



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Decided on: 31st May, 2023

+ **CS(COMM) 111/2017**

IMPRESARIO ENTERTAINMENT & HOSPITALITY PVT. LTD.

..... Plaintiff

Represented by: Mr. Sai Krishna, Ms. Shikha
Sachdeva, Ms. Mugdha & Ms. Nikita,
Advs.

versus

S & D HOSPITALITY

..... Defendant

Represented by: Mr. Hemant Daswani, Mr. Anmol
Saxena, Ms.Saumya Bajpai and
Ms.Camellia Nandi, Advs.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

REVIEW PET. 129/2018

1. By the present review petition the petitioner seeks review of the judgment dated 3rd January, 2018 passed by this Court whereby the application filed by the respondent being IA No. 3139/2017 under Order VII Rule 10 was allowed and the plaint was directed to be returned to be filed before the Court of competent jurisdiction.

2. Challenging the judgment dated 3rd January, 2018 the petitioner had preferred an appeal being FAO(OS) (COMM) 7/2018 which was withdrawn with liberty to file a petition seeking review of the order dated 3rd January, 2018, as according to the plaintiff, Section 134(2) of the Trade Marks Act (in short T.M. Act) was not considered in the judgment under review.



3. According to learned counsel for the plaintiff/ review petitioner the plaintiff's principal place of business is in Delhi as pleaded in para 64 of the plaint at page 85. It is claimed that the registered office and the principal place of business of a company need not necessarily be the same and it would require evidence to determine which is the principal place of business of a company and cannot be decided at the preliminary stage and hence under Section 134 (2) of the Trade Marks Act this Court will have territorial jurisdiction to try and entertain the suit. Further, even if it is considered that the defendant is at Hyderabad, plaintiff does not have an office or a branch office at Hyderabad. It is submitted that it is not the case of the defendant that the suit should be filed at Hyderabad. Relying upon the decision reported as (2015) 10 SCC 161 Indian Performing Rights Society Ltd. Vs. Sanjay Dalia & Anr. if the plaintiff has no presence in territory where the offending activity is carried on, remedy of territorial jurisdiction under Section 134(2) of the T.M. Act can be availed of. Reliance is also placed on the decision of the Division Bench of this Court in FAO(OS) (COMM) 35/2016 HSIL Vs. Oracle Ceramic & Ors. It is submitted that the plaintiff is carrying on business in Delhi through its office in Hauz Khas village where it has about 250 employees. Further, the plaintiff also carries on business in Delhi through its various 'Social' restaurants located in Delhi. Thus, the plaintiff will be deemed to be carrying on business in Delhi within the jurisdiction of this Court and hence this Court would have territorial jurisdiction to try and entertain the same. Reliance is placed on the decision of this Court in CS(COMM) 90/2017 EIH Ltd. & Anr. Vs. Sahana Reality Realty Pvt. Ltd. & Ors. and (2014) Indlaw DEL 2917 World Wrestling



Entertainment Inc. Vs. Reshma Collection & Ors. It is further claimed that an application under Order VII Rule 10 CPC is to be decided on the basis of averments in the plaint and a mini trial cannot be conducted at this stage. Reliance is placed on MANU/SC/0148/2004 Expfar SA and Anr. Vs. Eupharma Laboratories Ltd. & Anr., FAO(OS)49/2017 & CM 6951-54/2017 M/s. Allied Blenders & Distillers Pvt. Ltd. Vs. Prag Distillery Pvt. Ltd. & Anr., CS(OS) 2583/2015 Vikrant Chemico Industries Pvt. Ltd. Vs. Shri Gopal Engineering and Chemical Works Pvt. Ltd. & Ors. and MANU/SC/0340/2019 Isha Distribution House Pvt. Ltd. Vs. Aditya Birla Nuvo Ltd. & Ors.

4. Case of the defendant before this Court in IA 3139/2017 was that this Court had no territorial jurisdiction to entertain the present suit as the defendant neither has its registered office within the jurisdiction of this Court nor carries on any business within the jurisdiction of this Court. Plaintiff's registered office is in Mumbai. Further, neither the cause of action has arisen in the territorial jurisdiction of this Court nor the defendant works for gain or profit within the territorial jurisdiction of this Court and hence the plaint is liable to be returned.

5. Section 134(2) of the Trade Marks Act reads as under:

“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.”

6. In Sanjay Dalia (supra) dealing with the interplay of Section 20 CPC and Section 62 of the Copyright Act/Section 134 of the Trade Marks Act, Hon’ble Supreme Court held:

“16. “Corporation” in the Explanation to Section 20 CPC would mean not only the statutory corporation but companies registered under the Companies Act, as held by this Court in Patel Roadways Ltd. v. Prasad Trading Co. and New Moga Transport Co. v. United India Insurance Co. Ltd. The domicile of the company is fixed by the situation of its principal place of business as held in Jones v. Scottish Accident Insurance Co. Ltd. In the case of companies registered under the Companies Act, the controlling power is, as a fact, generally exercised at the registered office, and that office is therefore not only for the purposes of the Act, but for other purposes, the principal place of business, as held in Watkins v. Scottish Imperial Insurance Co. A company may have subordinate or branch offices in fifty different jurisdictions and it may be sued in any one of such jurisdictions in respect of a cause of action arising there, has been held in Peoples’ Insurance Co. Ltd. v. Benoy Bhusan Bhowmik, Home Insurance Co. Ltd. v. Jagatjit Sugar Mills Co. Ltd. and Prag Oil Mills Depot v. Transport Corpn. of India.



17. *Accrual of cause of action is a sine qua non for a suit to be filed. Cause of action is a bundle of facts which is required to be proved to grant relief to the plaintiff. Cause of action not only refers to the infringement but also the material facts on which right is founded. Section 20 CPC recognises the territorial jurisdiction of the courts inter alia where the cause of action wholly or in part arises. It has to be decided in each case whether cause of action wholly or in part arises at a particular place, as held by this Court in Rajasthan High Court Advocates' Assn. v. Union of India . Thus, a plaintiff can also file a suit where the cause of action wholly or in part arises.*

18. *On a due and anxious consideration of the provisions contained in Section 20 of the Code of Civil Procedure, Section 62 of the Copyright Act and Section 134 of the Trade Marks Act, and the object with which the latter provisions have been enacted, it is clear that if a cause of action has arisen wholly or in part, where the Plaintiff is residing or having its principal office/carries on business or personally works for gain, the suit can be filed at such place/s. Plaintiff (s) can also institute a suit at a place where he is residing, carrying on business or personally works for gain de hors the fact that the cause of action has not arisen at a place where he/they are residing or any one of them is residing, carries on business or personally works for gain. However, this right to institute suit at such a place has to be read subject to certain restrictions, such as in case Plaintiff is residing or carrying on business at a particular place/having its head office and at such place cause of action has also arisen wholly or in part, Plaintiff cannot ignore such a place under the guise that he is carrying on business at other far flung places also. The very intendment of the insertion of provision in the Copyright Act and Trade Marks Act is the convenience of the Plaintiff. The rule of convenience of the parties has been given a statutory expression in Section 20 of the Code of Civil Procedure as well. The interpretation of provisions has to be such which prevents the mischief of causing inconvenience to 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 Code of Civil Procedure of going to a place where it was not having ordinary residence or principal place of business was sought to be removed by virtue of the aforesaid provisions of the Copyright Act and the Trade Marks Act. Where the Corporation is having ordinary residence/principal place of business and cause of action has also arisen at that place, it has to institute a suit at the said place and not at other places. The provisions of Section 62 of the Copyright Act and Section 134 of the Trade Marks Act never intended to operate in the field where the Plaintiff is having its principal place of business at a particular place and the cause of action has also arisen at that place so as to enable it to file a suit at a distant place where its subordinate office is situated though at such place no cause of action has arisen. Such interpretation would cause great harm and would be juxtaposed to the very legislative intendment of the provisions so enacted.*

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



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

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 Code of Civil Procedure or any other law for the time being in force', emphasise that the requirement of Section 20 of the Code of Civil Procedure 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.*

23. *The provisions of Section 62(2) of the Copyright Act and Section 134 of the Trade Marks Act are 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 of CPC.

24. If the interpretation suggested by the Appellant is accepted, several mischiefs may result, intention is that the Plaintiff should not go to far flung places than that of residence or where he carries on business or works for gain in order to deprive Defendant a remedy and harass him by dragging to distant place. It is settled proposition of law that the interpretation of the provisions has to be such which prevents mischief. The said principle was explained in Heydon's case. According to the mischief rule, four points are required to be taken into consideration. While interpreting a statute, the problem or mischief that the statute was designed to remedy should first be identified and then a construction that suppresses the problem and advances the remedy should be adopted. The Heydon's mischief rule has been referred to in Interpretation of Statutes by Justice G.P. Singh, 12th Edn., at pp. 124-125 thus:

(b) Rule in Heydon's case; purposive construction:mischief rule

When the material words are capable of bearing two or more constructions the most firmly established rule for construction of such words "of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law)" is the rule laid down in Heydon's case which has "now attained the status of a classic [Kanailal Sur v. Paramnidhi Sadhukhan]. The rule which is also known as 'purposive construction' or 'mischief rule' [Anderton v. Ryan], enables consideration of four matters in construing an Act: (i) What was the law before the making of the Act, (ii) What was the mischief or defect for which the law did not provide, (iii) What is the remedy that the Act has provided, and (iv) What is the reason of the remedy. The rule then directs that the courts must adopt that construction which "shall suppress the mischief and advance the remedy". The rule was explained in the Bengal Immunity



Co. v. State of Bihar by S.R. DAS, CJI as follows: (AIR p.674, para 22)

“22.It is a sound rule of construction of a statute firmly established in England as far back as 1584 when Hey don's case was decided that (ER p.638)

“...for the sure and true interpretation of all Statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered:

1st-What was the common law before the making of the Act?

2nd-What was the mischief and defect for which the common law did not provide?

3rd-What remedy the Parliament hath resolved and appointed to cure the disease of the commonwealth, and

4th-The true reason of the remedy;

and then the office of all the judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and pro private commodo, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, pro bono publico. [Bengal Immunity Company v. State of Bihar].

25. Considering the first aspect of aforesaid principle, the common law which was existing before the provisions of law were passed was Section 20 of the Code of Civil Procedure. It did not provide for the Plaintiff to institute a suit except in accordance with the provisions contained in Section 20. The defect in existing law was inconvenience/deterrence caused to the authors suffering from financial constraints on account of having to vindicate their intellectual property rights at a place far away from their residence or the place of their business. The said mischief or defect in the existing law which did not provide for the Plaintiff to sue at a place where he ordinarily resides or carries on business or personally works for gain, was sought to be removed. Hence, the remedy was provided incorporating the



provisions of Section 62 of the Copyright Act. The provisions enabled the Plaintiff or any of them to file a suit at the aforesaid places. But if they were residing or carrying on business or personally worked for gain already at such place, where cause of action has arisen, wholly or in part, the said provisions have not provided additional remedy to them to file a suit at a different place. The said provisions never intended to operate in that field. The operation of the provisions was limited and their objective was clearly to enable the Plaintiff to file a suit at the place where he is ordinarily residing or carrying on business etc., as enumerated above, not to go away from such places. The Legislature has never intended that the Plaintiff should not institute the suit where he ordinarily resides or at its Head Office or registered office or where he otherwise carries on business or personally works for gain where the cause of action too has arisen and should drag the Defendant to a subordinate office or other place of business which is at a far distant place under the guise of the fact that the Plaintiff /corporation is carrying on business through branch or otherwise at such other place also. If such an interpretation is permitted, as rightly submitted on behalf of the Respondents, the abuse of the provision will take place. Corporations and big conglomerates etc. might be having several subordinate offices throughout the country. Interpretation otherwise would permit them to institute infringement proceedings at a far flung place and at unconnected place as compared to a place where Plaintiff is carrying on their business, and at such place, cause of action too has arisen. In the instant cases, the principal place of business is, admittedly, in Mumbai and the cause of action has also arisen in Mumbai. Thus, the provisions of Section 62 of the Copyright Act and Section 134 of the Trade Marks Act cannot be interpreted in a manner so as to confer jurisdiction on the Delhi court in the aforesaid circumstances to entertain such suits. The Delhi court would have no territorial jurisdiction to entertain it.



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

7. It is thus evident that Section 134(2) provides an additional place of jurisdiction in addition to the jurisdictions vested in the Court in terms of Section 20 of the Cr.P.C. as held by the Hon’ble supreme Court in Sanjay



Dalia (supra). In the present case even as per the plaint three things are admitted that the defendant is running its restaurant at Hyderabad and thus the defendant works for gain at Hyderabad, secondly the registered office of the plaintiff/review petitioner which is a company is at Mumbai and thirdly, to claim that the cause of action arises in Delhi as pleaded in the plaint that because of the website *Zomato.com* and *DineOut*, the customers can book the defendant's restaurant at Delhi as well. It is, thus, claimed that the cause of action having arisen in Delhi and the plaintiff's office, even if assuming supporting office or branch office being in Delhi, this Court would have territorial jurisdiction to try the suit.

8. This Court in the judgment under review clearly noting the decision in *World Wrestling Entertainment Inc.(supra)* and the test laid down in (2010) 42 PTC 361 Del (DB) *Banyan Tree Holding (P) Ltd. Vs. A. Murali Krishna Reddy & Ors.* noted as under:

"58. We summarise our findings on the questions referred for our opinion as under:

Question (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")

Answer: 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, and in the absence of a long-arm statute, in order to satisfy the forum court that it has jurisdiction to entertain the suit, the plaintiff would have to show that the Defendant 'purposefully availed' itself of the jurisdiction of the forum court. For this it would have to be prima facie shown that the nature of the activity indulged in by



the Defendant by the use of the website was with an intention to conclude a commercial transaction with the website user 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 (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?

Answer: 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 resulting in an injury or harm to the plaintiff within the forum state.

Question (iii): Is it permissible for the plaintiff to establish such prima facie case through "trap orders" or "trap transactions"?

Answer: The commercial transaction entered into by the Defendant with an internet user located within the jurisdiction of the forum court cannot possibly be a solitary trap transaction since that would not be an instance of "purposeful" avilment by the Defendant. It would have to be a real commercial transaction that the Defendant has with someone not set up by the plaintiff itself. If the only evidence is in the form of a series of trap transactions, they have to be shown as having been obtained using fair means. The plaintiff seeking to establish jurisdiction on the basis of such trap transactions would have to aver unambiguously in the plaint, and also place



along with its supporting material, to prima facie show that the trap transactions relied upon satisfy the above test.”

9. This Court in Para 18 also noted paragraph 61 of the plaint dealing with the territorial jurisdiction and held that even if the defendant has been able to attract customers from other jurisdiction including by way of Zomato and Dine-Out, the services of defendant cannot be availed unless the customers go to Hyderabad. Thus, through Zomato and Dine-Out the customers will only be able to invite customers and reserve a table at the restaurant of the defendant at Hyderabad. The commercial transaction will take place only at Hyderabad once the defendant avails the services there. Merely booking at Delhi for availing the services of defendant at Hyderabad will not give rise to cause of action at Delhi resulting in jurisdiction to the plaintiff on the said ground as the plaintiff does not have its registered office at Delhi nor the cause of action has arisen in Delhi.














10. Para 61 of the plaint in the present suit reads as under:

“61. This Hon'ble Court has the territorial jurisdiction to entertain the present suit on account of the fact that a part of the cause of action has arisen in Delhi. In this regard, it is submitted that the Defendant advertises and promotes its services on www.Zomato.com, an interactive restaurant guide service through which reservations can be made from Delhi at the outlets of the Defendant and/or the Defendant can be contacted. This is done against a charge. Resultantly, through Zomato.com the Defendant is able to target customers in Delhi. In fact, from the reviews set out in paragraph 33 above, which are posted on Zomato.com it is apparent that the Defendant has successfully targeted parties in Delhi to its outlet, making them believe that the same is a part of the Plaintiffs 'SOCIAL' outlets. It is submitted that since the Plaintiff does not have a 'SOCIAL' outlet or a 'STONE WATER GRILL' in Hyderabad, a large part



of the Defendant's clientele would be customers who are aware of Plaintiff's outlets in particular the 'SOCIAL' outlets in other locations such as those in Delhi. Hence, it is to be presumed that through websites such as Zomato, Facebook and Dine Out, the Defendant is able to target customers inter alia in Delhi and invite them to visit the Defendant's outlet in Hyderabad and also reserve a table at the Defendant's outlets in Hyderabad from Delhi. It may not be out of place to mention that on Zomato, DineOut and Facebook, there are pictures of the Defendant's outlet, the infringing beverage and food products served in the restaurant and indeed the menu card bearing the SOCIAL and STONE WATER brand of the Plaintiff. Even the phone number of the Defendant is displayed on the Zomato and DineOut website with an invitation to users to book a table with the Defendants. Additionally, Zomato has a telephone number listed on its website which is indicative that it has a base in Delhi, within the jurisdiction of this Hon'ble Court. A screenshot of the Zomato display is reproduced below. A screenshot of the website DineOut has been reproduced in paragraphs 32 and 42 hereinabove.

For business enquiries, please call your nearest Zomato office:





 Australia +61 450 266 295	 Lebanon +961 1 567680 +961 1 567690	 Poland +48 500 504 763	 South Africa +27 10 4930880
 India +91 11 30806376	 Malaysia +6011 3921 3923 +6003 2785 0495	 Philippines +63 2904 8965	 Turkey +90 212 287 5335
 Czech Republic +420 725 027 343 +420 775 612 660	 Slovakia +421 911 794 888	 Portugal +351 211 519 969 +351 937 646 774	 UAE +971 4 351 9170 (Dubai) +971 4 352 3254 (Dubai) +971 26713728 (Abu Dhabi)
 Indonesia +62 8121 8582 738			

11. During the course of arguments learned counsel for the plaintiff/review petitioner also relies upon para 64 of the plaint to claim that in para



64 the plaintiff has clearly pleaded that it has principal office at Delhi. Para 64 of the plaint reads as under:

“64. Further, the Plaintiff carries on business in Delhi inter alia through its office at the address 12, Hauz Khas Village, New Delhi 110016 where the Plaintiff has a SOCIAL cafe and an office housing about two hundred and fifty personnel. The entire pan India franchise and licensing business and the nonfood supply chain management of the Plaintiff for all its outlets is carried out from this office of the Plaintiff. The principal officer of the Plaintiff who conducts the negotiations with respect to the franchise business and negotiates the licensing terms also resides in Delhi and works out of the above office. Additionally, the Plaintiff carries on business in Delhi through its wholly owned 'SOCIAL' branded outlets at the following addresses:

Name of the outlet	Address
	9-A & 12, Hauz Khas Village, New Delhi-110016
	28A, Defence Colony Market, New Delhi, Delhi 110024
	23, First Floor, Odeon Building, Radial Road 5, D Block, Connaught Place, New Delhi, Delhi 110001
	R-1, Upper Ground Floor, Epicuria Food Mall, Nehru Place Metro Station, St Nagar East Of Kailash Road, Nehru Place, New Delhi, Delhi 110019



Additionally, the Plaintiff also carries on business in Delhi through the operations of its other outlets being SMOKE HOUSE DELI and MOCHA, which are located at multiple locations in Delhi.”

12. As noted above, though in both para 61 and 64 of the plaint plaintiff claims to be carrying on business at Delhi, however there is no averment that the principal office of the plaintiff is at Delhi in the two paragraphs. As noted above, with regard to the cause of action it is stated that the defendant is able to attract customers for other jurisdiction including at Delhi through Zomato and Dine-out for its services at Hyderabad, but as noted above and in the order under review the defendant can only book reservations from anywhere in India, however the services cannot be availed unless the customer goes to Hyderabad and dines at the restaurant at Hyderabad.

13. Learned counsel for the plaintiff has also relied upon a decision of a Co-ordinate Bench of this Court dated 22nd February 2023 whereby the application filed by the defendant therein under Order VII Rule 10 CPC was declined by this Court. However, para 53 of the plaint in CS(COMM) 119/2022 based whereon, the Co-ordinate Bench dismissed the application of the defendant therein, reads as under:-

“53. This Hon'ble Court has the territorial jurisdiction to try and entertain the present proceedings by virtue of the fact that the Plaintiff carries on business in Delhi inter alia through its office at the address R-1, Upper Ground Floor, Epicuria Food Mall, Nehru Place Metro Station, New Delhi - 110019 where the Plaintiff has a SOCIAL restaurant/bar and an office housing about two hundred and fifty personnel. The Plaintiff's principal place of business is Delhi. The Plaintiff's Delhi office is the principal office through which the entire pan India franchise and licensing business and the nonfood supply chain



management of the Plaintiff for all its restaurants/bars is carried out. The principal officer of the Plaintiff who conducts the negotiations with respect to the franchise business and negotiates the licensing terms also resides in Delhi and works out of the above office.”

14. Even as per Rule 3 of the Trade Marks Rules, 2017, the “Principal place for business in India” means where a person carries on business in the goods or services concerned in a trademark and if it is at only one place, that place will be treated as principal place of business in India, however, if the business is carried on in India at more places than one, the place mentioned by the person as the principal place of business in India will be treated so. As noted above, the plaintiff/review petitioner in the present suit has no-where pleaded that Delhi is the principal place of business of the plaintiff/review petitioner in India. Rule 3 of the Trade Marks Rules, 2017 reads as under:

“3. Principal place of business in India.—“Principal place of business in India” means—

(i) *where a person carries on business in the goods or services concerned in a trademark —*

(a) if the business is carried on in India at only one place, that place;

(b) if the business is carried on in India at more places than one, the place mentioned by him as the principal place of business in India.

XXX

XXX

XXX.”

15. It is well settled that an application under Order VII Rule 10 & 11 CPC has to be decided by way of demurer based on the pleadings in the plaint. As noted above, there is a difference between the pleadings with



regard to the cause of action as pleaded in CS(COMM) 111/2017 and CS(COMM) 119/2022 in the sense it is specifically stated that the principal office of the plaintiff is situated at Delhi whereas in the present case, the plaintiff has not made any such averment.

16. Learned counsel for the plaintiff/review petitioner states that the plaintiff has filed a number of suits which have been entertained by this Court, however, in none of the orders relied, this Court has considered the issue of territorial jurisdiction. Further this issue at the stage of an application under VII Rule 10 CPC has to be considered by way of demurer based on the pleadings in the plaint.

17. Learned counsel for the plaintiff relies upon the decision in EIH Ltd. (supra), wherein the learned Single Judge of this Court, referring to its earlier decision reported as (2018) SCC OnLine Del 8260 Millennium & Copthorne International Limited Vs. Aryan Plaza Services Private Limited & Ors. held that making a booking/reservation from a place, even if the same does not subsequently materialize, is part of carrying on business, inasmuch as the hotel which has taken the booking, even if it has not received the payment being unable to turn back a customer if shows up in pursuance to such booking, would be deemed to have availed of the services of third party website to carry on business from the place of booking even if it is not hosting its own interactive website. This Court is not impressed by the reasoning given in Millennium & Copthorne International Limited (supra) and followed in EIL Ltd. (supra), for the reason, even if a booking through third website is to be treated as the defendant carrying on its business at that place, then, every place in India would have jurisdiction to try the suit, for



the reason, the defendant carries on the business. Section 20 of the CPC cannot be given such a wide interpretation.

18. The Division Bench of this Court in the decision reported as 2016 (227) DLT 320 DB Ultra Home Construction Pvt. Ltd. Vs. Purushottam Kumar Chaubey & Ors. applying the principles laid down by the Hon'ble Supreme Court in Sanjay Dalia (supra) gave three situations where the plaintiff can avail jurisdiction in terms of Section 134(2) of the Trade Marks Act besides Section 20 CPC; situation No.3 being, if the plaintiff has its principal office and not the registered office at the said place and the cause of action also arises in the said jurisdiction. It was held:

“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 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

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."*



19. As noted above, that in para 61 and 64 though plaintiff claims to be carrying on business in Delhi, however there is no averment that the principal place of business of the plaintiff/ review petitioner is at Delhi. Further, as noted above, no cause of action also arises at Delhi. Thus even in terms of Section 134(2) of the T.M.Act, this Court has no territorial jurisdiction to entertain the suit.

20. Consequently, the Review Petition is dismissed.

21. Copy of the judgment be uploaded on the website of this Court.

(MUKTA GUPTA)
JUDGE

MAY 31, 2023/‘ga’