



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL IP SUIT (L) NO.19290 OF 2024
WITH
INTERIM APPLICATION (L) NO.19292 OF 2024
WITH
LEAVE PETITION (L) NO.19291 OF 2024
IN
COMMERCIAL IP SUIT (L) NO.19290 OF 2024**

M/s. ARCEE Electronics, a
partnership Firm.

...Plaintiff

V/s.

M/s. ARCEEIKA and Ors.

...Defendants

**WITH
INTERIM APPLICATION (L) NO.32557 OF 2024
IN
COMMERCIAL IP SUIT (L) NO.19290 OF 2024**

Thiya Distribution and Logistics
Pvt. Ltd.

M/s. ARCEE Electronics, a
partnership Firm.

...Plaintiff

V/s.

M/s. ARCEEIKA and Ors.

...Defendants

Mr. Subhradeep Banerjee *i/b. Mr. Navin P. Sachanandani for
the Plaintiff.*

Mr. Hiren Kamod *with Mr. Rakesh Sawant, Mr. Prem Khullar,
Ms. Shamiyana H. & Mr. Rahul Patil i/b. M/s. Arhat Legal for
Defendant Nos.1 and 2.*

CORAM: SANDEEP V. MARNE, J.

DATED: 11 AUGUST 2025.

Oral Judgment:

1) Plaintiff has instituted the present Suit for infringement of its registered trademark '**ARCEE**' and also for the tort of passing off.

2) Plaintiff is a partnership firm. It is engaged in the business of sale of electronic goods through various showrooms set up by it. Plaintiff claims that it is registered proprietor of the mark '**ARCEE**'. Plaintiff has set up a network of showrooms for sale of electronic goods at various locations such as Vashi, Nerul, CBD Belapur, Kamothe, Kalamboli, Uran, Ulwe, Panvel, Ghansoli and Airoli. Plaintiff also has stores in Alibaug, Karjat, Khopoli, Neral, Pen, Roha, Mangaon and Mahad in Raigad District. Plaintiff claims that it has 23 showrooms, one head office and 1 warehouse in Navi Mumbai and Raigad District. Plaintiff has given details of his turnover in paragraph 3.11 of the Plaint. On 18 August 2021 Firm's name was changed to M/s. Arcee International. Plaintiff claims that the Defendants have opened a showroom by name '**ARCEEIKA**' adopting similar colour, font and type so as to steal Plaintiff's business model since August 2024. Plaintiff claims that the Defendants are selling electronic goods from their showrooms. This is how Plaintiff has brought in the present suit against the Defendants

by complaining infringement of its registered trademark and also for an action of passing off.

3) Defendant No.2 has filed application under provisions of Order VII Rule 10 of the Code of Civil Procedure, 1908 (**the Code**) seeking return of the Plaint on the ground that this Court lacks territorial jurisdiction to try the present Suit. Defendant No. 2 has contended that in the territorial jurisdiction of this Court, neither Plaintiff has a place of business nor has any cause of action arisen. It is contended on behalf of the Plaintiff that since a Leave Petition under Clause XIV of the Letters Patent (Bombay) is filed dealing with the issue of jurisdiction, Plaintiff is prepared to answer the objection of territorial jurisdiction without filing a formal reply to the Interim Application (L) No.32557 of 2024. Accordingly, both the sides are heard on the prayer of Defendant No.2 for return of the Plaint.

4) Mr. Banerjee, the learned counsel appearing for the Plaintiff would submit that part of cause of action has arisen within the territorial limits of this Court and that therefore, this Court has jurisdiction to try and entertain the Suit. In support of his contention, he would submit that Plaintiff has several showrooms in Navi Mumbai and District-Raigad and also carries on business in Mumbai city. That Plaintiff routinely supplies electronic goods to the customers within the territorial limits of this Court. That since Plaintiff carries on business in Mumbai City as well, Defendants' acts constitute infringement of

Plaintiff's marks as well as passing off. He would therefore submit that the Suit is correctly filed in this Court on the strength of the Plaintiff carrying on business in the Mumbai city. Additionally, he would submit that Defendants also carry on business in Mumbai city. He would submit that infringing acts have been committed by the Defendants by delivery of electronic goods to various customers in Mumbai. In support, he has placed on record invoice/challan dated 2 September 2022 issued by Defendant No.1 to a customer in Chembur. He would therefore submit that both on count of Plaintiff carrying on business in Mumbai city as well as Defendants' act of supplying electronic goods to their customers in Mumbai city, this Court would have territorial jurisdiction to try and entertain the present Suit under Section 134(2) of the Trade Marks Act, 1999 (**Trade Marks Act**) as well as Section 20 of the Code. He would accordingly pray for dismissal of the Interim Application (L) No.32557 of 2024.

5) *Per contra*, Mr. Kamod, the learned counsel appearing for Defendant Nos.1 and 2 would submit that entire Plaint is silent on the aspect of jurisdiction as the Plaintiff has chosen not to raise even a single averment to demonstrate as to how Suit is within territorial jurisdiction of this Court. He would rely upon provisions of Section 134(2) of the Trade Marks Act in support of his contention that present Suit ought to have been filed with the District Court within the local limits of whose jurisdiction, the Plaintiff actually and voluntarily resides or

carries on business. He would submit that there is no averment in the entire Pleint that Plaintiff carries on business within the territorial limits of this Court. He would further submit that even if the jurisdiction could be supported on the strength of accrual of part cause of action, there is no averment in the entire Pleint that any part cause of action has arisen within the territorial limits of this Court. That there is no averment in the entire Pleint that the Defendants have sold any goods within Mumbai city from their showroom located in Navi Mumbai. That Plaintiff's reliance on invoice at Exhibit- EE is misplaced and that the said invoice does not demonstrate delivery of the goods in Mumbai city.

6) Mr. Kamod would also rely on judgment in ***Manugraph India Limited V/s. Simarq Technologies Pvt. Ltd. and Others¹*** in support of his contention that the Plaintiff cannot file a Suit in this Court where it does not carry on business or where no part of cause of action has accrued. Mr. Kamod would accordingly pray for return of Pleint under Order VII Rule 10 of the Code.

7) Rival contentions of the parties now fall for my consideration.

8) Plaintiff owns and operates several showrooms for sale of electronic goods in Navi Mumbai city as well as in the District-Raigad. In this regard, it would be apposite to reproduce

¹ 2016 SCC OnLine Bom 5334

contents of paragraphs 3.1 and 3.2 of the Plaint, which read thus:-

3.1 In 1986, the Plaintiff firm was incorporated at Vashi, Navi Mumbai. The firm, earlier known as Arcee Electronics, was managed by the Plaintiff's father, Mr. Premnath Sharma. The firm's primary objective was to provide a diversified distribution of goods, including electronic goods and white goods, and it also had plans to diversify into the furniture market. The initials of Mr. Roopchand, i.e. RC (eldest son), converted to Arcee and were used in the business. Mr. Premnath Sharma designed the trademark. Annexed hereto and marked as Exhibit A is a copy of the firm's PAN card.

3.2 Since its inception, the firm's idea was to have a one-stop solution for all electronic goods, which expanded into the online domain. The Plaintiff trademark is famous and has generated a reputation as it has been in the market for approximately 4(four) decades. **The firm's stores were located at various locations, including Vashi, Nerul, CBD Belapur, Kamothe, Kalamboli, Uran, Ulwe, Panvel, Ghansoli, and Airoli. The firm also had stores in Alibaug, Karjat, Khopoli, Neral, Pen, Roha Mangaon, and Mahad. Over time, the business grew to 23 showrooms 1(one) head office and 1(one) warehouse in Navi Mumbai Raigad districts.** Annexed hereto and marked as Exhibit B is a copy of the documents demonstrating the same.

(emphasis added)

9) Plaintiff has also given its address in the cause title of the Plaint as under:-

M/s. ARCEE Electronics,
a partnership firm represented through its
Partner Mr. Dev Sharma
having office address at Sector-17-
Shop No.27,28, 29, 36, 37, 38 Chadha Crescent,
Vashi, Navi Mumbai- 400703.

10) Throughout the body of the Plaint, there is total absence of even a single averment that Plaintiff has any

showroom in Mumbai city or has sold any of its goods in Mumbai city. On the contrary, Plaintiff has been emphatic throughout the Plaint that it owns and operates 23 showrooms, one head office and one warehouse in Navi Mumbai city and Raigad District. There is no averment in the Plaint that Plaintiff carries on business in Mumbai city. As a matter of fact, Plaint is completely silent on the aspect of jurisdiction as no averments are made to demonstrate as to how the Suit is within the territorial jurisdiction of this Court.

11) Faced with the situation of the Plaint not containing any averment relating to jurisdiction, the learned counsel for the Plaintiff has raised two contentions to demonstrate that Suit is within territorial jurisdiction of this Court. Firstly, it is submitted that Plaintiff has produced several invoices to demonstrate sale and delivery of its goods in the city of Mumbai. Secondly, it is contended that Defendants have also sold and delivered electronic goods in the city of Mumbai. The first contention is raised to indicate Plaintiff's business in Mumbai and the second contention is raised to demonstrate that part of the cause of action has arisen in Mumbai city.

12) Section 134 of the Trade Marks Act provides for filing of Suit for infringement, etc. before a District Court. Sub-Section (1) provides that no Suit for the infringement of a registered trade mark; or relating to any right in a registered trade mark; or for passing off shall be instituted in any court

inferior to a District Court having jurisdiction to try the suit. Sub-Section (2) provides for the exact District Court within whose jurisdiction such suit can be filed. For facility of reference, provisions of Section 134 of the Trade Marks Act are extracted 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 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.

13) Thus, under Section 134(2) of the Trade Marks Act, the term '*District Court having jurisdiction*' has been defined to mean and include a District Court within the local limits of whose jurisdiction the Plaintiff actually and voluntarily resides or carries on business or personally works for gain. Thus

jurisdiction is conferred under Section 134(2) only on the Court within whose jurisdiction the Plaintiff resides or carries on business. If the averments made in the Plaint are considered in the light of provisions of Section 134(2) of the Trade Marks Act, it is clear that Plaintiff has clearly admitted that it carries on business in Navi Mumbai City and Raigad District. There is no averment in the entire body of the Plaint that Plaintiff either voluntarily resides or carries on business in any part of Mumbai city. Its address in the title of the Suit is also indicated as Vashi, Navi Mumbai.

14) In absence of any pleading to the effect that Plaintiff carries on business in Mumbai city, a feeble attempt is made through oral submissions that Plaintiff has supplied goods to customers in Mumbai city and that therefore its business in Mumbai needs to be inferred. This oral contention is premised on few invoices placed on record along with the Plaint. The invoice produced at page No. 656 indicates that electronic item (Samsung Top Loading Washing Machine) was purchased at Plaintiff's showroom located at Shop-B001, Vasant Smruti, Panvel, Navi Mumbai by a customer having delivery address at Vile Parle (West) Mumbai. Here the business of Plaintiff is of sale of goods and not of delivery. Therefore, the place at which the sale has occurred would determine Plaintiff's place of business. Mere delivery of goods at customer's residence would not mean that the Plaintiff carries on business at the place of residence of the customer. Similarly, invoice at page No.657 indicates that a mobile phone handset has been sold from

Plaintiff's Branch at Mulund Check Naka and purchased by a customer having address at Vikhroli. However, neither the said invoice makes it clear that the Plaintiff has any showroom within Mumbai city nor such claim is backed by any averment in the Plaint. Plaint proceeds on the footing that Plaintiff's 23 showrooms, one head office and one warehouse, all of which are located only in Navi Mumbai city and Raigad District. Plaintiff has not claimed in the Plaint that it has any showroom in the city of Mumbai. Therefore, none of the invoices produced alongwith the Plaint indicates that Plaintiff carries on business in Mumbai city. As observed above, Plaintiff's address in the cause title is also shown at Vashi, Navi Mumbai. Thus, Plaintiff neither resides nor carries on business within the territorial jurisdiction of this Court.

15) Since Plaintiff is unable to cross the hurdle of Section 134(2) of the Trade Marks Act, it seeks to base its claim of jurisdiction on part of cause of action accruing in Mumbai city. It is claimed that (albeit through oral submissions, not backed by any pleadings) since the goods of Plaintiff and Defendants are sold in Mumbai, part of cause of action arises in Mumbai as well. Here provisions of Section 20 of the Code are relevant, which provide 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.

16) Thus, under Section 20 of the Code, suit can be instituted in a Court within whose jurisdiction part of cause of action arises. It must be observed here that the provisions of Section 134 of the Trade Marks Act and Section 20 of the Code are not analogous. Section 134 of the Trade Marks Act does not confer jurisdiction on the principle of accrual of cause of action. It provides for filing of Suit only at one place i.e. the place where the Plaintiff resides or carries on business. In fact, Section 134(2) uses the expression '*notwithstanding anything contained in the Code of Civil Procedure, 1908 or any other law for the time being in force*'. Similar to Section 134 of the Trade Marks Act are the provisions of Section 62 of the Copyright Act, 1957, which provide thus:

“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.”

17) The issue of applicability of provisions of Section 20 of the Code to proceedings filed under the Copyright Act, 1957 in the light of provisions of Section 62 thereof fell for consideration before the Supreme Court in *Indian Performing Rights Society Limited Vs. Sanjay Dalia & Another*². The Supreme Court also considered the provisions of Section 134 of the Trade Marks Act and held that use of the expression “notwithstanding anything contained in the Code of Civil Procedure” in Sections 62 of Copyright Act and Section 134 of the Trade Marks Act do not oust the applicability of the provisions of Section 20 of the Code and an 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. The Supreme Court held in Para 14 as under:

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**

² (2015) 10 SCC 161

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.

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.

23. The provisions of Section 62(2) of the Copyright Act and Section 134 of the Trade Marks Act are in pari materia. Section 134(2) of the Trade Marks Act is applicable to clauses (a) and (b) of Section 134(1)

of the Trade Marks Act. **Thus, a procedure to institute suit with respect to Section 134(1)(c) in respect of “passing off” continues to be governed by Section 20 CPC.**

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.

(emphasis added)

18) Thus, in ***IPRS Vs. Sanjay Dalia*** (supra) it is held that Section 134 of the Trade Marks Act and Section 62 of the Copyright Act merely provide for an additional forum for institution of a suit at a place where the Plaintiff resides or carries on business and that provisions of Section 20 of the Code would continue to apply to the proceedings filed under both the Acts. It is thus clear that suits under both the enactments can also be filed in a court within whose territorial jurisdiction, part of the cause of action has arisen.

19) A Single Judge of this Court has also taken a view in ***Manugraph India Ltd.*** (supra) that a Suit for infringement of trade mark can also be tried by invoking Section 20 of the Code where part of cause of action arises. This Court has summed up the conclusions in paragraph 36 of the judgment, which read thus:-

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.

20) Thus, a Suit for infringement of trade mark can undoubtedly be filed within the territorial jurisdiction of the Court where part of cause of action has been arisen by having recourse to provisions of Section 20 of the Code.

21) I now, therefore, proceed to examine whether any part of cause of action has accrued for the Plaintiff within the territorial limits of jurisdiction of this Court. As observed above, Plaintiff is silent on the aspect of jurisdiction. There is no averment in the entire body of the Plaintiff that any part of cause of action has been arisen within the territorial limits of jurisdiction of this Court. Reliance is sought to be placed on invoice at Page 1036, which has been issued by Defendant No.1 to a customer- Bipin Shah having his address at Chembur. Invoice, however, is silent with regard to delivery address. The customer has approached the showroom of Defendant No.1 located at Navi Mumbai and has purchased a washing machine. Therefore, said invoice dated 2 September 2023 cannot be used for the purpose of demonstrating that Defendants have committed any infringing or passing off act within the territorial limits of this Court. Reliance is also placed on another invoice dated 25 April 2024, which shows that a customer has apparently purchased a Dry Iron, from the showroom of Defendant No.1 at Kamothe, Navi Mumbai. Though the address

of the customer is shown at Chembur and delivery details are indicated as same as billing address, the invoice also makes it clear that customer picked up the item from Kamothe showroom. Therefore, the residence of the customer becomes irrelevant. The purchase has taken place in Navi Mumbai and therefore the cause of action would be in Navi Mumbai.

22) As observed above, Plaintiff has neither pleaded nor demonstrated that any part of cause of action for filing of the present Suit has arisen within the limits of Mumbai city. In my view, therefore, present Suit does not satisfy the requirement under Section 134(2) of the Trade Marks Act or Section 20 of the Code. Neither the Plaintiff carries on business in Mumbai city nor any part of cause of action has arisen in Mumbai city. This Court lacks territorial jurisdiction to try and entertain the present Suit. Therefore the Plaint in the Suit deserves to be returned under Order VII Rule 10 of the Code for being filed in the Court having jurisdiction.

23) I accordingly proceed to pass the following order:

- (i) The Plaint in the Suit is returned to the Plaintiff under provisions of Order VII Rule 10 of the Code for being presented in the Court having jurisdiction.
- (ii) Interim Application (L) No.32557 of 2024 is accordingly allowed.
- (iii) There shall be no order as to costs.

24) With the above directions, Interim Application, Leave Petition as well as the Suit are disposed of.

[SANDEEP V. MARNE, J.] .