



* IN THE HIGH COURT OF DELHI AT NEW DELHI
%
Judgment Reserved on: 24.02.2025
Judgment pronounced on: 16.04.2025

+ CS(COMM) 828/2022 & CRL.M.A. 8235/2023, I.A. 20135/2022, I.A. 20140/2022, I.A. 21994/2022, I.A. 2200/2023, I.A. 2212/2023, I.A. 12359/2023, I.A. 8949/2024, I.A. 31885/2024, I.A. 32259/2024, I.A. 45654/2024, I.A. 45827/2024, I.A. 47101/2024, I.A. 2437/2025, I.A. 2500/2025

M/S KOHINOOR SEED FIELDS INDIA PVT LTDPlaintiff
Through: Mr. Saurav Agrawal, Mr. Adarsh Ramanujan, Mr. Shantanu Agrawal, Mr. Kapil Rustagi, Mr. Chandreyee Maitra, Ms. Asmita Srivastav, Ms. Allaka M., Mr. Manas Arora, Mr. Ajay Sharma, Mr. Raghav Thareja, Mr. Shivam Chaudhary, Ms. Surabhi Mahajan and Mr. Parth Singh, Advocates.

Versus

M/S VEDA SEED SCIENCES PVT LTDDefendant
Through: Mr. Raj Shekhar Rao, Senior Advocate with Mr. Kapil Wadhwa, Ms. Sindoor VNL, Ms. Vishakha Gupta, Ms. Twinkle Rathi, Ms. Thithiksha Padman & Mr. Anish Jandial, Advocates.

CORAM:
HON'BLE MR. JUSTICE AMIT BANSAL
JUDGMENT

AMIT BANSAL, J.



I.A. 2500/2025 (under Order VII Rule 14 r/w Section 151 of CPC seeking permission to file additional documents)

1. This application has been filed on behalf of the plaintiff under Order VII Rule 14 of the Code of Civil Procedure, 1908 seeking permission to file additional documents.
2. For the reasons stated in the application, the additional documents as described in paragraph 7 of the application are taken on record.
3. The application stands disposed of.

I.A. 2200/2023 (under Order VII Rule 10, CPC)

4. The plaintiff has instituted the present suit seeking permanent injunction restraining the defendant from infringing the trademark of the plaintiff, passing off along with other ancillary reliefs.
5. The present application has been filed on behalf of the defendant under Order VII Rule 10 of the Code of Civil Procedure, 1908 (“CPC”) seeking return of the plaint for want of territorial jurisdiction and material suppression of facts by the plaintiff.
6. Notice in the present application was issued and accepted by counsel for the plaintiff in Court on 6th February, 2023. Reply on behalf of the plaintiff has been filed.
7. Pleadings in the captioned application were completed, arguments were heard on behalf of the counsel for the parties on 9th January, 2025, 30th January, 2025, 10th February, 2025 and 24th February, 2025, when the judgment was reserved.
8. Thereafter, on 4th March, 2025, the defendant filed its written submissions and on 5th March, 2025, the plaintiff filed its written submissions



in the captioned application.

FACTUAL BACKGROUND

9. The relevant facts necessary for deciding the present application are as follows:

9.1. The plaintiff is an Indian seed company having its registered office at New Delhi. The plaintiff company has obtained necessary approvals to produce and sell the Bollgard II cotton hybrids in Madhya Pradesh, South Rajasthan, Gujarat, Maharashtra, Andhra Pradesh, Telangana and Karnataka.

9.2. In 2014, the plaintiff developed 'KSCH-207 BG II' and 'KSCH-212 BG II' cotton hybrids and has been producing the same under the brand names 'TADAAKHA' and 'BASANT' respectively. The plaintiff also commenced the sale of hybrid 'KSCH-232 BG II' under the brand name 'SADANAND' in the year 2015.

9.3. The defendant is an Indian company having its registered office at Guntur, Andhra Pradesh. The defendant company is engaged in the production and marketing of agro inputs.

9.4. Since 2014, the plaintiff has had a co-marketing arrangement with the defendant to co-market its BG cotton hybrids. The said non-exclusive co-marketing arrangement with the defendant was renewed annually for the purpose of marketing and distribution of five different cotton hybrids.

9.5. The Marketing Agreement dated 1st January, 2022 executed in New Delhi is the latest iteration of this arrangement which was valid up to 31st December, 2022 (hereinafter "the Marketing Agreement").

9.6. On 27th September, 2022, the plaintiff issued a notice to the defendant stating that it did not intend to renew the Marketing Agreement. Thereafter,



on 1st October, 2022, the plaintiff communicated to its various distributors that beginning from the next year i.e. Kharif 2023, it will not sell its products to the defendant. Instead, the plaintiff decided to sell its products directly.

9.7. In October 2022, the plaintiff learned that the defendant was promoting and taking advance bookings for the Kharif season 2023, for the sale of BG II cotton hybrid seeds under the brand names of ‘VEDA TADAAKHA GOLD BG II’, ‘VEDA SADANAND GOLD BG II’ and ‘VEDA BASANT GOLD BG II’ (hereinafter “impugned marks”). The plaintiff received copies of these advance bookings on WhatsApp from traders/distributors.

9.8. Consequently, the plaintiff issued a termination notice dated 25th November, 2022 to the defendant and 15 days’ time was given to the defendant to rectify its actions.

9.9. Thereafter, the plaintiff filed the present suit on 29th November, 2022 before this Court seeking to restrain the defendant from carrying on its infringing activities. Subsequently, the Marketing Agreement stood terminated on 10th December, 2022.

9.10. On 23rd February, 2024, the defendant filed a suit being COS No. 6 of 2024 before the Rangareddy District Court, Telangana asserting its rights over the impugned marks.

9.11. On 18th April, 2024, the plaintiff filed a transfer petition, T.P.(C) No. 1161/2024 before the Supreme Court. *Vide* order dated 22nd November, 2024, the Supreme Court stayed the proceedings in the suit instituted by the defendant in Telangana. Further, it was noted that the said transfer petition would be adjudicated subject to the orders passed by this Court in the present application i.e., I.A. 2200/2023.



PROCEEDINGS IN THE SUIT

10. On 1st December, 2022, this Court granted an *ad interim* injunction in favour of the plaintiff restraining the defendant from manufacturing, selling and advertising any BT cotton hybrid seeds under the plaintiff's trademarks 'SADANAND', 'TADAAKHA' and 'BASANT'.

11. The appeal preferred by the defendant against the aforesaid *ad interim* injunction order was dismissed by the Division Bench of this Court on 15th December, 2022.

SUBMISSIONS ON BEHALF OF THE DEFENDANT

12. Mr. Raj Shekhar Rao, Senior Advocate, appearing on behalf of the defendant/applicant, has made the following submissions:

12.1. The plaintiff has not been able to satisfy the twin conditions of 'cause of action' and 'place of business' under Section 134(2) of the Trade Marks Act, 1999 read with Section 20 of the Code of Civil Procedure, 1908. Reliance is placed on ***Indian Performing Rights Society v. Sanjay Dalia***, (2015) 10 SCC 161 and ***Ultra Home Construction v. Purushottam Kumar Chaubey***, (2016) 227 DLT 320 (DB).

12.2. The plaint deliberately fails to disclose that the plaintiff has subordinate or branch offices in the states of Andhra Pradesh and Telangana, in addition to its head office in New Delhi.

12.3. The plaintiff had applied for and was granted the licence to carry on business of a dealer in seeds under the Seeds (Control) Order, 1983 by showing the addresses of the subordinate offices at Andhra Pradesh and Telangana. The plaintiff has also raised invoices from the said offices to distributors on several dates, which shows that the plaintiff carries on business



from these offices regularly. Therefore, it cannot be said that the cause of action arose in Delhi.

12.4. In addition to this, Marketing Agreement was to be performed only in states of Madhya Pradesh, Gujarat, Maharashtra, Andhra Pradesh, Telangana, Karnataka, Tamil Nadu as the defendant was authorized to market and distribute only in these states. There is no dynamic effect of the acts of the defendant that can be felt in Delhi, as the defendant did not and cannot as per the existing licenses, target the consumers in Delhi. In this regard, reliance has been placed on **Radico Khaitan v. Nakshatra Distilleries & Breweries** 2017 SCC OnLine Del 7682.

12.5. The defendant does not have a license to carry on the business of a dealer in seeds in Delhi under the Seeds (Control) Order, 1983. Therefore, the products of the defendant cannot be sold in Delhi and are in fact not sold in Delhi.

12.6. The defendant is not registered with India Mart or such other e-commerce websites and has not put up its products on such websites for sale. Therefore, even if the defendant's products are shown available on e-commerce platforms, the defendant cannot be held liable or responsible for the same. In any event, no sale and purchase of goods take place on the portal of India Mart. In this regard, reliance has been placed on **Banyan Tree Holding v. A Murali Krishna Reddy**, 2009 SCC OnLine Del 3780.

12.7. Moreover, the plaintiff filed the present suit while the Marketing Agreement was subsisting between the parties and the period of 15 days after the issuance of termination notice had not expired. The present suit has not been filed for enforcing rights under the Marketing Agreement, but has been



filed as a trademark infringement and passing off suit.

12.8. Mere registration of the plaintiff's marks in Delhi would not give jurisdiction to the Courts in Delhi.

SUBMISSIONS ON BEHALF OF THE PLAINTIFF

13. Mr. Saurav Agrawal, counsel appearing on behalf of the plaintiff, has made the following submissions:

13.1. Only the averments made in the plaint should be considered while deciding an application under Order VII Rule 10 of the CPC and averments in the plaint must be assumed to be true on a demurrer. The averments made by the defendant have to be ignored.

13.2. The plaintiff's principal place of business and registered office is within the jurisdiction of this Court, i.e., New Delhi, and the plaintiff ordinarily carries on business in New Delhi. Further, the two registered marks asserted in the present suit have been registered with the Trade Marks Registry in Delhi. Therefore, this Court has territorial jurisdiction to entertain the present suit.

13.3. This Court after considering ***Ultra Home*** (Supra) has consistently held that a trademark infringement suit is maintainable in Delhi if the registered office of the plaintiff is situated in Delhi. Reliance is placed on ***Provident Housing v. Central Park Estates***, 2022 SCC OnLine Del 2167 and ***CP Century Hardware v. Skywood Interior Solutions***, 2024 SCC OnLine Del 326.

13.4. If the defendant had a principal office and a subordinate office and part of the cause of action arose at both the offices, the jurisdiction cannot be limited only to the subordinate offices of the defendant, even under Section



20 of the CPC. Therefore, correspondingly, where the pleaded cause of action partly arises at the principal office, jurisdiction cannot be limited to the subordinate office.

13.5. The Marketing Agreement dated 1st January, 2022, which constitutes a critical part of the cause of action, was executed by the parties in New Delhi. The stamp paper accompanying the various marketing agreements was also purchased in Delhi. The defendant was also invoiced in New Delhi for its orders of hybrid seeds placed upon the plaintiff. Moreover, the cause of action was also based on violation of the Marketing Agreement.

13.6. Where an infringement suit is filed during the currency of a permitted user agreement, use of the marks in breach of the agreement amounts to infringement.

13.7. The seed packets of the impugned goods of the defendant are available on various e-commerce platforms like India Mart etc., which are accessible within Delhi. This Court after considering **Banyan Tree Holding** (Supra), has consistently held that India Mart listing is sufficient to invoke jurisdiction. Reliance is placed on **Marico Limited v Mukesh Kumar**, 2018 SCC OnLine Del 13412 and **Shakti Fashion v Burberry Limited**, 2022 SCC OnLine Del 1636.

13.8. In violation of the Marketing Agreement, the defendant has been infringing on the plaintiff's proprietary rights and even collecting advance amounts as evidenced from various advance booking forms and WhatsApp Screenshots filed along with the plaint. Such an infringement of the plaintiff's registered trademarks has been taking place in multiple jurisdictions, including the principal place of business of the plaintiff. Hence, the plaintiff



is entitled to institute a suit for infringement before this Court.

13.9. The purpose behind the long arm statute under Section 62 of the Copyright Act, 1957 or under Section 134 of the Trade Marks Act, 1999 is to expose the transgressor/ pirator with inconvenience rather than compelling the sufferer to chase after the former.

13.10. It is settled law that Section 134 of the Trade Marks Act, 1999 and Section 20 of the CPC are used alternatively to establish jurisdiction. If part of cause of action is made out within the jurisdiction of this Court, then suit would be maintainable irrespective of Section 134 of the Trade Marks Act, 1999 and vice versa.

ANALYSIS AND FINDINGS

14. I have heard the rival submissions and also examined the material on record.

15. In sum, the submission of the defendant is that there is no cause of action to file the present suit before this Court. Even if the plaintiff has its head office in Delhi, the present suit has to be filed in Telangana as the cause of action arises there and the defendant is located in Telangana and even the plaintiff has a subordinate office in Telangana.

16. *Per contra*, the submission of the plaintiff is that since a part of cause of action arises in Delhi, the present suit can be filed in Delhi even if the plaintiff has a subordinate office in the State of Telangana. Even if it is assumed that there is no cause of action in Delhi, the present suit can be filed in Delhi on the basis that the plaintiff has its registered/head office in Delhi.

17. Before I proceed to address these issues, I may deal with the contention of the plaintiff that the jurisdiction of this Court is premised on the fact that



the trademark registration in respect of the subject marks were obtained by the plaintiff in Delhi. This contention is completely contrary to the observations of the Supreme Court in ***Dhodha House v. S.K. Maingi***, (2006) 9 SCC 41.

18. In ***Dhodha House*** (Supra), the Supreme Court has categorically held that cause of action arises only when a registered trademark is in use and not when the application is filed for registration of a trademark. Therefore, the plaintiff cannot claim jurisdiction on the basis that its marks were registered in Delhi.

19. Based on the submissions of the parties, the following issues arise for consideration before me:

- i. Whether the cause of action of filing the present suit is also based on the Marketing Agreement between the parties?
- ii. Whether there is any cause of action in the present suit, including the listing of the infringing products on India Mart, for filing the present suit in this Court?
- iii. If there is no cause of action arising in the present case within territorial jurisdiction of this Court, can jurisdiction be made out on the basis of plaintiff having its head office in Delhi, even though it has a subordinate office at the place where cause of action has arisen?

20. Before I address these issues, I may hasten to add it is the settled position of law that for purposes of deciding an application under Order VII Rule 10 of the CPC, the Court has to look only at the averments made in the



plaint along with the documents filed with the plaint. No reference can be made to the written statement, or the documents filed by the defendant.

ISSUE No.1 WHETHER THE CAUSE OF ACTION OF FILING THE PRESENT SUIT IS ALSO BASED ON THE MARKETING AGREEMENT BETWEEN THE PARTIES?

21. Paragraph 2 of the plaint states that the present suit has been filed on account of infringement and passing off of the plaintiff's registered and unregistered trademarks by the defendant. The plaint extensively provides the details of the sales carried out by the plaintiff of the products bearing the marks which are subject matter of the suit. The plaint also discloses the registrations of the trademarks 'TADAAKHA' and 'SADANAND' in favour of the plaintiff.

22. The details of the infringing and passing off activities of the defendants have been detailed in paragraphs 27 to 43 of the plaint. In paragraphs 44 to 46 of the plaint, the plaintiff has made averments regarding the allegedly *mala fide* and illegal conduct of the defendant in seeking to obtain registration of the impugned marks.

23. The cause of action and the jurisdiction have been pleaded in the paragraphs 49 and 50 of the plaint respectively, which are set out below:

"CAUSE OF ACTION

49. The cause of action for the present suit arose in October 2022 when the Plaintiff learnt that the **Defendant was using the Plaintiff's Subject Marks to market and offer for sale hybrids** not produced by the Plaintiff. The cause of action further arose in October 2022 when the Plaintiff learned that the



Defendant was offering for sale such infringing products through very easily accessible online marketplaces such as India Mart etc.

JURISDICTION

50. The present suit is a consolidated suit for infringement and/or passing off three Plaintiff's Subject Marks, by the same Defendant, arising out of the same course of transaction. **This Hon'ble High Court has jurisdiction to entertain the present suit under Section 134 (2) of the Trade Marks Act, 1999 since the Plaintiff's registered address is within the jurisdiction of this Hon'ble Court, i.e., New Delhi, and the Plaintiff ordinarily carries on business in New Delhi. The two registered marks asserted in the present suit has been registered with the Delhi Trademarks Registry. Further, the seed packets of the impugned goods of the Defendant are available on various e-commerce platforms like India Mart etc., which are available for access within New Delhi, and in any event, are dynamic websites that permits communication and placement of orders.** In addition, the relationship between parties to the suit arises out of the Marketing Agreement executed in New Delhi. As such, this Hon'ble High Court of Delhi has territorial jurisdiction to entertain the present suit. The suit is valued beyond the minimum pecuniary jurisdiction of this Hon'ble Court and is also a commercial suit within the meaning of the Commercial Courts Act, 2015."

[Emphasis supplied]

24. A perusal of the paragraph 49 of the plaint on cause of action clearly demonstrates that the cause of action for filing the present suit was the act of the defendant in selling/offering for sale the products bearing the plaintiff's marks. There is no reference in this paragraph with regard to the Marketing Agreement or any breach thereof.

25. In paragraph 50, the territorial jurisdiction has been pleaded on the basis of infringement and/or passing off of the plaintiff's trademark by the defendant. The plaintiff asserts territorial jurisdiction based on the following:



25.1. Section 134(2)¹ of the Trade Marks Act since the registered office of plaintiff is located in Delhi and it carries on business in Delhi.

25.2. The subject marks were registered with the Trade Marks Registry in Delhi.

25.3. The impugned goods of the defendant are available on “*various e-commerce platforms like India Mart etc., which are available for access within New Delhi, and in any event, are dynamic websites that permit communication and placement of orders*”.

26. It has also been pleaded in paragraph 50 that, “*In addition, the relationship between parties to the suit arises out of the Marketing Agreement executed in New Delhi*”. Even though a reference has been made to the Marketing Agreement between the parties, there is no explanation as to how the jurisdiction is invoked on the basis of the Marketing Agreement since there is no reference to the Marketing Agreement in the cause of action. The aforesaid averment has to be read in conjunction with the averments made in paragraphs 47 and 48 of the plaint, which are set out below:

“RESERVATION OF RIGHTS QUA OTHER CAUSES OF ACTION

47. The present suit is limited to pursuing the statutory remedy of trademark

¹134. Suit for infringement, etc. to be instituted before District Court. —

(1) ...

...

...

(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 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.



infringement and common law rights with respect to passing off. The facts narrated may also give rise to other causes of action in favour of the Plaintiff and against the Defendant. The Plaintiff expressly reserves its rights and remedies in this respect and out of abundant caution, seeks leave of this Hon'ble Court to pursue such other causes of action at an appropriate time through an appropriate application.

48. In addition, and without prejudice, the Marketing Agreement anyway expires on 31.12.2022. If the Defendant fails to cure the breach of contract as specified in the terminated notice dated 21.11.2022 within the stipulated period of fifteen (15) days, the Marketing Agreement would stand terminated even earlier. In either event, the Defendant cannot sell Plaintiff's hybrids thereafter. Any existing packets of the Plaintiff's hybrid seeds are to be returned to the Plaintiff and the Defendant cannot use the Plaintiff's trademarks for selling Plaintiff's hybrids or any other product/hybrid for that matter. **The Plaintiff expressly reserves its rights and remedies in the event the Defendant continues selling Plaintiff's products or uses the Plaintiff's marks after the Marketing Agreement expires on 31.12.2022 or stands terminated earlier. Out of abundant caution, the Plaintiff seeks leave of this Hon'ble Court to pursue such other causes of action at an appropriate time through an appropriate application.** The Plaintiff has not filed any other similar suit or petition with respect to present cause of action before this Hon'ble Court or any other court. The Plaintiff has never condoned or acquiesced in the unlawful acts of the Defendant."

[Emphasis supplied]

27. A reading of the aforesaid paragraphs leaves no doubt in my mind that the present suit filed by the plaintiff is only in the nature of trademark infringement and passing off action. The plaintiff has specifically stated that the facts narrated in the suit may give rise to other causes of action for which the plaintiff reserves its rights and leave of the Court has been sought to pursue such other cause of action at an appropriate time.

28. Even in the application filed under Order II Rule 2 of CPC, I.A. 20138/2022, the plaintiff has averred that the conduct of the defendant may



give rise to a 'separate cause of action' arising out of the breach of Marketing Agreement and leave of this Court may be granted to initiate appropriate proceedings. The relevant paragraph 4 of the said application is set out below:

*"4. Similarly, **the conduct of the Defendant as pleaded in the Plaint may also give rise to a separate cause of action of breach of contract.** On the date of the suit, a terminate notice dated 25.11.2022 has been issued and is presently within the 15-day cure period. **Out of abundant caution, through this application, the Plaintiffs seeks leave of this Hon'ble Court to bring appropriate proceedings against the Defendant qua such other cause of action.**"*

[Emphasis supplied]

29. In this regard, the Predecessor Bench granted leave to the plaintiff to seek such relief *qua* breach of contract as may be maintainable in law. The relevant paragraphs 3 and 5 of order dated 12th July, 2023 is set out below:

"3. This is an application under Order II Rule 2 CPC moved by the Plaintiff to seek further reliefs in respect of additional trademarks. The prayers in this application are as under:

"(i) Grant leave to the Plaintiff to take appropriate proceedings in respect of a claim for infringement/passing off of additional trademarks/marks by the Defendant;

*(ii) **Grant leave to the Plaintiff to take appropriate proceedings in respect of a claim for breach of contract;***

(iii) Grant leave to the Plaintiff to take appropriate proceedings in respect of a claim for infringement/passing off after 31.12.2022 or the earlier termination of the Marketing Agreement dated 01.01.2022;"

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5. Insofar as the prayer (ii) for breach of contract is concerned, **leave is granted to the Plaintiff for seeking relief qua the breach of contract, if maintainable, in accordance with law.**

[Emphasis supplied]

30. From a holistic reading of the plaint and the application under Order II Rule 2 of CPC above, it is abundantly clear that the present suit is not premised on any cause of action based on the Marketing Agreement or the breach thereof. Therefore, the plaintiff cannot claim jurisdiction on the basis of the Marketing Agreement, even if the same was executed in Delhi. The jurisdiction would have to be determined on the basis of averments in the plaint regarding trademark infringement and passing off.

ISSUE No.2 WHETHER THERE IS ANY CAUSE OF ACTION IN THE PRESENT SUIT, INCLUDING THE LISTING OF THE INFRINGING PRODUCTS ON INDIA MART, FOR FILING THE PRESENT SUIT IN THIS COURT?

31. There are no averments made in the plaint that the defendant sells or offers to sell its products in Delhi, nor have any documents been filed to evidence the sale of products by the defendant in Delhi. The only averment made is that the impugned products of the defendant are available on e-commerce platforms like India Mart etc. which are accessible in Delhi. In fact, the documents filed by the plaintiff along with the plaint such as dealer information sheets and order forms of the defendant (*at pages 51-331 of the volume II of the plaintiff's documents filed along with the plaint*), seem to



suggest that the business of the defendant is carried out only in the states of Telangana, Andhra Pradesh and Karnataka and not in Delhi.

32. The plaintiff claims territorial jurisdiction on the basis of the listing of the defendant's products on various e-commerce platforms like India Mart etc. The specific pleading in paragraph 50 is that, "*impugned goods of the defendants are available on various e-commerce platforms like India Mart etc., which are available for access within New Delhi*".

33. Even though the plaintiff uses the terms "*various*" and "*etc.*", it does not give details of any e-commerce platform other than India Mart in the plaint. The only other document filed at a later stage is with respect to a third-party listing of the defendant's product on 'Kalgudi' (*pages 3-5 of the additional documents filed by the plaintiff*).

34. A perusal of India Mart listing of the defendant's product filed along with the plaint would show that the said listing has not been made by the defendant. It appears from the listing that it has been made by one "Shiva Agro Agency" having its address in Karnataka. The listing does not display any option for placing an order of delivery of goods to Delhi. It is not the case of the plaintiff that the said "Shiva Agro Agency" is selling the products of the plaintiff in Delhi.

35. Similarly, a perusal of the Kalgudi listing would show that the said listing has been made by a third-party seller viz., "Bhavani Seeds Center" located in Andhra Pradesh. It is not the case of the plaintiff that the said third-party seller is selling the products of the plaintiff in Delhi.



36. The listing on India Mart does not show an option of placing an order for delivery of goods to Delhi. The tab “*find related products near you*” also does not show any listing of the defendant’s product.

37. In this context, a reference may be made to the judgment of the Division Bench in ***Banyan Tree Holding*** (Supra), which was passed pursuant to a reference of questions of law by a Single Judge to the Division Bench.

38. The judgment of the Division Bench in ***Banyan Tree Holding*** (supra) arose in the context of a suit filed in Delhi by a plaintiff based out of Singapore, invoking territorial jurisdiction under Section 20 of the CPC on the basis of the defendant soliciting business through its website, which was accessible in Delhi.

39. It was stated that services of the defendant were being offered to customers in Delhi by the said website. Further, the said website was not a passive website but seeks feedback and inputs of its customers through an interactive web page. The terms of reference as framed by the Division Bench are given below:

“7. Having considered the submissions of Mr. Praveen Anand, learned counsel for the Plaintiff, we consider it appropriate to reframe the questions referred to us for our opinion as under:

- (i) For the purposes of a passing off action, or an infringement action where the Plaintiff is not carrying on business within the jurisdiction of a court, in what circumstances can it be said that the hosting of a universally accessible website by the Defendants lends jurisdiction to such Court where such suit is filed (“the forum court”)?*
- (ii) In a passing off or infringement action, where the defendant is sought to be sued on the basis that its website is accessible in the forum state, what is the extent of the burden on the Plaintiff to prima facie establish that the forum court has jurisdiction to*



entertain the suit?

(iii) Is it permissible for the Plaintiff to establish such prima facie case through “trap orders” or “trap transactions”?”

40. Relevant paragraphs of the judgment of the Division Bench are set out below:

“38. ... At the outset, this court does not subscribe to the view that the mere accessibility of the Defendants' website in Delhi would enable this Court to exercise jurisdiction. A passive website, with no intention to specifically target audiences outside the State where the host of the website is located, cannot vest the forum court with jurisdiction...”

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42. This Court holds that jurisdiction of the forum court does not get attracted merely on the basis of interactivity of the website which is accessible in the forum state. The degree of the interactivity apart, the nature of the activity permissible and whether it results in a commercial transaction has to be examined. For the ‘effects’ test to apply, the Plaintiff must necessarily plead and show prima facie that the specific targeting of the forum state by the Defendant resulted in an injury or harm to the Plaintiff within the forum state. For the purposes of a passing off or an infringement action (where the plaintiff is not located within the jurisdiction of the court), the injurious effect on the Plaintiff's business, goodwill or reputation within the forum state as a result of the Defendant's website being accessed in the forum state would have to be shown. Naturally therefore, this would require the presence of the Plaintiff in the forum state and not merely the possibility of such presence in the future. **Secondly, to show that an injurious effect has been felt by the Plaintiff it would have to be shown that viewers in the forum state were specifically targeted.** Therefore the ‘effects’ test would have to be applied in conjunction with the “sliding scale” test to determine if the forum court has jurisdiction to try a suit concerning internet based disputes.

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45. This court holds that in order to prima facie establish that the Defendant purposefully availed of the jurisdiction of this court, **the Plaintiff would**



have to show that the Defendant engaged in some commercial activity in the forum State by targeting its website specifically at customers within that State. This is consistent with the law laid down in *Cybersell* and reiterated later in *Toys R Us*. It is also consistent with the application of the ‘tighter’ version of the ‘effects’ test which is ‘targeting’. In any action for passing off or infringement, it would have to be shown that the Defendant by using its mark intended to pass off its goods as that of the Plaintiff's. A mere hosting of a website which can be accessible from anyone from within the jurisdiction of the court is not sufficient for this purpose. Also a mere posting of an advertisement by the Defendant depicting its mark on a passive website which does not enable the Defendant to enter into any commercial transaction with the viewer in the forum state cannot satisfy the requirement of giving rise to a cause of action in the forum state. Even an interactive website, which is not shown to be specifically targeted at viewers in the forum state for commercial transactions, will not result in the court of the forum state having jurisdiction. In sum, for the purposes of Section 20(c) CPC, in order to show that some part of the cause of action has arisen in the forum state by the use of the internet by the Defendant, the Plaintiff will have to show prima facie that the said website, whether euphemistically termed as “passive plus” or “interactive” was specifically targeted at viewers in the forum state for commercial transactions. The Plaintiff would have to plead this and produce material to prima facie show that some commercial transaction using the website was entered into by the Defendant with a user of its website within the forum state and that the specific targeting of the forum state by the Defendant resulted in an injury or harm to the Plaintiff within the forum state. Question no. (ii) is answered accordingly.”

[Emphasis supplied]

41. The conclusions of the Division Bench relevant for the purposes of the present case are set out below:

- i. Mere accessibility of the defendant’s website in Delhi would not enable this Court to exercise jurisdiction.
- ii. A passive website, not specifically targeting audience in the forum state would not vest the Court with jurisdiction.



iii. The jurisdiction would not get attracted merely on the basis of interactivity of the website which is accessible in the forum state. It would have to be shown that the website is specifically targeting viewers in the forum state for commercial transactions.

iv. For the purposes of passing off or an infringement action, the plaintiff would have to show that the defendant had an intention to conclude a commercial transaction with the user of the website.

v. The plaintiff must necessarily plead and show *prima facie* that the specific targeting of the forum state by the defendant resulted in injury or harm to the plaintiff within the forum state.

42. In the present case, no averments have been made in the plaint, nor have any documents been filed along with the plaint fulfilling the aforesaid criteria laid down by the Division Bench. It is not the case of plaintiff that the defendant has a website for selling its own products. The listings on the e-commerce websites like, 'India Mart' and 'Kalgudi' have been put by the third-party sellers and not by the defendant. Therefore, even if the defendant's products are shown available on India Mart and Kalgudi, the defendant cannot be held responsible for the same.

43. Even though the plaintiff has pleaded that India Mart is a dynamic website that permits communication and placement of orders, there is neither any pleading nor any document produced to show that there has been any communication with the defendant or any order placed for the defendant's products in Delhi.

44. Nor has it been pleaded that the defendant in the present case has purposefully engaged in commercial activity in Delhi by targeting customers



here or had any intention to do so. The plaintiff has failed to show that any commercial transaction took place in Delhi resulting in injury or harm to the plaintiff within the forum state.

45. It is pertinent to note that no pleadings have been made in the present case to show that the dynamic effect of the sales of the defendant were felt by the plaintiff in Delhi.

46. In similar facts and circumstances, a Single Judge in **Indovax v. Merck Animal Health**, 2017 SCC OnLine Del 9393, relying upon **Banyan Tree Holding** (Supra), rejected the plaint under Order VII Rule 11 of the CPC on the ground of territorial jurisdiction. The observation of the Court was that, *“the plaintiff only states that the goods of the defendants are available for sale in Delhi but this averment is not supported by any documentary evidence”*.

47. The plaintiff has relied upon the judgment of this Court in **Marico Limited** (Supra) and **Shakti Fashion** (Supra), in support of its contention that availability of infringing products on India Mart website is sufficient to invoke jurisdiction of the Court.

48. The plaintiff relies upon the observation made in **Marico Limited** (Supra) in paragraphs 66 and 67 of the judgment, which are set out below:

“66. This Court finds that the plaintiff has positively asserted in its plaint that the defendants are selling their products within the jurisdiction of this Court through the departmental store ‘Big Bazar’. The plaintiff has also placed on record a printout of the defendants’ website, which specifically states that the defendants’ products are available on various e-commerce websites including ‘Big Bazar’. It is an admitted position that ‘Big Bazar’ has outlets in Delhi. The Supreme Court in Saleem Bhai v. State of Maharashtra, (2003) 1 SCC 557 : AIR 2003 SC 759 and Kamala v. K.T. Eshwara SA, ((2008) 12



SCC 661 has held that averments in the plaint have to be believed at this stage.

67. The plaintiff has further asserted in its plaint that the defendants are indulging in online sale of the impugned product in Delhi through another website 'Indiamart'. Printouts of the 'Indiamart' website showing the defendants products range have been filed. A perusal of the 'Indiamart' website prima facie shows that it is an interactive website inasmuch as it permits the viewers to ask for price and specifically states "before dispatching the product, they are firmly tested and checked by the team of quality controllers". Accordingly, in the present case the "purposeful availment" as well as "sliding scale" and "effects" tests as stipulated in *Banyan Tree Holding (P) Limited v. A. Murali Krishna Reddy*, (2010) 42 PTC 361 (Del) are satisfied."

[Emphasis supplied]

49. In **Marico Limited** (Supra), the Court was adjudicating an application for grant of interim injunction wherein *prima facie* view was taken that the territorial jurisdiction is vested in this Court. Further, paragraph 66, as extracted above, states that the defendants' website showed that its products were being sold in a departmental store within the jurisdiction of this Court. Clearly, the said judgment would not apply in the facts and circumstances of the present case.

50. In **Shakti Fashion** (Supra), the plaintiff relies upon paragraphs 13, 16 and 18 of the judgment which is set out below:

"13. The Court notes that the Defendants challenge the said listing on the ground that the said listing has not been provided by them and that the IndiaMart website has automatically uploaded the said listing. This would be a question of fact which would require trial and evidence to be led. The ld. Counsel for the Petitioners does not dispute that the said listing does not belong to the said Defendant. Even if the Defendants' plea is accepted, the



question as to how a name identical to the Defendant's, with the same address of Bommanahalli, Bengaluru appears on the IndiaMart website would also be a question of evidence. The Court cannot give an opinion at this stage.

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XXXX

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16. The Defendants' business having been advertised in Delhi enables the jurisdiction of this Court to be invoked, as was clarified in Burger King Corporation v. Techchand Shewakramani, 2018...

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18. In the present case, the said principle would be applicable inasmuch as the IndiaMart listing and the clandestine sales as also the advertising of the products and business of the Defendants in Delhi would require evidence. Therefore, it cannot be held that the impugned order is incorrect at this stage. Accordingly, the present revision petition is dismissed."

[Emphasis supplied]

51. As noted in paragraphs set out above, the India Mart listing had the same address as that of the defendant and therefore, the Court was of the view, the listing was at the behest of the defendant which is not the case in the present matter.

52. In my considered view, the judgments in **Marico Limited** (Supra) and **Shakti Fashion** (Supra) do not hold that the jurisdiction can be made out only on the basis of listing of the impugned products on e-commerce portal of India Mart and the like. The jurisdiction has to be made out in each case on the basis of facts and circumstances obtaining in the said case.

53. It is the settled position of law that a plaintiff cannot, by clever drafting, vest jurisdiction in a Court, if it otherwise does not have the same. Reference in this regard may be made to the judgment of the Supreme Court in **T.**



Arvindandam v. T.V. Satyapal, (1977) 4 SCC 467, the relevant paragraph 5 of which is set out below:

“5. ...if on a meaningful – not formal – reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order VII Rule 11, C.P.C. taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order X, C.P.C. An activist Judge is the answer to irresponsible law suits. The trial Courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, and must be triggered against them...”

[Emphasis supplied]

54. In the present case, through clever drafting, the plaintiff has tried to bring in the element of the Marketing Agreement in the paragraph dealing with jurisdiction, even though the cause of action for filing the present suit is totally based on an action of infringement and passing off. Once again, by way of clever drafting the plaintiff has tried to create jurisdiction on the basis of the listing of the defendant’s product on India Mart and like portals by stating - *“impugned goods of the defendants are available on various e-commerce platforms like India Mart etc., which are available for access within New Delhi”*

55. In view of the discussion above, on a meaningful reading of the plaint and the documents filed with the plaint, in my view, the plaintiff has failed to show that any part of cause of action has arisen within the territorial jurisdiction of this Court.

**ISSUE NO.3**

IF THERE IS NO CAUSE OF ACTION ARISING IN THE PRESENT CASE WITHIN TERRITORIAL JURISDICTION OF THIS COURT, CAN JURISDICTION BE MADE OUT ON THE BASIS OF PLAINTIFF HAVING ITS HEAD OFFICE IN DELHI, EVEN THOUGH IT HAS A SUBORDINATE OFFICE AT THE PLACE WHERE CAUSE OF ACTION HAS ARISEN?

56. The plaintiff has filed the present suit stating that its registered office is in Delhi and that is enough to vest jurisdiction in this court. *Per contra*, it has been contended on behalf of the defendant that since plaintiff has subordinate offices at places where cause of action has arisen, jurisdiction cannot be claimed on the basis of the location of plaintiff's head office, where no cause of action has arisen.

57. It has correctly been pointed out on behalf of the defendant that plaintiff has failed to disclose in the plaint that plaintiff also has subordinate offices elsewhere in India including a subordinate office in Telangana, where the defendant is based. Invoices filed with the plaint (*pages 159-185 of the plaintiff's documents filed along with the plaint and pages 18-28 of the additional documents filed by the plaintiff along with the plaint*) clearly suggest that the plaintiff has a branch office at Medchal, State of Telangana. This position is also not disputed by the plaintiff.

58. To appreciate the rival submissions, it may be useful to refer to the authorities cited at the bar.



59. On behalf of the defendant, reliance has been placed on the judgment of the Supreme Court in **Sanjay Dalia** (Supra). This case involved the interpretation of Section 62 of the Copyright Act, 1957 which is *para materia* with Section 134(2) of the Trade Marks Act, 1999. In the said case, Indian Performing Rights Society Ltd. ('IPRS'), which had its head office in Mumbai filed the suit against the defendant, which was running cinema halls in Maharashtra, where the infringement is alleged to have taken place. The Single Bench as well as Division Bench of this Court held that the suit was not maintainable in Delhi on account of territorial jurisdiction. In Supreme Court, it was argued on behalf of the appellant, IPRS, that a special right has been conferred under Section 62 of the Copyright Act and Section 134 of the Trade Marks Act with regard to jurisdiction and the principles of Section 20 of the CPC cannot be invoked to defeat such right.

60. The Supreme Court held that if a cause of action has arisen wholly or in part where the plaintiff has its principal office, the suit can be filed at such place. However, where cause of action arises wholly or in part at the location of the plaintiff's head office, the plaintiff cannot file a suit at a far-flung place on the basis that it also has a subordinate office at such a far-flung place even if no cause of action arises at such place. This is necessary so that the plaintiff cannot indulge in mischief of causing inconvenience to a defendant. Therefore, when a corporation has its principal place of business in a particular place and the cause of action has also arisen in that place, wholly or in part, the suit must be filed there and not in any other jurisdiction. In light of the aforesaid observation, the appeal was dismissed by the Supreme Court. Since both parties have placed reliance on **Sanjay Dalia** (Supra) and it is the



seminal judgement on issue of territorial jurisdiction in trademark/ copyright infringement suits, I deem it appropriate to set out the relevant observations of the Supreme Court in **Sanjay Dalia** (Supra) as noted in paragraphs 18, 19, 20, 21 and 22 below:

“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.”

[Emphasis supplied]

61. The next judgment relied by the defendant is the judgment of the Division Bench of this Court in **Ultra Home** (Supra). In the said case, the plaintiff instituted a trademark infringement suit before this Court against the defendants who were running a hotel in Jharkhand. The jurisdiction was claimed under Section 134(2) of the Trade Marks Act based on the registered office of the plaintiff situated at New Delhi.

62. Relying upon a judgment of the Supreme Court in **Sanjay Dalia** (Supra), the Division Bench has observed as under:

“14. 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 of action arose	Place where Plaintiff can additionally sue under section 134(2) and section 62(2)
1	A	—	C	A
2	A	B	A	A
3	A	B	B	B
4	A	B	C	A

15. 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.”

[Emphasis supplied]

63. The Special Leave Petition filed against **Ultra Home** (Supra) was dismissed by the Supreme Court *vide* order dated 8th April, 2016.

64. The defendant contends that the present case squarely falls under the third situation contemplated in paragraph 14 of **Ultra Home** (Supra) set out above i.e., plaintiff has a principal office at one place and the cause of action has arisen at a place where the plaintiff has a subordinate office. Therefore, in such a situation the plaintiff can only file a suit at a place where its subordinate office is located and cannot sue at the place of principal office.

65. Counsel for the plaintiff sought to distinguish the judgment in **Ultra Home** (Supra) on the ground that in the said case, it was an admitted position that no part of cause of action arose in Delhi which is not the case in the present matter. In the present case, it has specifically been pleaded in the plaint that part of the cause of action arose in Delhi.

66. The plaintiff has also relied upon the judgment of the Division Bench in **Provident Housing** (Supra) to contend that if the plaintiff's registered office is located in Delhi, a suit can be filed in relation to a registered trademark only in Delhi. The primary issue raised by the appellant/ defendant in **Provident Housing** (Supra) was that the main office of respondent/ plaintiff was in Gurgaon and the respondent did not carry out any activity with respect to real estate projects in Delhi, hence, the cause of action did not arise in Delhi. The contention of the appellant was rejected by the Division Bench on the ground that the registered office of the respondent was located in National



Capital Territory of Delhi. The issue of cause of action was not the subject matter of discussion before the Division Bench. Therefore, this judgment is distinguishable on facts. Though the Division Bench in **Provident Housing** (Supra) makes a reference to **Ultra Home** (Supra), it is not discernible from the judgment as to which of the multiple scenarios that were discussed in the **Ultra Home** (Supra) were applicable in the said case.

67. Similarly, the judgment of **CP Century Hardware** (Supra) relied upon by the plaintiff, would not be applicable in the present case as in the said case, it is noted that the paragraph in the plaint dealing with the territorial jurisdiction clearly stated that the defendant was making clandestine sales of the impugned products in Delhi.

67.1. There is no such pleading in the present case.

68. **Ultra Home** (Supra) has also been followed by the Division Benches of this Court in **HSIL v. Marvel Ceramic**, 2017 SCC OnLine Del 11571 and **Radico Khaitan v. Nakshatra Distilleries & Breweries.**, 2023 SCC OnLine Del 1224.

69. In **Radico Khaitan** (Supra), the respondents/ defendants raised an issue of lack of territorial jurisdiction since the defendants were selling alcoholic beverages in the State of Maharashtra and also had their registered offices at Mumbai and Pune. On the other hand, the appellant/ plaintiff had its corporate office in Delhi and the subordinate office was in Mumbai. The plaintiff had pleaded that the dynamic effect of the sales of the defendants in Maharashtra can be felt in Delhi. Relying upon the judgment in **Ultra Home** (Supra), the Division Bench of this Court in **Radico Khaitan** (Supra), held that use of words such as “dynamic effect” cannot be permitted to create territorial



jurisdiction, if none exists otherwise. The relevant paragraph 19 is set out below:

“19. As per the appellants the dynamic effect of the approval of labels by the Excise department was felt in Delhi and as such the courts at Delhi would have jurisdiction. If the dynamic effect of an approval of excise labels by the Excise Department at Mumbai is felt at Delhi then its dynamic effect would also be felt at Mumbai, where admittedly the appellants have their branch office. If a part of cause of action has arisen in Mumbai, then applying the ratio of the judgment in Ultra Home Construction Pvt. Ltd. (Supra), the jurisdiction would only lie with the courts at Mumbai and the appellants/plaintiff would be precluded from suing in Delhi.”

[Emphasis supplied]

70. In the present case, even though the head office of the plaintiff is located in Delhi, no part of the cause of action has arisen in Delhi. The cause of action appears to have arisen at place(s) where the plaintiff has its subordinate office(s). Hence, applying the principles of **Sanjay Dalia** (Supra) and **Ultra Home** (Supra) in the present case, the plaintiff cannot maintain this suit in Delhi.

CONCLUSION

71. In view of the discussion above, in my considered view, a reading of the plaint and the documents filed with the plaint does not disclose any part of cause of action arising within the territorial jurisdiction of this Court. The plaintiff cannot claim jurisdiction only on the basis of the location of its head office in Delhi, when it has subordinate office(s) at place(s) where the cause of action has arisen.



72. Accordingly, the application is allowed and the plaint along with pending applications are ordered to be returned under provisions of Order VII Rule 10 of CPC to be presented in a Court having jurisdiction.

AMIT BANSAL, J

FEBRUARY 24, 2025
at/ds