20 reads as under:

"20. In our opinion, in a case where the cause of action has arisen at a place where the plaintiff is residing or where there are more than one such persons, any of them actually or voluntarily resides or carries on business or personally works for gain would oust the jurisdiction of other place where the cause of action has not arisen though at such a place, by virtue of having subordinate office, the plaintiff instituting a suit or other proceedings might be carrying on business or personally works for gain."

(Emphasis supplied)

19. In para 25, the Supreme Court, while rejecting the submission of the appellant, who was the plaintiff and had invoked Section 62 of the Copyright Act, observed:

"25. ....The legislature has never intended that the plaintiff should not institute the suit where he ordinarily resides or at its head office or registered office or where he otherwise carries on business or personally works for gain where the cause of action too has arisen and should drag the defendant to a subordinate office or other place of business which is at a far distant place under the guise of the fact that the plaintiff corporation is carrying on business through branch or otherwise at such other place also. If such an interpretation is permitted, as rightly submitted on behalf of the respondents, the abuse of the provision will take place. Corporations and big conglomerates, etc. might be having several subordinate offices throughout the country. Interpretation otherwise would permit them to institute infringement proceedings at a far-flung place and at an unconnected place as compared to a place where the plaintiff is carrying on their business, and at such place, cause of action too has arisen. In the instant cases, the principal place of business is, admittedly, in

Mumbai and the cause of action has also arisen in Mumbai. Thus, the provisions of Section 62 of the Copyright Act and Section 134 of the Trade Marks Act cannot be interpreted in a manner so as to confer jurisdiction on the Delhi Court in the aforesaid circumstances to entertain such suits. The Delhi Court would have no territorial jurisdiction to entertain it."

(Emphasis supplied)

20. In para 26, the Supreme Court further observed;

"26. ....It was never visualised by the lawmakers that both the parties would be made to travel to a distant place in spite of the fact that the plaintiff has a remedy of suing at the place where the cause of action has arisen where he is having head office/carrying on business, etc. The provisions of the Copyright Act and the Trade Marks Act provide for the authors/trade mark holders to sue at their ordinary residence or where they carry on their business. The said provisions of law never intended to be oppressive to the defendant. The Parliamentary debate quoted above has to be understood in the manner that suit can be filed where the plaintiff ordinarily resides or carries on business or personally works for gain. Discussion was to provide remedy to the plaintiff at convenient place; he is not to travel away. Debate was not to enable the plaintiff to take the defendant to farther place, leaving behind his place of residence/business, etc. The right to remedy given is not unbridled and is subject to the prevention of abuse of the aforesaid provisions, as discussed above. Parliament never intended that the subject provisions be abused by the plaintiff by instituting suit in wholly unconnected jurisdiction. In the instant cases, as the principal place of business is at Mumbai the cause of action is also at Mumbai but still the place for suing has been chosen at Delhi. There may be a case where the plaintiff is carrying on the business at Mumbai and cause of action has arisen in Mumbai. The plaintiff is having branch offices at Kanyakumari and also at Port Blair, if interpretation suggested by the appellants is acceptable, mischief may be caused by such plaintiff to drag a defendant to Port Blair or Kanyakumari. The provisions cannot be interpreted in the said manner devoid of the object of the Act."

(Emphasis supplied)

21. Again, in para 52, the Supreme Court observed;

"52. ....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."

22. From the aforesaid decision in Indian Performing Rights Society Limited (supra), and the decision cited by the Supreme Court therein, in my opinion, the position that emerges is as follows:

(a) By resort to Section 134 of the Trade Marks Act and 62 of the Copyright Act, the plaintiff may institute the suit where the plaintiff voluntarily resides or carries on business or personally works for gain. In the context of corporation, which includes a company incorporated under the Indian Companies Act, 1956, such a place would be the place where the registered office of the company is situated. Thus, a company can maintain a suit under Section 134 of the Trade Marks Act, or Section 62 of the Copyright Act, at the place where its registered office is situated, irrespective of the fact, whether or not, cause of action has arisen within the jurisdiction of the Court, within whose jurisdiction the registered office of the company is situated.

(b) Section 134 of the Trade Marks Act and Section 62 of the Copyright Act do not take away right of the plaintiff to institute the suit by resort to Section 20 of the CPC, as Section 134 of the Trade Marks Act and Section 62 of the Copyright Act provide an additional forum to the plaintiff alleging infringement of the registered trademark or copyright, as the case may be. This is clear from the inclusive definition of the expression, 'District Court having jurisdiction' contained in Section 134 (2) of the Trade Marks Act and Section 62(2) of the Copyright Act. Thus, the plaintiff may file a suit for infringement of trademark/copyright either at the place where the plaintiff voluntarily resides or carries on business or personally works for gain by resort to Section 62 of the Copyright Act and Section 134 of the Trade Marks Act, or at the place where, 'the defendant, or each of the defendants where there are more than one, at the time of commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain'. [Section 20 (a)]; or where 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 work for gain, as aforesaid, acquiesce in such institution [section 20(b)]; or the cause of action wholly or in part, arises [section 20(c)].

(c) The plaintiff cannot file a suit alleging infringement of trademark/copyright at a place where it has a subordinate office, by resort to Sections 134 of the Trade Marks Act or Section 62 of the Copyright Act, unless one of the conditions of Section 20 CPC are satisfied.

23. Since the plaintiffs registered office is not situated within the jurisdiction of this court, to be able to maintain the suit within the jurisdiction of this court, it is essential for the plaintiff to show that some part of cause of action has arisen in Delhi as the defendants, admittedly, are situated in Bulandshahar.



24. The averments of the plaintiff clearly show that there is absolutely nothing to suggest that the defendant has any presence in Delhi, or that the defendant has carried out any professional or business activity including that of soliciting work, or rendering services under the impugned mark within the jurisdiction of this Court. Pertinently, in para 26, the plaintiff gives the address of the defendant in Bulandshahar. While stating that the defendant is situated at 64, Kailashpuri, Bulandshahar, U.P., the plaintiff does not state that the defendant has any presence or office/address at Delhi. Though in para 37, it is claimed by the plaintiff that the defendants are conducting the impugned acts within the jurisdiction of this court by adopting, soliciting and rendering the services with the impugned trademark within the jurisdiction of this court, the said averment is as vague as it could be. No particulars, whatsoever, have been disclosed on the basis of the said averment, in the plaint.

25. Order 6 CPC deals with pleadings generally. Order 6 Rule 2 CPC provides that every pleading shall contain, and contain only, a statement in a concise form of the "material facts" on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved. Order 6 Rule 4 provides that in all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, willful default, or undue influence "and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading". Order 7 deals with the plaint.

26. Order 7 Rule 1 CPC deals with "Particulars to be contained in plaint". It states "The plaint shall contain the following particulars:-

(a) ... ..

(b) ... ..

(c) ... ..

(d) ... ..

(e) ... ..

(f) the facts showing that the Court has jurisdiction;

(g) ... ..

(h) ... ..

(i) ... .."

(Emphasis supplied)

27. The code consciously uses the expressions "material facts" and "particulars" at different places. Whereas Order 6 Rule 2 obliges the plaintiff to plead "material facts", but not the evidence, Order 6 Rule 4 deals with the aspect where "particulars", are required to be pleaded. Order 7 Rule 1, as noticed above, obliges the plaintiff to plead in his plaint particulars, inter alia, in relation to the facts showing court has jurisdiction.

28. The Supreme Court in *Udhav Singh v. Madhav Rao Scindia*, AIR 1976 SC 744, while dealing with a case arising out of the Representation of the People Act, 1951 (RPA), and in particular Section 83 thereof, dealt with issue as to what constitutes "material facts" and "material particulars". Section 83(1)(a) and 83(1)(b) of RPA, insofar as they are relevant, read as follows:

"83. Contents of petition -

(1) An election petition--

(a) shall contain a concise statement of the material facts on which the petitioner relies;

(b) shall set forth full particulars of any corrupt practice that the petitioner alleges including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and"

(Emphasis supplied)

29. The Supreme Court in *Udhav Singh* (supra), inter alia, observed as follows:

37. Like the Code of Civil Procedure, this section also envisages a distinction between material facts and material particulars. Clause (a) of sub-section (1) corresponds to O.6, R.2, while clause (b) is analogous to Order 6 Rules 4 and 6 of the Code. The distinction between "material facts" and "material particulars" is important because different consequences may flow from a deficiency of such facts or particulars in the pleading. Failure to plead even a single material fact leads to an incomplete cause of action and incomplete allegations of such a charge are liable to be struck off under Order 6, Rule 16, Code of Civil Procedure. If the petition is based solely on those allegations which suffer from lack of material facts, the petition is liable to be summarily rejected for want of a cause of action. In the case of a petition suffering from a deficiency of material particulars, the court has a discretion to allow the petitioner to supply the required particulars even after the expiry of limitation.

38. All the primary facts which must be proved at the trial by a party to establish the existence of a cause of action or his defence, are "material facts". In the context of a charge of corrupt practice, "material facts" would mean all the basic facts constituting

the ingredients of the particular corrupt practice alleged, which the petitioner is bound to substantiate before he can succeed on that charge. Whether in an election-petition, a particular fact is material or not, and as such required to be pleaded is a question which depends on the nature of the charge levelled, the ground relied upon and the special circumstances of the case. In short, all those facts which are essential to clothe the petitioner with a complete cause of action, are "material facts" which must be pleaded and failure to plead even a single material fact amounts to disobedience of the mandate of sec. 83(1) (a).

39. "Particulars", on the other hand, are "the details of the case set up by the party". "Material particulars" within the contemplation of clause (b) of s. 83(i) would therefore mean all the details which are necessary to amplify, refine and embellish the material facts already pleaded in the petition in compliance with the requirements of clause (a). 'Particulars' serve the purpose of finishing touches to the basic contours of a picture already drawn, to make it full, more detailed and more informative.

40. The distinction between 'material facts' and 'material particulars' was pointed out by this Court in several cases, three of which have been cited at the bar. It is not necessary to refer to all of them. It will be sufficient to close the discussion by extracting what A. N. Ray J. (as he then was) said on this point in Hardwari Lal's case (supra):

"It is therefore vital that the corrupt practice charged against the respondent should be a full and complete statement of material facts to clothe the petitioner with a complete cause of action and to give an equal and full opportunity to the respondent to meet the case and to defend the charges. Merely, alleging that the respondent obtained or procured or attempted to obtain or procure assistance are extracting words from the statute which will have no meaning unless and until facts are stated to show what that assistance is and how the prospect of election is furthered by such assistance. In the present case, it was not even alleged that the assistance obtained or procured was other than the giving of vote. It was said by counsel for the respondent that because the statute did not render the giving of vote a corrupt practice the words "any assistance" were full statement of material fact. The submission is fallacious for the simple reason that the manner of assistance, the measure of assistance are all various aspects of fact to clothe the petition with a cause of action which will call for an answer. Material facts are facts which if established would give the petitioner the relief asked for. If the respondent had not appeared, could the court have given a verdict in favour of the election petitioner. The answer is in the negative because the allegations in the petition did not disclose any cause of action."

(Emphasis supplied)

30. Mahendra Pal v. Ram Dass Malanger & Ors., (2000) 1 SCC 261, is another decision of the Supreme Court on the same lines as Udhav Singh (supra).

31. In Mahadeorao Sukaji Shivankar v. Ramaratan Babu and Ors. (2004) 7 SCC 181, which was also a case under the RPA, and pertained to Section 83(1)(a) and 83(1)(b) of the said Act, the Supreme Court, inter alia, observed:

"6. ... .. The expression "material facts" has neither been defined in the Act nor in the Code. It may be stated that the material facts are those facts upon which a party relies for his claim or defence. In other words, material facts are facts upon which the plaintiff's cause of action or defendant's defence depends. What particulars could be said to be material facts would depend upon the facts of each case and no rule of universal application can be laid down. It is, however, absolutely essential that all basic and primary facts which must be proved at the trial by the party to establish existence of cause of action or defence are material facts and must be stated in the pleading of the party.

7. But, it is equally well settled that there is distinction between "material facts" and "particulars". Material facts are primary or basic facts which must be pleaded by the party in support of the case set up by him either to prove his cause of action or defence. Particulars, on the other hand, are details in support of material facts pleaded by the party. They amplify, refine and embellish material facts by giving finishing touch to the basic contours of a picture already drawn so as to make it full, more clear and more informative. Particulars ensure conduct of fair trial and would not take the opposite party by surprise".

(Emphasis supplied)

32. In the context of the claim of territorial jurisdiction, and in the light of the obligation cast on a plaintiff by Order 7 Rule 1 CPC, "material facts" would mean all the basic facts constituting the ingredients conferring jurisdiction on the court which the plaintiff is bound to disclose before he can claim such jurisdiction. Thus, it is not enough for a plaintiff to plead that the court has the territorial jurisdiction as a part of cause of action has arisen within the jurisdiction of the court. The plaintiff is obliged to plead the particulars as to how it is claimed that the cause of action, or a part of the cause of action, has arisen within the jurisdiction of the court. The particulars in the present context - wherein the plaintiff claims that the defendants are carrying on their business, namely, conducting, soliciting and rendering their services within the jurisdiction of the court, would mean, atleast the disclosure of the address from where such activity is being carried out within the jurisdiction of the court. The plaint is completely silent in this regard. For the sake of argument, even if one were to proceed on the assumption that the facts showing that the court has jurisdiction are "particulars", and not "material facts", the plaintiff has not come forward to disclose the said particulars either in the replication, or in the reply to the present application, despite a challenge being raised by the defendant to the territorial jurisdiction of this court in the present application.

33. Merely by making a vague and non-specific averment, which is devoid of particulars, the plaintiff cannot call upon this court to act upon the said averment, on the premise that the plaintiff is not obliged to lead evidence in his pleadings, and the plea of territorial jurisdiction should not be decided at this stage and that the same should be left to be decided only after the parties have led their evidence at the trial. By disclosing the particulars, which he is obliged to plead, the plaintiff does not plead evidence. Looking to the overflowing dockets and workload of the Courts, the Courts are not obliged to turn a blind eye to frivolous pleas, and to swallow unfounded averments. The Court is not helpless to deal with such shallow pleas at the threshold, and nip such causes in the bud.

34. The plaintiff is not even aware of and, therefore, has not pleaded the particulars of the cause of action which is claimed to have arisen within the jurisdiction of the Court. The plaintiff cannot take a blind shot in the dark and hope to subsequently make good his averment in his pleading. It is one thing to say that a party may not be aware of definite particulars of the facts pleaded on the date of filing of his pleadings, but he has definite knowledge of the facts pleaded, and quite another thing to say that he has no definite knowledge of the pleaded fact. If the plaintiff had definite knowledge that the defendants are carrying on their impugned activities within the jurisdiction of this Court, the plaintiff would also have been aware of definite particulars in regard thereto. Obviously, the plaintiff has no such definite knowledge. Pertinently, the plaintiff did not seek appointment of a local commissioner in respect of any premises of the defendant situated within the jurisdiction of this court. The plaintiff has not filed any document in relation to the alleged "conducting, soliciting, rendering the impugned services" with the impugned trade name within the jurisdiction of this court.

35. There is no reason to subject the defendant, who is admittedly located outside the jurisdiction of this Court, namely in Bulandshahar, U.P., to continue to face the present proceedings in this Court when the acts of the defendant, complained of by the plaintiff, have not been undertaken within the jurisdiction of this Court, and the defendants are also not situated or working for gain within the jurisdiction of this Court.

36. The submission of Mr. Bansal that the filing of the caveats by the defendant in the several district courts at Delhi gives cause of action to the plaintiff has absolutely no merit. These caveats have been filed by the defendants in their capacity of litigants/prospective defendants, and not while acting in their professional capacity on behalf of their client. The defendant was apprehensive that the plaintiff may institute proceedings within the jurisdiction of this court. By filing the caveat, the defendant cannot be assumed to conceding jurisdiction in the court. The purpose of filing caveat is only to ensure that no ex-parte ad-interim orders of injunction are passed against the defendant without hearing the defendant. The caveat filed by the defendant before the District Judge, Karkardooma Courts, Delhi relied upon by the plaintiff reads as follows:

"Let nothing be done in the above matter without notice to the undersigned. The plaintiff has been harassing for using the word GHARI WHICH IS A DICTIONARY WORD and embarrassing by threatening to use local commissioner. That caveator is a lawyer and running a law firm under the name Ghari Trade mark Co. and

anticipating a suit for infringement of trade mark, passing off etc.".

There is nothing in the caveat to suggest that the defendants have admitted to carrying on their business/profession within the jurisdiction of this court.

37. The submission of Mr. Bansal that the defendant has not denied in the written statement the averment of the plaintiff that the defendants are soliciting work within the jurisdiction of this court and, thus, the defendants have admitted that they are soliciting work in Delhi, is completely wrong and misconceived. The relevant portion of the preliminary objection raised by the defendants in their written statement has been set out herein above. In reply to para 37 of the plaint (in which the plaintiff avers that the defendants are carrying on their business in Delhi), the defendant has stated as follows:

"37. That the contents of para 37 of the plaint are wrong, misleading and denied. The plaintiff be put to strict proof thereof. This Hon'ble Court has no territorial jurisdiction to entertain and try the present suit. That the cause title/memo of parties of the plaint itself shows that the defendants are based at Bulandshahar, Uttar Pradesh and are not residing or carrying their business in Delhi. It is hereby further submitted that the defendants have no place of business in Delhi, which is corroborated by the fact that there is no documentary evidence filed along with the plaint about such service in relation to registration of trade mark from Delhi of the defendants, thus no cause of action can be said to have arisen in Delhi for filing the present suit, and therefore, the suit is not maintainable within the territorial jurisdiction of this Hon'ble Court in Delhi as neither the defendants are residing or carrying on their business in Delhi nor has any cause of action arisen in Delhi. That the plaintiff in paragraph 37 of the plaint have falsely claimed that this Hon'ble Court has territorial jurisdiction to entertain the present suit by merely averring that by the defendant impugned activities in North East Delhi area, besides other parts of country, however, such averment is vague and baseless as not supported by any material or documentary evidence to showcase and establish to this Hon'ble Court for jurisdiction purpose that the defendants are actually doing any activity within the territorial jurisdiction of the Courts in Delhi, and also that no address of place where defendants, as alleged by plaintiff, are carrying out activities in North East Delhi has been mentioned in the plaint, thus such an averment is vague and false, and cannot be given any credence in law being vague as not supported by any material in its support. Thus this Hon'ble Court has no territorial jurisdiction to entertain the present suit. It is further submitted that the plaintiff just in order to create false territorial jurisdiction of this Hon'ble Court, have vaguely stated that the defendants are carrying out activities in North East Delhi and that the plaintiff's said proprietary rights are being prejudicially affected in Delhi area due to such activities from Delhi, however, the plaintiff in the application filed along with the plaint under Order 26 Rule 9 r/w Section 151 of CPC seeking appointment of local commissioner for execution of local commission, nowhere mentioned about any place or any address of Delhi and did not sought any local commission in any part of Delhi what to say of

North East Delhi, where, as per his claim only the defendants are carrying out impugned activities in North East part of Delhi. ....".

(Emphasis supplied)

38. Thus, it cannot be said that the defendant has admitted in the written statement that the defendant is carrying on its business within the jurisdiction of this court. I may observe that though, for the purpose of deciding the present issue, the written statement of the defendant cannot be looked into, the same has been referred only to examine the submission of Mr. Bansal is that there is an admission made by the defendant in their written statement that they are carrying on business within the jurisdiction of this court. It is clear that there is absolutely no admission made by the defendants, who have repeatedly and categorically stated that they are not residing or carrying on business in Delhi, and that they have no place of business in Delhi.

39. The submission of Mr. Bansal that the filing of opposition by the defendant to the application moved by the plaintiff before the Registrar of Trademark gives cause of action, also has no merit. Once again, while filing the opposition, the defendants have acted as the litigating party/opposer and not in their professional capacity as advocates-to represent the cause of a client. The opposition would be filed, obviously, before the Trademark Registry, before whom the application for registration of Trademark is made. The opposer does not determine the situs of the place where the opposition is filed. It is determined by the applicant for trademark registration. Thus, the fact that the defendants have filed their opposition in Delhi, does not constitute a part of cause of action in favour of the plaintiff.

40. The Supreme Court in *Dhodha House & Patel Field Marshal Industries v. S.K. Maingi & P.M. Diesel Ltd.*, 2006 (9) SCC 41 has, inter alia, observed:

"31. .... but a cause of action for filing the suit would not arise within the jurisdiction of the court only because an advertisement has been issued in the trademark journal or any other journal notifying the factum of filing of such an application".

41. The said decision was followed in *Pfizer Products v. Rajesh Chopra* (supra). In this decision, the Court held that the publication of the advertisement in the trademark journal would not confer jurisdiction upon a court within whose territorial limits the advertisement is published or is seen. The mere allegation that the defendants mark had been advertised in the trademark journal which was circulated in Delhi, would not constitute a part of cause of action.

42. In *Union of India v. Adani Exports Limited & Anr.*, (2002) 1 SCC 567, while considering the issue of territorial jurisdiction of the High Court to entertain a writ petition under Article 226 of the Constitution of India, the Supreme Court relied upon its earlier decision in *ONGC v. Utpal Kumar Basu & Ors.*, (1994) 4 SCC 711, and held that "... .. It is clear from the above judgment that each and every fact pleaded by the respondents in their application does not ipso facto lead to the conclusion that those facts give rise to a cause of action within the court's territorial jurisdiction

unless those facts pleaded are such which have a nexus or relevance with the lis that is involved in the case. Facts which have no bearing with the lis or the dispute involved in the case, do not give rise to a cause of action so as to confer territorial jurisdiction on the court concerned."

(Emphasis supplied)

43. The filing of the opposition by the defendants to the plaintiffs application for registration of the trademark with the Registrar of Trademarks in Delhi, or the filing of the caveat by the defendants in several district courts in Delhi, are not facts which either need to be pleaded by the plaintiff in the paint to establish its cause of action, nor required to be traversed by the defendant in their written statement and thus, do not constitute facts giving rise to cause of action.

44. The decision in Govardhan Motels & Restaurants (supra) does not come to the aid of the plaintiff in the facts of this case. No doubt, the act of soliciting business would give rise to cause of action, but the plaintiff has not made any specific averment as to how the defendant is carrying on its business and, inter alia, soliciting work within the jurisdiction of this court. As noticed above, in Govardhan Motels & Restaurants (supra), the defendant no.1 - an ex-employee of the plaintiff, was carrying on the infringing business along with another person at Gurgaon, and defendant no.1 was residing within the jurisdiction of the court. Moreover, the report of the local commissioner clearly establishes that the defendants were soliciting customers and advertising within the jurisdiction of the court to promote their infringing brand. The plaintiff had also alleged infringement of the copyright and invoked Section 62 (2) of the Copyright Act. The plaintiff in that case was situated in Delhi. Thus, this decision is not applicable in the facts of this case.

45. The decision in Bhatia Industries (supra) is of no avail to the plaintiff. In this case, the plaintiff pointed out that the defendant in its written statement itself stated that it was selling its goods throughout India since 1995, which would include Delhi. At another place, the defendant had claimed that their business activities were confined to the State of U.P. and they were neither manufacturing, nor selling goods outside the State of U.P.

In view of the said contradictory stand, the court did not accept the defendants application under Order 7 Rule 10 (though styled as one under Order 7 Rule 11). In the present case, there is no inconsistency in the written statement of the defendants, and the defendants have consistently pleaded that they have no address in Delhi and they are not carrying on any business in Delhi. No admission has been pointed out by the plaintiff with regard to the defendant carrying on their business within the jurisdiction of this court.

46. Reliance placed on the order dated 08.10.2013 in St. Ives Laboratories (supra) is of no avail for the reason that the court found that, firstly, the denial of the defendant to para 22 of the plaint (in which the plaintiff had asserted the territorial jurisdiction of the court) was minimal, and secondly, the documents filed by the defendants itself showed that the defendant was supplying its products at Delhi.



47. LG Electronics India Pvt. Ltd. (supra) relied upon by the plaintiff is wholly irrelevant to the point in issue and does not, therefore, need any comment. There can be no quarrel with the proposition laid down by the Supreme Court in Mayar (H.K.) Ltd. (supra). For the purpose of examination of the present application, in the light of Order 7 Rule 10 CPC, it is only the averments made in the plaint and the documents filed by the plaintiff which are relevant to be examined, and the averments made by the defendant in the written statement and the documents filed by the defendant would become relevant only if the plaintiff seeks to rely upon them to claim jurisdiction in this court. The defendant cannot rely upon its own written statement or the documents filed by it for the purpose of examining the application under Order 7 Rule 10, or Order 7 Rule 11 CPC.

48. The decision in Laxman Prasad (supra) also has no relevance to the facts of the present case. In that case, the court found that the defendant had used the trademark within the jurisdiction of the court by using the mark at a trade fair in Delhi. Consequently, a part of cause of action had arisen within the jurisdiction of the court.

49. After this judgment was reserved and drafted, I have come across a judgment of the Division Bench of this Court in Ultra Home Construction Pvt. Ltd. v. Purushottam Kumar Chaubey & Ors., in FAO (OS) No.494/2015 rendered on 20.01.2016. Though this judgment was rendered prior to the date on which the judgment in the present case was reserved, the same was not cited by either of the counsels at the bar.

50. On a perusal of the decision in Ultra Home Construction Pvt. Ltd. (supra), I find that my opinion as incorporated in para-22 above is at variance with the opinion of the Division Bench. No doubt, the view of the Division Bench would prevail. But in the present case, the said difference of opinion does not come in my way in deciding the present case as it has no relevance to the present case.

51. Since the said decision in Ultra Home Construction Pvt. Ltd. (supra) has now come to my notice and, with utmost respect, I beg to differ with the view expressed by the Division Bench in the said case to a limited extent, as a student of law, I take this opportunity to express my reasons for the said difference of opinion and why, in my humble view, the same may need reconsideration.

52. In Ultra Home Construction Pvt. Ltd. (supra), the plaintiff filed the suit in this Court alleging infringement of its trademark. The plaintiff had its registered office/ principal place of business within the jurisdiction of this Court. The defendant was situated in Deogarh, Jharkand, where the infringement of the plaintiffs trademark was taking place. The plaintiff also had a subordinate office at Deogarh, Jharkand. The Division Bench examined the judgment of the Supreme Court in Indian Performing Rights Society Limited (supra) and observed:

"13. .... the expression "carries on business" in the context of a defendant under section 20 of the Code has also been employed in the context of a plaintiff under the said sections 134(2) and 62(2). Thus, in addition to the places where suits could be filed under section 20 of the Code, the plaintiff can also institute a suit under the Trade Marks Act, 1999 and the Copyright Act, 1957, as the case may be, by taking advantage of the provisions of section 134(2) or section 62(2), respectively. Both the

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

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

(Emphasis supplied)

53. The only aspect on which I respectfully cannot agree with the view of the Division Bench is the third case/situation discussed by the Division Bench. I have, therefore, highlighted in the aforesaid extract from the judgment of the Division Bench, the aspect with which I find myself in disagreement with the view of the Division Bench.

54. The reason for my having a different view is that, apparently, it was not brought to the notice of the Division Bench that in Indian Performing Rights Society Limited (supra), the Supreme Court

was dealing with a fact situation, wherein the plaintiff company's principal place of business/ head office was situated at Mumbai, and the cause of action had also arisen within the jurisdiction of the courts at Mumbai, whereas the suit had been filed in Delhi - where the subordinate office of the plaintiff was situated, but where no cause of action has arisen. This is evident from paras 2 and 3 of the judgment in Indian Performing Rights Society Limited (supra):

"2. The appellant-plaintiff in Civil Appeals Nos. 10643-44 of 2010 had filed a suit praying for relief against Defendant 1 so as to prevent infringement of the rights of the plaintiff without obtaining a licence. The defendant owns cinema halls in Maharashtra and Mumbai where the infringement is alleged and the entire cause of action, as alleged in the plaint, has arisen in Mumbai, Maharashtra.

3. Civil Suit FAO (OS) No. 359 of 2007 has been filed in the High Court at Delhi, by virtue of the fact that the branch office of the plaintiff is situated at Delhi and the plaintiff is carrying on the business at Delhi. However, it is not disputed that the plaintiff's head office is situated at Mumbai. The objection was raised by the defendant with regard to the territorial jurisdiction of the court at Delhi. The Single Bench [Indian Performing Right Society Ltd. v. Sanjay Dalia, 2007 SCC OnLine Del 1164 : (2007) 143 DLT 617] and the Division Bench [Indian Performing Right Society Ltd. v. Sanjay Dalia, 2008 SCC OnLine Del 1238 : (2008) 155 DLT 164] of the High Court have upheld the objection and held that the suit should have been filed in the facts of the case, in the court at Mumbai. Hence, the impugned order has been questioned in the appeals".

(Emphasis supplied)

55. The extract from the judgment of the Supreme Court in Indian Performing Rights Society Limited (supra) relied upon by the Division Bench, along with the emphasis as laid down by the Division Bench, is extracted herein below:

"14. Considering the very language of Section 62 of the Copyright Act and Section 134 of the Trade Marks Act, 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. The object of the provisions was to enable the plaintiff to institute a suit at a place where he or they resided or carried on business, not to enable them to drag the defendant further away from such a place also as is being done in the instant cases. In our opinion, the expression "notwithstanding anything contained in the Code of Civil Procedure" does not oust the applicability of the provisions of Section 20 of the Code of Civil Procedure and it is clear that additional remedy has been provided to the plaintiff so as to file a suit where he is residing or carrying on business, etc. as the case may be. Section 20 of the Code of Civil Procedure enables a plaintiff to file a suit where the defendant resides or where cause of action arose. Section 20(a) and Section 20(b) usually provides the venue where the defendant or any of them resides, carries on business or personally

works for gain. Section 20(c) of the Code of Civil Procedure enables a plaintiff to institute a suit where the cause of action wholly or in part, arises. The Explanation to Section 20 CPC has been added to the effect that 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 subordinate office at such place. Thus, "corporation" can be sued at a place having its sole or principal office and where cause of action wholly or in part, arises at a place where it has also a subordinate office at such place.

15. The learned author Mulla in Code of Civil Procedure, 18th Edn., has observed that under clauses (a) to (c) of Section 20, the plaintiff has a choice of forum to institute a suit. The intendment of the Explanation to Section 20 of the Code of Civil Procedure is that once the corporation has a subordinate office in the place where the cause of action arises wholly or in part, it cannot be heard to say that it cannot be sued there because it did not carry on business at that place. 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. Ordinarily the suit has to be filed at the place where there is principal place of business of the corporation."

xxxx xxxx xxxx xxxx xxxx "18. On a due and anxious consideration of the provisions contained in Section 20 CPC, Section 62 of the Copyright Act and Section 134 of the Trade Marks Act, and the object with which the latter provisions have been enacted, it is clear that if a cause of action has arisen wholly or in part, where the plaintiff is residing or having its principal office/carries on business or personally works for gain, the suit can be filed at such place(s). The plaintiff(s) can also institute a suit at a place where he is residing, carrying on business or personally works for gain de hors the fact that the cause of action has not arisen at a place where he/they are residing or any one of them is residing, carries on business or personally works for gain. However, this right to institute suit at such a place has to be read subject to certain restrictions, such as in case the plaintiff is residing or carrying on business at a particular place/having its head office and at such place cause of action has also arisen wholly or in part, the plaintiff cannot ignore such a place under the guise that he is carrying on business at other farflung places also. The very intendment of the insertion of provision in the Copyright Act and the Trade Marks Act is the convenience of the plaintiff. The rule of convenience of the parties has been given a statutory expression in Section 20 CPC as well. The interpretation of provisions has to be such which prevents the mischief of causing inconvenience to the parties.

19. The intendment of the aforesaid provisions inserted in the Copyright Act and the Trade Marks Act is to provide a forum to the plaintiff where he is residing, carrying on business or personally works for gain. The object is to ensure that the plaintiff is not deterred from instituting infringement proceedings "because the court in which

proceedings are to be instituted is at a considerable distance from the place of their ordinary residence". The impediment created to the plaintiff by Section 20 CPC of going to a place where it was not having ordinary residence or principal place of business was sought to be removed by virtue of the aforesaid provisions of the Copyright Act and the Trade Marks Act. Where the corporation is having ordinary residence/principal place of business and cause of action has also arisen at that place, it has to institute a suit at the said place and not at other places. The provisions of Section 62 of the Copyright Act and Section 134 of the Trade Marks Act never intended to operate in the field where the plaintiff is having its principal place of business at a particular place and the cause of action has also arisen at that place so as to enable it to file a suit at a distant place where its subordinate office is situated though at such place no cause of action has arisen. Such interpretation would cause great harm and would be juxtaposed to the very legislative intent of the provisions so enacted.

20. In our opinion, in a case where the cause of action has arisen at a place where the plaintiff is residing or where there are more than one such persons, any of them actually or voluntarily resides or carries on business or personally works for gain would oust the jurisdiction of other place where the cause of action has not arisen though at such a place, by virtue of having subordinate office, the plaintiff instituting a suit or other proceedings might be carrying on business or personally works for gain.

21. At the same time, the provisions of Section 62 of the Copyright Act and Section 134 of the Trade Marks Act have removed the embargo of suing at place of accrual of cause of action wholly or in part, with regard to a place where the plaintiff or any of them ordinarily resides, carries on business or personally works for gain. We agree to the aforesaid extent that the impediment imposed under Section 20 CPC to a plaintiff to institute a suit in a court where the defendant resides or carries on business or where the cause of action wholly or in part arises, has been removed. But the right is subject to the rider in case the plaintiff resides or has its principal place of business/carries on business or personally works for gain at a place where cause of action has also arisen, suit should be filed at that place not at other places where the plaintiff is having branch offices, etc.

22. There is no doubt about it that the words used in Section 62 of the Copyright Act and Section 134 of the Trade Marks Act, "notwithstanding anything contained in CPC or any other law for the time being in force", emphasise that the requirement of Section 20 CPC would not have to be complied with by the plaintiff if he resides or carries on business in the local limits of the court where he has filed the suit but, in our view, at the same time, as the provision providing for an additional forum, cannot be interpreted in the manner that it has authorised the plaintiff to institute a suit at a different place other than the place where he is ordinarily residing or having principal office and incidentally where the cause of action wholly or in part has also arisen. The

impugned judgments, in our considered view, do not take away the additional forum and fundamental basis of conferring the right and advantage to the authors of the Copyright Act and the Trade Marks Act provided under the aforesaid provisions."

xxxx                      xxxx                      xxxx                      xxxx                      xxxx  
xxxx                      xxxx                      xxxx                      xxxx                      xxxx

"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."

56. From the above, it would be seen that in para 14 of the judgment in Indian Performing Rights Society Limited (supra), the Supreme Court recognized that an additional forum had been provided under Section 62 of the Copyright Act and Section 134 of the Trade Marks Act by including District Court within whose limit the plaintiff actually and voluntarily resides or carries on business or personally works for gain, where the plaintiff could institute the suit for infringement of copyright/trademark, as the case may be. The object of these provisions was recognized-as to enable the plaintiff to institute a suit at a place where he or they resides or carry on business. In the context of the facts of the case before the Supreme Court, the Supreme Court pertinently observed in the same paragraph:

"14. ... .... The object of the provisions was to enable the plaintiff to institute a suit at a place where he or they resided or carried on business, not to enable them to drag the defendant further away from such a place also as is being done in the instant cases ... ..".

(Emphasis supplied)

57. As noticed above, the fact situation considered by the Supreme Court was where the plaintiff had filed the suit where its subordinate office was situated (where no part of cause of action had arisen) - and not where its principal office/ head office was situated. As already noticed above, incidentally, the entire cause of action in the case before the Supreme Court had arisen within the jurisdiction of the Court where the principal place of business/ head office of the plaintiff was situated. The Supreme Court, in my opinion, did not interpret Section 62 of the Copyright Act and Section 134 of the Trade Marks Act to mean that the plaintiff could not file the suit where its principal place of

business was situated, if it had a subordinate office where the cause of action had arisen. To my understanding, the sentence in the judgment of the Supreme Court in para 14, which has been emphasized by the Division Bench, does not in any way impinge on the right of the plaintiff to file the suit-by resort to Section 62 of the Copyright Act and Section 134 of the Trade Marks Act, at the principal place/ head office/ place of residence of the plaintiff, under any circumstances, as the said extract itself recognizes that an additional forum has been provided to the plaintiff so as to file a suit where he is residing or carrying on business, as the case may be.

58. From para 15 of the judgment of the Supreme Court, as extracted above, it appears to me, with utmost respect, that the Division Bench has not appreciated that the observation of the Supreme Court was in the context of a defendant, and not in the context of a plaintiff. The explanation following Section 20(c) CPC is in relation to a defendant, and not in relation to a plaintiff. Section 20(a) and 20(b) CPC permit the institution of the suit where the defendant(s) or one or more of them "actually and voluntarily resides, or carries on business, or personally works for gain". Section 20(c) permits the filing of the suit where "the cause of action, wholly or in part, arises". The explanation following clause (c) is an explanation qua Section 20(a) and Section 20(b). The said explanation reads:

"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".

59. Thus, no part of Section 20 CPC is concerned with the situs of the plaintiff. That is not the focus of the said provision. Section 62 of the Copyright Act, and Section 134 of the Trade Marks Act, on the other hand, focus on the situs of the plaintiff.

60. The extract of para 18 of the judgment of the Supreme Court itself shows that the Supreme Court recognized that "it is clear that if a cause of action has arisen wholly or in part, where the plaintiff is residing or having its principal office/ carries on business or personally works for gain, the suit can be filed at such place(s)". The Supreme Court merely stated that the suit under Section 62 of the Copyright Act and Section 134 of the Trade Marks Act "can be filed .... ....". The Supreme Court did not observe that such a suit could only be filed at the place of the principal office or the place of residence of the plaintiff, or where the plaintiff carries on business or personally works for gain. The Division Bench has laid great emphasis on the highlighted portion in para 18 of the judgment of the Supreme Court. With due respect, while doing so, the material fact in Indian Performing Rights Society Limited (supra) - that no part of cause of action had arisen at the situs of the subordinate office, was overlooked.

61. From para 19 of the above extract from the judgment of the Supreme Court in Indian Performing Rights Society Limited (supra), to my mind, it is clear that what the Supreme Court observed was that a suit could not be filed by resort to Section 62 of the Copyright Act and Section 134 of the Trade Marks Act at a distant place where the plaintiff has a subordinate office situated, when at such place no part of cause of action has arisen.

62. A perusal of para 20 from the extract of the judgment of the Supreme Court in Indian Performing Rights Society Limited (supra), once again, shows that the Division Bench has not appreciated the factual context in which the said observations came to be made. Very clearly, the Supreme Court observed "... .. oust the jurisdiction of other place where the cause of action has not arisen though at such a place, by virtue of having a subordinate office, the plaintiff instituting a suit or other proceedings might be carrying on business or personally works for gain".

63. Similarly, the portion highlighted in para 21 of the judgment of the Supreme Court in Indian Performing Rights Society Limited (supra), that the suit should not be filed at other places where the plaintiff is having branch offices etc. has to be understood in the context that in the cases dealt with by the Supreme Court, no part of cause of action had arisen at the location of such branch offices. Since the cause of action had arisen at the place where the plaintiff was residing/ working for gain and had its principal office, the Supreme Court observed that the suit could be filed before the Court having jurisdiction over the said place. The Supreme Court was not dealing with a case where the suit had been filed at a place where the subordinate office of the plaintiff was situated and a part of the cause of action had also arisen at the same place. It was dealing with cases where the cause of action had arisen at the principal place of business of the plaintiff, and no part of cause of action had arisen at the place where the subordinate office was situated and where the suit had been filed by resort to Section 62 of the Copyright Act and Section 134 of the Trade Marks Act.

64. In my humble view, there is nothing in the judgment of the Supreme Court in Indian Performing Rights Society Limited (supra) to suggest that the plaintiff is precluded from filing a suit where its head office/ principal office is situated, even though it has a subordinate office at a place where the cause of action arises by resort to Section 62 of the Copyright Act and Section 134 of the Trade Marks Act. In such a situation, the plaintiff, in my view, could maintain a suit at either of the two places, namely, where its head office/ principal place of business is situated and where he resides or works for gain, and also at the place where the plaintiff may have subordinate office and a part of cause of action has arisen. In fact, even if the plaintiff does not have a subordinate office at the place where cause of action has arisen, by resort to Section 20(c) CPC, the plaintiff would be entitled to file a suit within the jurisdiction of the Court where the cause of action has arisen, wholly or partly.

65. As already observed by me, the decision in Ultra Home Construction Pvt. Ltd. (supra) as regards the third situation discussed in the said judgment does not come in my way in the present case, since, in the present case, the plaintiff has filed the present suit simply on the premise that a part of cause of action has arisen within the jurisdiction of this Court and it has a subordinate office within the jurisdiction of this Court, and I am of the view that, no part of cause of action has arisen within the jurisdiction of this Court.

66. It is well settled that a judgment cannot be read like a statute. Construction of a judgment should be made in the light of the factual matrix involved therein. What is more important is to see the issues involved in a given case, and the context wherein the observations were made by the Court while deciding the case. Observation made in a judgment, it is trite, should not be read in isolation and out of context. [See Goan Real Estate & Construction Ltd. & Anr. v. Union of India, (2010) 5 SCC 388]. It is the ratio of the judgment, and not every observation made in the context of the facts



of a particular case under consideration of the court, which constitutes a binding precedent. The Supreme Court in P.S. Sathappan v. Andhra Bank Ltd. & Ors., (2004) 11 SCC 672 has held as follows:

"144. While analyzing different decisions rendered by this Court, an attempt has been made to read the judgments as should be read under the rule of precedents. A decision, it is trite, should not be read as a statute.

145. A decision is an authority for the questions of law determined by it. While applying the ratio, the court may not pick out a word or a sentence from the judgment divorced from the context in which the said question arose for consideration. A judgment as is well-known, must be read in its entirety and the observations made therein should receive consideration in the light of the questions raised before it. (See Haryana Financial Corporation and Anr. v. Jagdamba Oil Mills and Anr., [2002]1SCR621, Union of India and Ors. v. Dhanwanti Devi and Ors., (1996) 6 SCC 44, Dr. Nalini Mahajan v.

Director of Income Tax (Investigation) and Ors., [2002] 257 ITR 123(Delhi), State of UP and Anr. v. Synthetics and Chemicals Ltd. and Anr., 1991 (4) SCC 139, AOne Granites v. State of U.P. and Ors., AIR 2001 CrL. L.P. 558/2014 Page 17 of 31 SCW 848 and Bhavnagar University v. Palitana Sugar Mill (P) Ltd. and Ors., (2003) 2 SCC 111. 140.

146. Although, decisions are galore on this point, we may refer to a recent one in State of Gujarat and Ors. v. Akhil Gujarat Pravasi V.S. Mahamandal and Ors., AIR2004SC3894 wherein this Court held: "... It is trite that any observation made during the course of reasoning in a judgment should not be read divorced from the context in which they were used."

67. Consequently, with utmost respect, I hold a different view from the view of the Division Bench in Ultra Home Construction Pvt. Ltd. (supra).

68. For all the aforesaid reasons, I am of the view that this court has no territorial jurisdiction to deal with the present suit. Accordingly, the plaint is liable to be returned under Order 7 Rule 10 CPC. The plaintiff may, if it so desires, move an application under Order 7 Rule 10A CPC. The defendants shall be entitled to costs which are quantified at Rs.35,000/-, which shall be paid by the plaintiff within four weeks.

(VIPIN SANGHI) JUDGE APRIL 05, 2016