

Delhi High Court

Ultra Home Construction Pvt. Ltd vs Purushottam Kumar Chaubey & Ors on 20 January, 2016

Author: Badar Durrez Ahmed

THE HIGH COURT OF DELHI AT NEW DELHI

%

Judgment reserved on: 11.01.2016

Judgment delivered on: 20.01.2016

+ FAO (OS) 494/2015 & CM 17816/2015

ULTRA HOME CONSTRUCTION PVT. LTD

... Appellant

versus

PURUSHOTTAM KUMAR CHAUBEY & ORS

... Respondents

Advocates who appeared in this case:

For the Appellant : Mr Rakesh Kumar with Mr Bipin Kumar

For the Respondent Nos. 1&2 : Mr Vinay P. Tripathi

For the Respondent Nos. 3&4 : Mr Manjit Singh Ahluwalia

CORAM: -

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

BADAR DURREZ AHMED, J

1. This appeal has been filed against the judgement dated 20.07.2015 delivered by a learned single judge of this court in CS (OS) 2065/2015. By virtue of the impugned judgement the learned single judge has dismissed a suit filed by the appellant/plaintiff on the ground that this court does not have the territorial jurisdiction to entertain the same. The said dismissal of the suit was in limine, without requiring the presence of the defendants / respondents.

2. The suit was filed by the appellant/plaintiff seeking an injunction against the defendants, alleging infringement of its trademark "AMRAPALI". The appellant / plaintiff, as alleged in the plaint, carries on the business of building, developing, colonising and promoting residential, commercial and industrial buildings, cinema houses, amusement parks, hotels and deals in all kinds of immovable properties. It is further alleged that the appellant / plaintiff (Ultra Home Construction Private Limited) is the flagship company of the AMRAPALI GROUP and has a number of other affiliate/associate companies in which it has a controlling stake either by itself or through the shareholding members or has common directors and shareholders. It is further alleged that due to the popularity of the appellant company and its trademark AMRAPALI, the same has become the mark of the group as such and that is how the entire group is known as the AMRAPALI GROUP. According to the appellant / plaintiff, the AMRAPALI GROUP is the leader in real estate development industry. It is further stated in the plaint that the appellant / plaintiff has its principal place of business (registered office) at 307, Third floor, Nipun Tower, Community Centre, Karkardooma, Delhi-92.

3. It is also stated in the plaint that the plaintiff/appellant is inter alia operating a hotel at Deogarh, Jharkhand in association with Clark-Inn hotel group. The said hotel is being run under the name - Amrapali Clark-Inn. It is alleged that the defendants/respondents have launched a residential project at Deogarh, Jharkhand under a deceptively similar name - AMBAPALI GREEN. Paragraph 39 of the plaint is relevant and is set out herein below:-

"39. That the defendants are purportedly launched residential project by the deceptively similar name i.e. AMBAPALI GREEN which shall definitely create confusion in the mind of general public who will start considering this project as an extension of plaintiff's earlier project AMRAPALI GREEN. The plaintiff's has long back presence in the town of Deogarh (Jharkhand) where the defendants have launched the impugned project AMBAPALI GREEN. The plaintiff has its hotel in Deogarh which is operational and running in profit and plaintiff's trademark has been known to the local residents and tourists who throng to that place for worship. It is pertinent to mention here that plaintiff's project Amrapali Green is a successful group housing residential complex having sprawling ambience and consisting of approximately 354 flats/apartments of varying sizes in Indira Puram, Ghaziabad. The project has already been completed in 2008 and possession has been handed over to the respective customers. The launch of impugned project is a calculated move of defendants to injure the plaintiff in his trade or business by unfair competition. By launching project of deceptively similar name, the defendants have made false representation to prospective customers about his business to pass off its goods as the goods of plaintiff. The impugned project is also launched with the illegal motive to reduce force or value of plaintiff's trademark and to gradually tamper the commercial value of its marks and reputation slice by slice."

Paragraph 52 of the plaint, through which the territorial jurisdiction of this court is invoked, is relevant and is set out below:-

"52. That this Hon'ble Court has the territorial jurisdiction to entertain and decide the present suit as the plaintiff operates in Delhi through its registered office at: 307, 3rd floor, Nipun Tower, Community Centre, Karkardooma, Delhi-92. The plaintiff company carries on its business in Delhi through its several exclusive agents. The plaintiff has extensive goodwill and reputation under the said trademark on account of voluminous sales and advertisement within the jurisdiction of this Hon'ble Court. By virtue of above said this Hon'ble Court has the territorial jurisdiction within the meaning of section 134 (2) of the Trade Marks Act, 1999 and also under section 62 (2) of the Copyright Act, 1957 and the Code of Civil Procedure, 1908."

4. It is evident that the appellant/plaintiff had invoked the jurisdiction of this court on the ground that its principal office (registered office) was located in Delhi and that, therefore, it carried on business in Delhi. Consequently, it was stated that this court has territorial jurisdiction within the meaning of section 134(2) of the Trade Marks Act, 1999 and also under section 62(2) of the Copyright Act, 1957 and the Code of Civil Procedure, 1908. The learned single judge, placing reliance

on the recent decision of the Supreme Court in Indian Performing Rights Society Ltd v. Sanjay Dalia: (2015) 10 SCC 161, disagreed. The learned single judge also observed as under:-

"7. I may note that it is conceded on behalf of the plaintiff that at the place where the defendants are infringing the trademark at the ocre, Jharkhand, plaintiff has a hotel, and if the plaintiff as a hotel can surely the plaintiff is carrying on business at that particular place and carrying on of the hotel business is very much a part of carrying on of the business of the plaintiff and therefore the ratio of the judgement in Indian Performing Rights Society Ltd's case (supra) clearly applies. The plaintiff is running the hotel with the Clark-Inn Hotel Group i.e. plaintiff company does have a share in the profits and losses in the hotel which is being run along with the Clark-Inn Hotel Group at the Deogarh, Jharkhand. Once that is so, there is a running business and plaintiff is therefore carrying on business at Deogarh, Jharkhand, and consequently the ratio of the judgement in the case of Indian performing rights Society Ltd (supra) applies and hence this court would not have territorial jurisdiction."

5. The learned counsel for the appellant / plaintiff submitted that the learned single judge had not correctly appreciated the finding and the ratio of the decision of the Supreme Court in the case of Sanjay Dalia (supra). It was contended that the Supreme Court did not hold that the jurisdiction of the court where the principal place of business or the registered office of the proprietor of the registered trademark and that of the copyright was situated would be ousted if the cause of action had arisen at another place where the plaintiff also had some activities. It was contended that the learned single judge erred in dismissing the suit of the plaintiff/appellant and in holding that this court did not have territorial jurisdiction although the registered office of the appellant/plaintiff was located in Delhi, merely on the ground that the appellant/plaintiff owned a hotel named "AMRAPALI CLARKS INN" at Deogarh, the place where the cause of action arose. Placing reliance on the Supreme Court decision in Dhoda House v. SK Maingi: (2006) 9 SCC 41 it was contended that merely owning a hotel at a place would not mean the carrying on of business at that place. It was submitted that even though the appellant/plaintiff has a hotel at Deogarh, Jharkhand it cannot be said that it is carrying on business at Deogarh, Jharkhand. It was also contended that the learned single judge had erred in law in dismissing the suit in limine. It was submitted that the learned single judge, if he found that this court did not have the territorial jurisdiction to entertain the suit, could only have returned the plaint to the appellant/plaintiff for filing before a court of competent jurisdiction and the suit could not have been dismissed in limine.

6. The learned counsel appearing on behalf of the respondents submitted that the learned single judge had correctly held that this court does not have territorial jurisdiction for entertaining the suit. It was contended that the appellant/plaintiff had clearly admitted that it was carrying on business at Deogarh, Jharkhand inasmuch as it had a hotel, albeit in collaboration with Clarks Inn, at that place. It was also admitted that the alleged cause of action had arisen at Deogarh, Jharkhand because it was alleged that the defendants/respondents had established a residential project at that place by the name of "AMBAPALI GREEN". All the respondents, as would be evident from the memo of parties itself, reside and/or carry on business at Deogarh, Jharkhand. Therefore, it is Deogarh, Jharkhand where the suit could have been filed and not Delhi since no part of the cause of action

arose in Delhi. The mere fact that the appellant/plaintiff had its principal office (registered office) in Delhi would not enable it to file the suit in Delhi because the cause of action arose at Deogarh which was a place where it carried on its business. It was submitted that the learned single judge had correctly understood and applied the ratio of the supreme court decision in Sanjay Dalia (supra).

7. It would be necessary to set out the relevant provisions of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the code'), the Trade Marks Act, 1999 and the Copyright Act, 1957. They are as under:- Section 20 of the Code of Civil Procedure, 1908:

"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."

(underlining added) Section 134 of the Trade Marks Act, 1999:-

"134. Suit for infringement, etc. to be instituted before District Court.--(1) No suit--

- (a) for the infringement of a registered trade mark; or
- (b) relating to any right in a registered trade mark; or
- (c) for passing off arising out of the use by the

defendant of any trade mark which is identical with or deceptively similar to the plaintiff's trade mark, whether registered or unregistered, shall be instituted in any court inferior to a District Court having jurisdiction to try the suit.

(2) For the purpose of clauses (a) and (b) of sub-section (1), a "District Court having jurisdiction" shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908) or any other law for the time being in force, include a District Court within the local limits of whose jurisdiction, at the time of the institution of the suit or other proceeding, the person instituting the suit or

proceeding, or, where there are more than one such persons any of them, actually and voluntarily resides or carries on business or personally works for gain. Explanation.--For the purposes of sub-section (2), "person" includes the registered proprietor and the registered user."

(underlining added) 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 institution of the suit or other proceeding, the person instituting the suit or 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."

(underlining added)

8. On examining the provisions of section 20 of the code, it is evident that a defendant could be sued inter alia where the defendant carried on business. If the defendant was a corporation (which expression includes a company), by virtue of the explanation after clause (c), it would be deemed to carry on business:-

(1) if it had a sole office in India then at the place of the sole office;

(2) if it had a principal office at one place as well as a subordinate office at another place then:-

(i) in case the cause of action arose at the place of the subordinate place, at that place;
or

(ii) in case no part of the cause of action arose at the place of the subordinate office, at the place of the principal office.

9. This position was explained in Patel Roadways Ltd. v. Prasad Trading Co.: (1991) 4 SCC 270, as follows:-

"12. We would also like to add that the interpretation sought to be placed by the appellant on the provision in question renders the Explanation totally redundant. If the intention of the legislature was, as is said on their behalf, that a suit against a

corporation could be instituted either at the place of its sole or principal office (whether or not the corporation carries on business at that place) or at any other place where the cause of action arises, the provisions of clauses (a), (b) and (c) together with the first part of the Explanation would have completely achieved the purpose. Indeed the effect would have been wider. The suit could have been instituted at the place of the principal office because of the situation of such office (whether or not any actual business was carried on there). Alternatively, a suit could have been instituted at the place where the cause of action arose under clause (c) (irrespective of whether the corporation had a subordinate office in such place or not). This was, therefore, not the purpose of the Explanation. The Explanation is really an Explanation to clause (a). It is in the nature of a clarification on the scope of clause (a) viz. as to where the corporation can be said to carry on business. This, it is clarified, will be the place where the principal office is situated (whether or not any business actually is carried on there) or the place where a business is carried on giving rise to a cause of action (even though the principal office of the corporation is not located there) so long as there is a subordinate office of the corporation situated at such place. The linking together of the place where the cause of action arises with the place where a subordinate office is located clearly shows that the intention of the legislature was that, in the case of a corporation, for the purposes of clause (a), the location of the subordinate office, within the local limits of which a cause of action arises, is to be the relevant place for the filing of a suit and not the principal place of business. If the intention was that the location of the sole or principal office as well as the location of the subordinate office (within the limits of which a cause of action arises) are to be deemed to be places where the corporation is deemed to be carrying on business, the disjunctive "or" will not be there. Instead, the second part of the Explanation would have read "and, in respect of any cause of action arising at any place where it has a subordinate office, also at such place".

13. As far as we can see the interpretation which we have placed on this section does not create any practical or undue difficulties or disadvantage either to the plaintiff or a defendant corporation. It is true that, normally, under clauses (a) to (c), the plaintiff has a choice of forum and cannot be compelled to go to the place of residence or business of the corporation and can file a suit at a place where the cause of action arises. If a corporation desires to be protected from being dragged into litigation at some place merely because a cause of action arises there it can save itself from such a situation by an exclusion clause as has been done in the present case. The clear intendment of the Explanation, however, is that, where the corporation has a subordinate office in the place where the cause of action arises, it cannot be heard to say that it cannot be sued there because it does not carry on business at that place. It would be a great hardship if, in spite of the corporation having a subordinate office at the place where the cause of action arises (with which in all probability the plaintiff has had dealings), such plaintiff is to be compelled to travel to the place where the corporation has its principal place. That place should be convenient to the plaintiff; and since the corporation has an office at such place, it will also be under no

disadvantage. Thus the Explanation provides an alternative locus for the corporation's place of business, not an additional one."

(underlining added)

10. This view was endorsed in *New Moga Transport Co. v. United India Insurance Co. Ltd:* (2004) 4 SCC 677 as follows:

"9. Normally, under clauses (a) to (c) the plaintiff has a choice of forum and cannot be compelled to go to the place of residence or business of the defendant and can file a suit at a place where the cause of action arises. If the defendant desires to be protected from being dragged into a litigation at some place merely because the cause of action arises there it can save itself from such a situation by an exclusion clause. The clear intendment of the Explanation, however, is that where the corporation has a subordinate office in the place where the cause of action arises it cannot be heard to say that it cannot be sued there because it does not carry on business at that place. Clauses (a) and (b) of Section 20 inter alia refer to a court within the local limits of whose jurisdiction the defendant inter alia "carries on business". Clause (c) on the other hand refers to a court within the local limits of whose jurisdiction the cause of action wholly or in part arises.

10. On a plain reading of the Explanation to Section 20 CPC it is clear that the Explanation consists of two parts: (i) before the word "or" appearing between the words "office in India" and the words "in respect of", and (ii) the other thereafter. The Explanation applies to a defendant which is a corporation, which term would include even a company. The first part of the Explanation applies only to such corporation which has its sole or principal office at a particular place. In that event, the court within whose jurisdiction the sole or principal office of the company is situate will also have jurisdiction inasmuch as even if the defendant may not actually be carrying on business at that place, it will be deemed to carry on business at that place because of the fiction created by the Explanation. The latter part of the Explanation takes care of a case where the defendant does not have a sole office but has a principal office at one place and has also a subordinate office at another place. The expression "at such place" appearing in the Explanation and the word "or" which is disjunctive clearly suggest that if the case falls within the latter part of the Explanation it is not the court within whose jurisdiction the principal office of the defendant is situate but the court within whose jurisdiction it has a subordinate office which alone has the jurisdiction "in respect of any cause of action arising at any place where it has also a subordinate office".

11. Section 20, before the amendment of CPC in 1976, had two Explanations being Explanations I and II. By the Amendment Act, Explanation I was omitted and Explanation II was renumbered as the present Explanation. Explanation which was omitted reads as follows: "Explanation I.--Where a person has a permanent dwelling

at one place and also a temporary residence at another place, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary residence."

12. This Explanation dealt with the case of place of residence of the defendant and provided with regard to a person having a permanent dwelling at one place and also temporary at another place, that such person shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary residence. The language used in Explanation II, on the other hand, which is the present Explanation, was entirely different. Had the intention been that if a corporation had its principal office at one place and a subordinate office at another place and the cause of action arose at the place where it had its subordinate office it shall be deemed to be carrying on business at both places, the language used in Explanation II would have been identical to that of Explanation I which was dealing with a case of a person having a permanent dwelling at one place and also temporary residence at another place."

(underlining added)

11. Thus, for the purpose of section 20 of the Code, a company having both a principal office and a subordinate office at a different place would be deemed to carry on business either at the principal office or at the place of the subordinate office but not at both places. If the cause of action arose at the place of the subordinate office then the company would be deemed to carry on business at the place of the subordinate office alone. On the other hand, if the cause of action did not arise at the place of the subordinate office then the company would be deemed to carry on business at the place of its principal office.

12. By virtue of the Supreme Court decision in Sanjay Dalia (supra) this deeming provision contained in the explanation in section 20 of the Code has been read into section 134(2) of the Trade Marks Act, 1999 and section 62(2) of the Copyright Act, 1957 for the purposes of isolating the place where the plaintiff can be said to carry on business. It will be noted that though the expression "carries on business" is used in all the three provisions (i.e., section 20 of the Code, section 134(2) of the Trade marks Act, 1999 and section 62(2) of the Copyright Act, 1957), the deeming provision contained in the Explanation in section 20 of the Code has not been expressly incorporated in the other two provisions. But, the Supreme Court has, in the said decision, given the expression "carries on business" used in relation to a corporation in the context of a defendant in section 20 of the Code the same meaning when it is used in relation to a plaintiff under the said sections 134(2) and 62(2). It would be instructive to note the following observations of the Supreme Court in the said decision:

"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 far- flung 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 intendment 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."

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

14. The present case falls under S. No. 3 in the above table. The appellant / plaintiff has its principal office in Delhi (place A). Its

subordinate office is at Deogarh, Jharkhand (place B) where it runs one of its hotels (Amrapali Clarks Inn), albeit in collaboration with Clarks Inn hotels. The alleged cause of action has accrued at Deogarh, Jharkhand (place B). Therefore, the appellant/plaintiff could, in respect of the alleged cause of action in this suit, institute a suit against the defendants at Deogarh, Jharkhand (place B) but not in Delhi. Thus, the conclusion arrived at by the learned single judge that this court did not have the territorial jurisdiction to entertain the suit cannot be faulted.

15. We may point out that the learned counsel for the appellant/plaintiff had also urged that there was some conflict between the decisions of the Supreme Court in Dhodha House (supra) and Sanjay Dalia (supra). But, that argument is not available to the learned counsel for multiple reasons. The first and only reason that we may allude to is that in Sanjay Dalia (supra) itself, the Supreme Court, considered its decision in Dhodha House (supra) and held that there was nothing in the interpretation put forth in Sanjay Dalia (supra) which militated against the observations / conclusions in Dhodha House. The exact language used by the Supreme Court on this aspect is as under:-

"42. In Dhodha House [Dhodha House v. S.K. Maingi, (2006) 9 SCC 41] , the question which is posed before us did not come up for consideration and it has been

observed that the Act provides for an additional forum. Such additional forum was provided so as to enable a plaintiff who may not be otherwise in a position to file a suit at different places where the copyright was violated. We have anxiously considered the aforesaid observations made and the object of the Act, we find that the interpretation made by us does not militate against the observations made by this Court in Dhodha House [Dhodha House v. S.K. Maingi, (2006) 9 SCC 41] , the precise question which is before us, was not involved in the aforesaid case. A decision is not to be construed like a statute nor by inferential process can it be assumed that this Court has decided the question also which is before this Court in the instant cases."

16. Interestingly, in the present case, even if the deeming fiction of the Explanation in section 20 of the Code is not imported into either of the said sections 134(2) or 62(2), on the basis of the averments made in the plaint itself it becomes clear that the plaintiff carries on business at, inter alia, Deogarh. In Dhodha House (supra) itself it was observed as follows:

"46. The expression "carries on business" and the expression "personally works for gain" connote two different meanings. For the purpose of carrying on business only presence of a man at a place is not necessary. Such business may be carried on at a place through an agent or a manager or through a servant. The owner may not even visit that place. The phrase "carries on business" at a certain place would, therefore, mean having an interest in a business at that place, a voice in what is done, a share in the gain or loss and some control thereover....."

(underlining added)

17. The appellant / plaintiff has a clear and admitted interest in the business of its hotel - Amrapali Clarks Inn - at Deogarh. On the basis of the averments in the plaint, the plaintiff carries on business through the said hotel at Deogarh. To recapitulate, the plaintiff had stated the following in paragraph 39 of the plaint:

"The plaintiff's has long back presence in the town of Deogarh (Jharkhand) where the defendants have launched the impugned project AMBAPALI GREEN. The plaintiff has its hotel in Deogarh which is operational and running in profit and plaintiff's trademark has been known to the local residents and tourists who throng to that place for worship."

(underlining added)

18. Clearly, on the basis of the averments in the plaint itself and in the backdrop of the observations in Dhodha House (supra), the appellant / plaintiff carries on business in Deogarh, Jharkhand. It may also carry on business at Delhi. But, because the cause of action has allegedly arisen in Deogarh, Jharkhand, and not in Delhi, the appellant/plaintiff cannot sue the defendants/respondents in Delhi in view of the

decision in Sanjay Dalia (supra). Thus, this court does not have the territorial jurisdiction to entertain the suit. And, on this count, the decision of the learned single judge cannot be faulted. But, the suit ought not to have been dismissed. As this court did not have jurisdiction, the plaint ought to have been returned under order 7 rule 10 CPC. Only to that extent, the learned single judge had erred.

19. In sum, the dismissal of the suit is set aside. Since this court does not have the territorial jurisdiction to entertain the suit, the plaint is directed to be returned to the appellant/plaintiff for presentation before the proper court. The appeal stands disposed of. The parties shall bear their own costs.

BADAR DURREZ AHMED, J

JANUARY 20, 2016
HJ

SANJEEV SACHDEVA, J