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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**ORDINARY ORIGINAL CIVIL JURISDICTION**  
**NOTICE OF MOTION NO. 494 OF 2014**  
**IN**  
**SUIT NO. 516 OF 2013**

**MANUGRAPH INDIA LIMITED,**

A Company incorporated and registered under the Companies Act, 1956 having its registered office at Sidhwa House, 1st Floor, N.A. Sawant marg, Near Colaba Fire Station, Colaba, Mumbai – 400 005

**...Plaintiff**

*versus*

**1 SIMARQ TECHNOLOGIES PVT. LTD.,**

having its registered office at A-258, Kegal Hatkanangale, Five Star MIDC, Kolhapur 416 216 Maharashtra

**2 PARAM PRINT SOLUTIONS PVT. LTD.,**

having its registered office at Plot No. 15-A, R.S. No. 917/918, Shri Bhavani Gruha Nirman Sanstha, Devkar Panand, Kolhapur – 416 002

**3 RAJESH RANGRAO GHORPADE,**

(Director of Sigmarq Technologies Pvt. Ltd.), residing at Plot No. 15, RS 918/1918, Shri Bhavani Grihnirman, Devkar Panand Kolhapur 416 002 also at A-258, Kegal Hatkanangale, Five Star MIDC, Kolhapur 416 216

Maharashtra

- 4 **PRADEEP APPASAHEB SHIRALE,**  
(Director of Sigmarq Technologies Pvt. Ltd.), residing at Post – Nagaon, Taluka, Katkanangale, District Kolhapur 416 122  
also at A-258, Kegal Hatkanangale, Five Star MIDC, Kolhapur 416 216  
Maharashtra
- 5 **GOPAL BALWANT VICHARE,**  
(Chairman & M.D. of Sigmarq Technologies Pvt. Ltd.), residing at 2156 D Shukrawar Peth, Near Jain Matt, Kolhapur 416 002  
also at A-258, Kegal Hatkanangale, Five Star MIDC, Kolhapur 416 216  
Maharashtra
- 6 **DHANAJI RAMCHANDRA BHALKAR,**  
(Director of Sigmarq Technologies Pvt. Ltd.), residing at Plot No. 107, Saneguruji Vasahat, Kolhapur 416 002  
also at A-258, Kegal Hatkanangale, Five Star MIDC, Kolhapur 416 216  
Maharashtra
- 7 **SARJERAO VISHNU CHANDANE,**  
(Director of Sigmarq Technologies Pvt. Ltd.), residing at Post Belavale, Taluka Kagal, Kolhapur 416 002  
also at A-258, Kegal Hatkanangale, Five Star MIDC, Kolhapur 416 216  
Maharashtra
- 8 **SHUBHENDRA MADHAVRAO MORDEKAR,**  
(Director of Manugraph India Limited and Param Print Solutions Pvt. Ltd.), residing at Plot No. 18, R.S. No. 917/918,

Shri Bhavani Gruha Nirman Sanstha,  
Devkar Panand, Kolhapur  
416 002

**9 VENKATESH ANANTNARAYANAN**

Managing Director of Param Print  
Solutions Pvt. Ltd., residing at A521, 5th  
Floor, Anant Regency CHS Limited, 46,  
M.M. Malviya Marg, Opp. M.T.N.L.,  
Mulund (West), Mumbai - 400 080

**10 MILONARAYAN S. MISHRA &  
OTHERS UNKNOWN**

(Director of Param Print Solutions Pvt.  
Ltd., residing at 260/10199 Kannamwar  
Nagar No. 1, Vikhroli (PU), Mumbai -  
400 033

...Defendants

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WITH

NOTICE OF MOTION NO. 1180 OF 2014

IN

SUIT NO. 632 OF 2014

**EZEEO ONE TRAVEL & TOURS LTD.,**

a company incorporated under the Companies  
Act, 1956 and having registered office at 1st Floor,  
Cecil Court, Lansdowne Road, Colaba, Mumbai -  
400 039 and corporate office Vaman Centre,  
Marol, Makwana Road, Off Andheri Kurla Road,  
Andheri (East), Mumbai - 400 059

...Plaintiffs

*versus*

**LA TRAVENUES TECHNOLOGY PRIVATE  
LIMITED,**

a company incorporated under the Companies

Act, 1956 having its office at H-3/157, Second  
Floor, Vikaspuri, Delhi – 110 018  
AND ALSO at 3rd Floor, Bestech Center Point,  
A Block Sushant Lok Phase I, Gurgaon 122 002 ...Defendants

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**Mr. Ravi Kadam, Senior Advocate, with Mr. Ashish Kamat, Mr. Rohan Kadam & Mr. Zaheb Ahmad, i/b Desai & Dimanji, for the Plaintiffs in Suit No. 516 of 2013.**

**Dr. Birendra Saraf, with Ms. Pooja Kshirsagar & Ms. Cheryl, i/b ALMT Legal, for Defendants Nos. 1, 3 & 4 in Suit No. 516 of 2013.**

**Mr. Himanshu Kane, with Mr. Ashutosh Kane, i/b W.S. Kane & Co., for the Plaintiffs in Suit No. 632 of 2014.**

**Mr. Alankar Kirpekar, i/b MAG Legal, for the Defendants in Suit No. 632 of 2014.**

**Ms. Swapnali Desai, i/b Mr. Mehul Shah, for Defendant No. 9 in Suit No. 516 of 2013.**

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**CORAM: G.S. PATEL, J**  
**DATED: 15th June 2016**

**ORAL JUDGMENT**

1. By this judgment, I propose to dispose of the preliminary issue of jurisdiction under Section 9A of the Code of Civil Procedure, 1908 (“CPC”) raised by the Defendants in both suits.

2. In Suit No. 632 of 2014, the preliminary issue was framed on 31st March 2016. Shortly stated the Defendants’ case is that while the Plaintiffs have their registered office in Mumbai, they also have a branch office in Delhi, where the Defendants have their place of business and where, according to the Defendants, the cause of

action has arisen. Therefore, according to Mr. Kirpekar for the Defendants in this Suit, this Court would not have jurisdiction. Only the courts in Delhi would.

3. The Defendants in Suit No. 516 of 2013 take a substantially similar plea. There, the Plaintiff has its registered office in Mumbai. The Defendants are based in Kolhapur and they allege that the Plaintiffs also have office in Kolhapur, and that the situs of the suit should, therefore, be Kolhapur.

4. I have heard Dr. Saraf for the Defendants in Suit No. 516 of 2013, Mr. Kirpekar for the Defendants in Suit No. 632 of 2014, Mr. Kadam for the Plaintiffs in Suit No. 516 of 2013 and Mr. Kane for the Plaintiffs in Suit No. 632 of 2014 at some length.

5. Dr. Saraf and Mr. Kirpekar base their submissions on a reading of the decision of the Supreme Court in *Indian Performing Rights Society Limited v Sanjay Dalia & Another*.<sup>1</sup> To put it in a nutshell, the Defendants' case before me is this: Neither Dr. Saraf nor Mr. Kirpekar dispute that the Plaintiffs can file a Suit under the Trade Marks Act, 1999 or under the Copyright Act, 1957 within the local limits of the jurisdiction of the District Court where the Plaintiff actually and voluntarily resides or carries on business or works for gain. What they suggest, however, is that this right is curtailed by the decision of the Supreme Court in *Sanjay Dalia* at least to this extent: that where such a Plaintiff *also* has a office at another location and the cause of action has arisen in that other

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1 (2015) 10 SCC 161: AIR 2015 SC 3479

location, then the Plaintiff cannot file the Suit at the place where it has its principal office or registered office, but *must* file it within the jurisdiction of the court where both the subsidiary or branch office and the cause of action are to be found.

6. Almost the entirety of the discussion before me has been on a reading of *Sanjay Dalia's* case. Before proceeding to a consideration of the rival submissions on that decision, it is perhaps more appropriate to set out my understanding of the pre- and post-*Sanjay Dalia* jurisdictional regimes. Section 134(2) of the Trade Marks Act, 1999 (“TMA 1999”) parallels Section 62(2) of the Copyright Act, 1957 (“CA 1957”). Both depart from the usual jurisdictional provision we find in Section 20 of the Code of Civil Procedure, 1908 (“CPC”). Under the CPC, a suit must be brought (a) where all the defendants reside or work; or (b) where any of several defendants live or reside provided there is either prior leave or the others acquiesce in the jurisdiction; or (c) where the cause of action arises wholly or in part. Sections 134(2) and 62(2), on the other hand, do not have any such requirement. They simply say that a suit in infringement or passing off can be brought where the *plaintiff* resides or works. In the case of a corporate, this could be where it has its office or offices. In the pre-*Sanjay Dalia* era, this often resulted in much mischief: a corporate would have several satellite offices scattered around the country. Using these provisions, it would bring infringement and passing off suits in the courts in whose jurisdiction those satellite or field offices were located, even though the defendants were not there and no cause of action arose there. This was precisely the mischief the *Sanjay Dalia* court addressed. It did so not in the manner the Defendants suggest today,

i.e., by a wholesale rewriting of Sections 134(2) and 62(2), for that could never have been the Supreme Court's intention or purpose. There is also no indication, as we shall see, of any kind of 'reading down' or 'imputing in' to the words of intellectual property statutes. To the contrary: the *Sanjay Dalia* decision closely interwove the special provisions of those two statutes with the regular jurisdictional provisions in the CPC, retaining the integrity and structure of each. Keeping in mind that the discussion (and the preceding discord) is largely about corporate Plaintiffs, what emerges, in my view, is this:

- (a) A Plaintiff can always file a suit in a court within the local jurisdiction of which its registered office or principal office is located. This is a 'pure' Section 134(2) or Section 62(2) invocation of jurisdiction. The location of the defendants and the place of accrual of the cause of action is inconsequential. Sections 134(2) and 62(2) do not refer to the situs of the cause of action or the situs of the defendants' location at all.
- (b) Where a Plaintiff *also* has a satellite or field office elsewhere, it *may* bring suit in a court in that location, but this is no longer a Section 134(2) or Section 62(2) jurisdictional invocation. The jurisdiction is governed by Section 20 of the CPC; and hence, one of the defendants must be found there; or leave must be obtained there if some of the defendants are within that jurisdiction and some outside it; or it must be shown that the cause of action has arisen, wholly or in part, in

that jurisdiction. This option does *not* oust or limit the plaintiff's right to move under Section 134(2) or Section 62(2).

- (c) A plaintiff can always travel to where the defendant is located<sup>2</sup> or where the cause of action arises and bring suit there. This again is purely a Section 20 CPC invocation of jurisdiction. It has nothing at all to do with Section 134(2) or Section 62(2). The plaintiff need not have any office in that location.

7. From this, it will be seen that the first 'route' — the one I describe as 'pure' Section 134(2) or 62(2) — is untouched by the others; and the others are only relatable to Section 20, not to the special provisions in the two intellectual property statutes.

8. At the cost of repetition, what was the mischief that was addressed in *Sanjay Dalia*? It was this: Section 134(2) of the TMA 1999 and Section 62(2) of the CA 1957 borrow the defendant-specific phraseology of Section 20(a) and (b) of the CPC but apply it to a *plaintiff*. The difficulty then arises with the phrase '*carries on business*', especially as applied to a corporate plaintiff. Corporates have branch, field or satellite offices throughout the country. Only one of them is the registered or principal place of business. If the two special intellectual property statutes are read broadly, it would mean that a plaintiff can file a suit in any remote location because it

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2 Or where one of several defendants is located, with leave, or if they have acquiesced.



'carries on business' there. That, the *Sanjay Dalia* court said, was never the legislative intent. True, an infringer should know the risk he runs, viz., that he will be forced to go to where the plaintiff is, but this should be read to mean the jurisdictional location of plaintiff's registered office or principal place of business, not its far-flung satellite office. But this does not and cannot mean that the plaintiff's right to bring suit in the jurisdiction of its registered office or principal place of business is in any way curtailed or fettered.

9. I turn now to the statutory provisions. Section 20 of the Code of Civil Procedure, 1908 reads thus:

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

- (a) the Defendant, or each of the Defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or
- (b) any of the Defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the Defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

- (c) the cause of action, wholly or in part, arises.

*Explanation.*— A corporation shall be deemed to carry on business at its sole or principal office in India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.”

10. Sections 134 of the Trade Marks Act, 1999 and Section 62 of the Copyright Act, 1957 are in *pari materia*. For completeness both are reproduced below:

**“134. Suit for infringement, etc., to be instituted before District Court.—**

- (1) No suit—
- (a) for the infringement of a registered trade mark; or
  - (b) relating to any right in a registered trade mark; or
  - (c) for passing off arising out of the use by the Defendant of any trade mark which is identical with or deceptively similar to the Plaintiff’s trade mark, whether registered or unregistered,

shall be instituted in any Court inferior to a District Court having jurisdiction to try the suit.

- (2) For the purpose of clauses (a) and (b) of subsection (1), a “District Court having jurisdiction” shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908) or any

other law for the time being in force, include a District Court within the local limits of whose jurisdiction, at the time of the institution of the suit or other proceeding, the person instituting the suit or proceeding, or, where there are more than one such persons any of them, actually and voluntarily resides or carries on business or personally works for gain.

*Explanation.*— For the purposes of sub-section (1), “person” includes the registered proprietor and the registered user.

**11. Section 62 of the Copyright Act, 1957:**

**“62. Jurisdiction of Court over matters arising under this Chapter.—**

(1) Every suit or other civil proceeding arising under this Chapter in respect of the infringement of copyright in any work or the infringement of any other right conferred by this Act shall be instituted in the district Court having jurisdiction.

(2) For the purpose of sub-section (1), a “district Court having jurisdiction” shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, include a district Court within the local limits of whose jurisdiction, at the time of the other proceeding or, where there are more than one such persons, any of them actually and voluntarily resides or carries on business or personally works for gain.

12. First as to a plain reading Sections 134(2) and 62(2). These sections have, to begin with, a *non obstante* clause that refers to the CPC. However, the important word in those sections is “include”. This suggests that the jurisdictional benefit of Sections 134(2) and 62(2) is not exclusive or exclusionary. It is an *additional* benefit or an additional provision, and, as we shall see, this is precisely the finding of the Supreme Court in *Sanjay Dalia*.

13. As I have noted, Section 20 of the CPC deals with the ‘ordinary’ jurisdictional situs. There is then the explanation to Section 20(c). This is a very interesting explanation. It tells us that when it comes to *defendant* companies, these are deemed to ‘carry on business’ at their sole or principal office in India; or if they have a subordinate office where the cause of action, then in that place. The important thing about this explanation is that it relates to defendant corporations, not plaintiffs.

14. Both Dr. Saraf and Mr. Kirpekar suggest that the law under Section 134(2) of the TMA 1999 and Section 62(2) of the CA 1957 was ‘changed’ by the Supreme Court in *Sanjay Dalia*. Referring to the ‘mischief’ I have described above — dishonest plaintiffs bringing suit in remote locations where there was neither defendant nor cause of action — they say that it was to prevent this abuse that the Supreme Court interpreted Sections 134(2) and 62(2) as it did. According to them, a plaintiff can no longer file a suit in the District Court within the jurisdiction of which the plaintiff has its registered or principal office, if the plaintiff also has another (satellite) office at another location, and which is the situs of either the defendant or the cause of action (or both). In short, their submission is that no

plaintiff can bring suit under section 134(2) or 62(2) at the place where it has its cause of action with nothing further. That privilege is now constrained. If it is shown that the plaintiff has another office where the defendant carries or business or resides, or where the cause of action has arisen, then the plaintiff *must* file the suit in that other location; the Section 134(2) and 62(2) routes are shut to such a plaintiff.

15. Both Dr. Saraf and Mr. Kirpekar rely extensively on the Supreme Court's decision in *Sanjay Dalia* in support of this proposition. They have also referred to the two decisions of the Delhi High Court, one of a learned Single Judge and the second of a Division Bench in Appeal. I will consider both these decisions presently.

16. It is necessary, I think, to first understand the circumstances in which the Supreme Court was required to decide the *Sanjay Dalia's* case. The Supreme Court had before it two matters. The first, Civil Appeal Nos. 10643-10644 of 2010, arose from suits filed by the Indian Performing Rights Society Limited (“IPRS”) to prevent copyright infringement by Sanjay Dalia, i.e., to restrain him from using the copyright work without license. Mr. Sanjay Dalia owned (or owns) cinema halls in Maharashtra and Mumbai where infringement was alleged. The entire cause of action arose in Mumbai. Yet IPRS brought suits in Delhi where it also happened to have an office. The second matter before the Supreme Court, Civil Suit FAO (OS) No. 359 of 2007 was filed in the Delhi High Court on the basis that the Plaintiff in that suit had a branch office in Delhi. The Plaintiff's head office, however, was in Mumbai and the

Defendant objected to jurisdiction being exercised by the Delhi High Court, saying that the suit should have been filed in the Mumbai High Court. The third matter appears to have been Civil Appeal arising out of SLP (C) No. 8253 of 2013 for trade mark infringement. The Plaintiff, a corporate proprietor of the magazine “Vogue India” has its registered office in Mumbai, where the magazine was processed and published. The Plaintiff also had a branch office in Delhi and on that basis sought to file the suit within the jurisdiction of that Court.

17. This was the factual conspectus before the Supreme Court. The rival contentions on behalf of the Appellants are set out in paragraphs 5, 6 and 7 of the SCC report. On behalf of the respondents, it was submitted *inter alia* that the mischief rule of *Heydon’s case*<sup>3</sup> ought to be invoked to prevent harassment of the defendants and abuse of statutory provisions, i.e., forcing them to travel to distant locations where absolutely nothing had happened only because the Plaintiff had a satellite or branch office there. After setting out the necessary statutory provisions, the Supreme Court also had occasion to note certain portions of the Parliamentary Debates on the Copyright Act, 1957. These are debates of the Copyright Committee. They are most instructive. Paragraph 13 of the SCC report reads:

“13. The following portion of the Parliamentary Debates as to the Copyright Act has been relied upon:

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3 (1584) 3 Co Rep 7a : 76 ER 637

*Shri P. Trikamdass*: **Ordinarily it should fall within the jurisdiction of the court where the infringing copy was published.** But there is nothing to prevent Parliament from making a law, as for instance in the case of divorce, and saying that the cause of action may also arise at any place where the author resides or where the original publication took place, **so that you could drag the infringer to that court. Instead of making the another run all over the country facing the infringer, the right may be given to the injured party – the author – to sue the man in the place where the author resides or where the first copy was published.**

*Dr. Raghubir Singh*: So you agree to that?

*Shri P. Trikamdass*: Yes, and I am obliged to you for asking me that question.

*Dr. Raghubir Singh*: Does Mr. Masani too approve of it?

*Shri Masani*: Yes.

*Shri P. Trikamdass*: It is desirable also because it may act as a deterrent on the infringer when he knows that he may have to go a few hundred miles off to a High Court where the author lives or where the book got published first.

*(Emphasis added)*

18. Both sides have referred extensively to the observations of the Supreme Court in paragraphs 14 to 22, 38, 40 and 52 of the SCC report. Dr. Saraf and Mr. Kirpekar lay particular emphasis on the observations of the Supreme Court in paragraph 14. But in this paragraph the Supreme Court itself accepted that Sections 62(2) 134(2) created **an additional forum** by including a District Court

within whose limit **the plaintiff actually and voluntarily resides.** Clearly this is as it must be, for Section 20 does not contemplate the location or situs of the plaintiff as a criterion for jurisdiction selection. Just as Section 20 of the CPC is plaintiff-independent, Sections 134(2) and 62(2) are defendant-independent (and cause of action-independent as well). Thus, Section 134(2) and 62(2) reverse the ordinary law governing jurisdiction.

19. In the cases before the Supreme Court, the entire cause of action had arisen within the jurisdiction of the court where the principal place of business of the Plaintiff was situated; yet the Plaintiffs all sought to sue elsewhere. I find that the portions that Dr. Saraf and Mr. Kirpekar highlight do not support their propositions. For instance, the last sentence of paragraph 14 and the whole of paragraph 15 relate to corporate defendants (covered by the explanation to Section 20 of the CPC), and not to plaintiffs in a trade mark or a copyright action at all.

"14. ... 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. Learned author Mulla in the Code of Civil Procedure, 18th Edn., has observed that under clauses (a) to (c) of section 20, 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.**

*(Emphasis added)*

20. The emphasized portions make it clear that the reference here was to a corporate defendant, not a corporate plaintiff. If there was any doubt about what the Supreme Court intended, I imagine it is put to rest by paragraph 18:

18. On a due and anxious consideration of the provisions contained in section 20 of the 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. 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 **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, Plaintiff cannot ignore such a place under the guise that he is carrying on business at other far flung places also. The very intendment of the insertion of provision in the Copyright Act and 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 of the CPC as well. The interpretation of provisions has to be such which prevents the mischief of causing inconvenience to parties.

21. Now this paragraph shows that there were four distinct scenarios.

- (a) The first portion is in the words “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”. This is a pure Section 20(c) jurisdictional choice. It also says *can*, not *must*. There is the element of choice.
- (b) That choice finds recognition in the second portion, with the words “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.” This is a reference to a pure Section 134(2) or 62(2)

jurisdictional choice of forum — entirely *de hors* the cause of action or the situs of the defendant.

- (c) The third portion deals with the mischief that faced the Supreme Court: “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, Plaintiff cannot ignore such a place under the guise that he is carrying on business at other far flung places also.” This was therefore a situation where the plaintiff had its head office or registered office at a place where the cause of action also arose but it chose to ignore all that and brought suit at the situs of a satellite office where nothing at all had happened and where none of the defendants resided or worked. That, the Supreme Court said, was not the legislative mandate of Section 62(2) or 134(2).

22. Dr. Saraf’s and Mr. Kirpekar’s arguments also overlook the Supreme Court’s finding that “the very intendment of the insertion of provision in the Copyright Act and Trade Marks Act is the convenience of the Plaintiff”, a matter that is reflected in the Copyright Committee debates. It is therefore in this background that we must see paragraphs 19, 20 and 21 of *Sanjay Dalia*.

**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 C.P.C. 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 intendment of the provisions so enacted.

20. In our opinion, in a case where 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 the impediment imposed under section 20 of the 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 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 Plaintiff is having branch offices etc.*

*(Emphasis added)*

23. Dr. Saraf and Mr. Kirpekar read the italicized portions as being a Supreme Court-mandated curtailing of Sections 134(2) and 62(2). I cannot agree with this. In paragraph 19, the italicized portion is to be read with the next sentence, not plucked out in isolation. The sentence “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” is followed by this: “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.” Reading only the first renders the second entirely otiose. No judgment can or should be read like this. Similarly, the italicized portion of paragraph 21, it must be read in context too of what it was the Supreme Court was addressing. “in case 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 Plaintiff is having branch offices etc.” only means that no suit can be filed at a site office, one that is not the registered or principal office, and at the location of which there is neither defendant nor cause of action. That, the Supreme Court said, is an abuse of the provision.

24. Mr. Kadam and Mr. Kane are, for their part, correct in also pointing out that the interpretation canvassed by Dr. Saraf and Mr. Kirpekar introduces multiple ambiguities where there are none. For instance, paragraph 23 says in terms that the judgments in appeal did not take away the *additional forum and fundamental basis* of conferring the right and advantage provided by Sections 62(2) and 134(2).

25. Then come paragraphs 25 and 26 and these, to my mind, put the matter beyond all doubt.

25. Considering the first aspect of aforesaid principle, the common law which was existing before the provisions of law were passed was section 20 of the CPC. It did not provide for the Plaintiff to institute a suit except in accordance with the provisions contained

in section 20. The defect in existing law was inconvenience/deterrence caused to the authors suffering from financial constraints on account of having to vindicate their intellectual property rights at a place far away from their residence or the place of their business. The said mischief or defect in the existing law which did not provide for the Plaintiff to sue at a place where he ordinarily resides or carries on business or personally works for gain, was sought to be removed. **Hence, the remedy was provided incorporating the provisions of section 62 of the Copyright Act. The provisions enabled the Plaintiff or any of them to file a suit at the aforesaid places. But if they were residing or carrying on business or personally worked for gain already at such place, where cause of action has arisen, wholly or in part, the said provisions have not provided additional remedy to them to file a suit at a different place.** The said provisions never intended to operate in that field. **The operation of the provisions was limited and their objective was clearly to enable the Plaintiff to file a suit at the place where he is ordinarily residing or carrying on business etc., as enumerated above, not to go away from such places.** 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 unconnected place as compared to a place where 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.

26. The avoidance of counter mischief to the Defendant is also necessary while giving the remedy to the Plaintiff under the provisions in question. It was never visualised by the law makers 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 marks 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 Plaintiff at convenient place; he is not to travel away. Debate was not to enable Plaintiff**



**to take 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 to 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 Plaintiff is carrying on the business at Mumbai and cause of action has arisen in Mumbai. Plaintiff is having branch offices at Kanyakumari and also at Port Blair, if interpretation suggested by 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.”

26. The illustration in paragraph 26 entirely sums up the finding.

27. In addition to this the Supreme Court has specifically noted the impact of the word “include” in paragraph 40 of the SCC report. It did so while referencing the decision in *Exphar Sa v. Eupharma Laboratories Limited*.<sup>4</sup> This decision makes it clear that the introduction of Section 62(2) was not to place any restriction on copyright owners, but quite reverse, i.e., to remove any impediments in their way. Any limitations or restrictions in the jurisdictional powers of the District Court were removed and were expanded to include in addition suits brought by person/s whose offices were within the jurisdiction of that Court irrespective of

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4 (2004) 3 SCC 688

whether the defendants were within that jurisdiction or whether the cause of action arose within that jurisdiction.

28. This is in fact the basis and substratum of the decision of the Supreme Court in *Sanjay Dalia* too. For here, the Supreme Court has emphasized that these two special statutes provide an additional remedy to the Plaintiff. This is the only plausible way to reconcile the *non obstante* clause with the word “include”.

29. It is also correct that while interpreting or construing a judgment, one must read it in its factual conspectus and see it as an authority what it actually decides. There are several consequences to accepting Dr. Saraf and Mr. Kirpekar’s argument, none of them very good. The first of these suggest that in *Sanjay Dalia* the Supreme Court engineered a wholesale rewriting of Sections 134(2) and Section 62(2) by inserting in each of these sections additional qualifications that we do not find there or requiring the reading down of these provisions. It did not, and nothing in the decision suggests that it did or intended to.

30. The second consequence, one that is possibly even more dramatic, is that if the Defendants’ interpretation is to be accepted, then Sections 134(2) and 62(2), and the special benefits or advantages they confer, now recognized emphatically by the Supreme Court, are rendered entirely otiose; and every plaintiff is then left with only a Section 20 CPC route open to him. For, if a plaintiff cannot bring suit in the situs of its registered office or principal place of business ‘*de hors*’ as the Supreme Court said ‘the

fact that the cause of action has not arisen there, then Sections 134(2) and 62(2) have no meaning. They are not required. Section 20 of the CPC is sufficient if a plaintiff in a trade mark or copyright action can only file suit as any other plaintiff could, i.e., where the defendants reside or where the cause of action accrues. This interpretation is not correct. Every plaintiff can always bring a suit where the cause of action in whole or in part arises or where the defendants reside or works for gain. No special dispensation was required for this purpose at all. A plaintiff in a trade mark or copyright action has, however, an additional option or route available: where he has his registered office, and this has nothing to do with the defendants' location or that of the cause of action. This is not fettered in any way by *Sanjay Dalia*. It matters not how to put it, whether in the affirmative or the negative as Dr. Saraf does (meaning that the Plaintiff can bring a suit where his registered office lies *unless* the cause of action arises in the jurisdiction where he has a satellite office).

31. In my view, all that the Supreme Court did in *Sanjay Dalia* was to deal with the patent mischief that was placed before it: plaintiffs filing suits in remote locations only because they happened to have branch offices there, although the defendants were to be found in another location and the plaintiffs themselves had their own offices in those other locations and the entire cause of action had also arisen in those other locations.

32. *Sanjay Dalia's* case was interpreted by a Single Judge of the Delhi High Court in *Ultra Home Construction Private Limited v.*

*Purushottam Kumar Chaubey & Others.*<sup>5</sup> The Single Judge of the Delhi High Court held, in essence, that, following *Sanjay Dalia*, a plaintiff could *no longer* bring suits where his principal office was located if the Plaintiff also have a branch office and the cause of action arose there. The Single Judge dismissed the Suit on this ground. The Appellate Court upheld this view but reversed on the limited ground that the plaint ought to have been returned for presentation to the proper Court. The decision of the Appellate Court in *Ultra Home Construction* has been extensively relied upon by Mr. Kirpekar.<sup>6</sup>

33. I am, with regret, unable to accept the interpretation of *Sanjay Dalia* in the decision of the Division Bench of the Delhi High Court. I would ordinarily have been loathe to stray too far from the decision of a Division Bench of another High Court; but this view seems to me to be plainly incorrect. I believe the Division Bench of the Delhi High Court was in error, and that error appears to me to be in the first sentence of paragraph 12 where it said that the deeming provision of Section 20, i.e., the explanation, had been 'read into' Sections 134(2) and 62(2) (for isolating the place where the plaintiff can be said to be carrying on business). As we have seen, that was not the issue before the Supreme Court at all, nor did the Supreme Court read down the provisions of either of these two sections. If we view the provisions of Section 20 as a three-tier structure, then the provisions of Section 134(2) and Section 62(2)

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5 227 (2016) DLT 320

6 *Ultra Home Construction Pvt. Ltd. v Purushottam Kumar Chaubey & Ors.*,  
FAO (OS) 494 of 2015 and CM 17816 of 2015, decided on 20th January  
2016.

must be seen as standing apart. *Sanjay Dalia* recognizes just this. It does not disrupt this structure at all. There is nothing in that judgment to suggest that the provisions of Section 134(2) or Section 62(2) are in any way curtailed by the provisions of Section 20 of the CPC.

34. Mr. Kane draws my attention to the judgment of another learned Single Judge (Vipin Sanghi J) of the Delhi High Court in *RSPL Limited v Mukesh Sharma & Anr.*<sup>7</sup> Mr. Justice Sanghi was of the view that the case before him was unaffected by the Division Bench's decision in *Ultra Home*, one he came upon after he reserved judgment in *RSPL Ltd.* Yet, as a student of law, he set out his reasons for disagreeing with the view of the Division Bench. Mr. Justice Sanghi's judgment sets out several passages from *Sanjay Dalia* and he too concludes, as have I, that the Supreme Court recognize that an additional forum had been provided under Section 62(2) and Section 134(2) of the Trade Marks Act, 1999 by including the District Court within whose limits a plaintiff actually and voluntarily resides or carries on business or personally works for gain as a possible place for such a plaintiff to bring a trade mark or copyright action. In paragraph 22 of his decision, Mr. Justice Sanghi summarized the position as it emerges from *Sanjay Dalia* with admirable precision and concision:

"22. From the aforesaid decision in *Indian Performing Rights Society Limited (supra)*, and the decision cited by

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7 I.A. No. 11034 of 2015 in C.S. (OS) No. 124 of 2015, decided on 5th April 2016.

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 Section 134 of the Trade Marks Act or Section 62 of the Copyright Act, unless one of the conditions of Section 20 CPC are satisfied."

**35.** I am in most respectful agreement with the views expressed by Mr. Justice Sanghi. In my view, his reading of *Sanjay Dalia* is correct on all counts.

**36.** What emerges from this discussion is this:

(a) a plaintiff suing under the Trade Marks Act or Copyright Act can always file the suit in the jurisdiction where he lives, works for gain or carries on business. In the context of a company, given the view in *Sanjay Dalia*, this would mean where the company has its principal or registered office. All issues of cause of action and situs or location of the defendant or the cause of action are inconsequential. It makes no difference where the defendant resides. It makes no difference where the cause of action arose. It certainly makes no difference that the plaintiff also happens to have a branch office in another location where the cause of action may have arisen or where the defendant may reside or carries on business.

(b) Where the plaintiff has only one office, it presents no difficulty. Where the plaintiff has multiple offices, however, he has a limited choice. He may either bring a Suit under Section 134(2) or Section 62(2), i.e., within the jurisdiction where he resides; or he may invoke Section 20 and file a suit where the Defendants reside or work for gain or where the cause of action arose wholly or in part. The fact that the Plaintiff has the choice of bringing a suit based on Section 20 of the CPC does not mean that his rights under Section 134(2) or Section 62(2) are in any way eroded, curtailed or restricted.



(c) However, where the plaintiff chooses not to file a Suit at his or its principal business or where his registered office is located, and *also* chooses not to file a suit in a jurisdiction covered by Section 20 of the CPC but instead attempts to file the suit at some other location where the plaintiff happens to have a subsidiary or satellite office, but where there is absolutely nothing else (neither cause of action nor any of the defendants) the Plaintiff cannot invoke Section 134(2) or Section 62(2) to drag the Defendant to that distant location. That, following the decision of the Supreme Court, is the abuse that is required to be prevented. That is in fact the *only* abuse that is required to be prevented.

(d) The Section 134(2) and Section 62(2) privilege or advantage attaches to the registered office or principal place of work. It is a privilege not to be used by abandoning the registered office situs, abandoning the Section 20 situs options, and travelling to some remote location where there is neither defendant nor cause of action. That is the mischief addressed in *Sanjay Dalia*. To illustrate: the plaintiff has its registered office in Mumbai. The defendant is in Delhi. The cause of action arose in Delhi. The plaintiff also has another branch office in Port Blair. A plaintiff can sue in Mumbai or in Delhi, but not in Port Blair.

37. This view is consistent with the view of Mr. Justice Sanghi in *RSPL Ltd*. In my view, it is the only possible reading of *Sanjay Dalia*

and the provisions of Section 134(2) of the TMA 1999, Section 62(2) of the CA 1957 and Section 20 of the CPC.

38. In this view of the matter, the preliminary issues in both the matters are answered in the negative. This Court has jurisdiction to try and entertain both the Suits.

39. The Plaintiff's Notices of Motions will accordingly be set down for hearing, since the pleading in both are complete. List both Notices of Motions in both the Suits but separately for hearing and final disposal in the week of 11th July 2016.

**(G. S. PATEL, J.)**