

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30<sup>TH</sup> DAY OF JUNE 2023

BEFORE

THE HON'BLE MR. JUSTICE H. T. NARENDRA PRASAD

**MFA No.2638 OF 2023 (IPR)**

**BETWEEN**

- 1 . VARUN CHOPRA  
AN INDIAN, HINDU  
AGED ABOUT 40 YEARS  
S/O SRI CHANDER SHEEL CHOPRA  
OCC BUSINESS 28 MISSION COMPOUND  
SAHARANPUR-241001  
UTTAR PRADESH.
- 2 . JAGDAMAN KUMAR CHOPRA  
AN INDIAN, HINDU  
AGED ABOUT 88 YEARS  
S/O LATE SRI MOHAN LAL CHOPRA  
PROPRIETOR  
TRADING AS RAJA TRADER  
28 MISSION COMPOUND  
SAHARANPUT-241001  
UTTAR PRADESH.

...APPELLANTS

(BY SRI. ADITYA SONDHI, SENIOR COUNSEL FOR  
SMT.DEEPA.J. AND MR.PUNEET YADAV, ADVOCATES)

**AND**

- 1 . SHYAM SUNDER CHOPRA AND SONS  
HUF,  
TRADING AS SHYAM TRADERS  
REPRESENTED BY ITS KARTA  
SHYAM SUNDER CHOPRA  
AN INDIAN, HINDU  
AGED ABOUT 62 YEARS  
S/O SRI JAGDAMAN KUMAR CHOPRA  
2537, MISSION COMPOUND  
NEAR SAINT MARY SCHOOL  
SAHARANPUR-241001  
UTTAR PRADESH.
- 2 . SAMPAN CHOPRA  
AN INDIAN, HINDU  
AGED ABOUT 35 YEARS  
S/O SRI SHYAM SUNDER CHOPRA  
1426/233, VAISHALI VIHAR  
SAHARANPUR-247001  
UTTAR PRADESH.
- 3 . VAIBHAV CHOPRA  
AN INDIAN, HINDU  
AGED ABOUT 35 YEARS  
S/O SRI VINOD KUMAR CHOPRA  
PROPRIETOR TRADING AS  
S.M. INTERNATIONAL  
O-43, 1ST FLOOR, SOUTH CITY-1  
GURGAON-122001  
HARYANA.
- 4 . SAMVITEE FOODS PVT LTD  
AN INDIAN COMPANY INCORPORATED  
UNDER THE COMPANIES ACT 2013

CIN U 74900HR2016PTC058023  
 REPRESENTED BY ITS DIRECTOR  
 VAIBHAV CHOPRA  
 AN INDIAN, HINDU  
 AGED ABOUT 35 YEARS  
 S/O SRI VINOD KUMAR CHOPRA,  
 O-43, IST FLOOR  
 SOUTH CITY-1, GURGAON-122001  
 HARYANA.

5 . VAIBHAV CHOPRA  
 AN INDIAN, HINDU  
 AGED ABOUT 35 YEARS  
 S/O SRI VINOD KUMAR CHOPRA  
 28 MISSION COMPOUND  
 SAHARANPUR-241001  
 UTTAR PRADESH.

...RESPONDENTS

(BY SRI. VENKATESH R BHAGAT, ADVOCATE)

THIS MFA IS FILED UNDER ORDER 43 RULE 96  
 OF CPC, PRAYING TO SET ASIDE THE JUDGMENT AND  
 DECREE DATED 11.04.2023 IN OS.NO.6788/2022 ON  
 THE FILE OF THE XVIII ADDITIONAL CITY CIVIL  
 JUDGE, BENGALURU.

THIS MFA, HAVING BEEN HEARD AND RESERVED  
 FOR JUDGMENT ON 30.06.2023, COMING ON FOR  
 PRONOUNCEMENT THIS DAY, H.T.NARENDRA PRASAD J,  
 DELIVERED THE FOLLOWING:

**JUDGMENT**

1. This appeal is filed by the appellants-plaintiffs under Order 43 Rule 96 of CPC challenging the order dated 11.04.2023 passed by XVIII Addl. City Civil Judge, Bengaluru on I.A.No.4 in O.S.No.6788/2022 whereby the Trial Court has ordered for return of the plaint to the plaintiffs to present the same before the jurisdictional court.

2. For the sake of convenience, the parties are referred to as per their ranking before the Trial Court in the original suit.

3. The case of the plaintiffs is that M/s.Raja Traders was a partnership firm consisting of partners Sri.Mohan Lal Chopra and his only son Sri.Jagdaman Kumar Chopra. The said M/s.Raja Traders had adopted the trademark 'NATRAJ' in the year 1956. Upon the death of one of the partners i.e., Sri.Mohan

Lal Chopra in the year 1980, the partnership firm of M/s.Raja Traders was dissolved and the surviving partner, Sri.Jagdaman Kumar Chopra, who is plaintiff No.2, became the sole Proprietor of M/s.Raja Traders. The further case of the plaintiffs is that the defendants have also acknowledged the sole proprietorship of Mr.Jagdaman Kumar Chopra, plaintiff No.2. In the month of August 2022, the plaintiffs for the first time came to know that the defendants have filed an application for registration of trademarks, namely, 'SV NATRAJ' and 'SHRI NATRAJ JI' and also the defendants are using the said trademark and selling the products in the city of Bengaluru. Hence, the suit is filed before the Civil Court, Bengaluru.

4. On service of summons, the defendants have appeared through their counsel and filed written statement denying all the averments made in the plaint. It was contended that there was no release of

right in favour of plaintiff No.2 by other family members of the plaintiffs to continue as a sole proprietor of M/s.Raja Traders. The plaintiff No.2 without authority of law has claimed sole proprietorship of M/s.Raja Traders. They further contended that the plaintiff No.2 has illegally got the affidavit of defendants in his favour to get the trademark transferred in his name. It was contended that there is no cause of action that arises to file the suit. The Civil Court, Bengaluru has no territorial jurisdiction to entertain the suit. Neither the plaintiffs, nor the defendants are residing within the jurisdiction of the Civil Court, Bengaluru and none of the parties are carrying on business within the said jurisdiction. Hence, the suit filed by the plaintiffs is not maintainable. Hence, he sought for dismissal of the suit.

5. Along with the written statement, the defendants filed I.A.No.4 under Order 7 Rule 11(a) of CPC seeking for rejection of plaint as there is no cause of action to file the suit. It is contended that neither the plaintiffs nor the defendants are residing within the jurisdiction of the Civil Court, Bengaluru and none of them are carrying on business within the said jurisdiction. Hence, they sought for rejection of the plaint.

6. The plaintiffs have filed objections to I.A.No.4 and they contended that the suit is maintainable as per Section 20 of CPC. The defendants are selling the products in the City of Bengaluru. Hence, the cause of action arises within the jurisdiction of the Civil Court, Bengaluru. Hence, they sought for dismissal of I.A.No.4 filed by the defendants.

7. On the basis of the pleadings of the parties, the Trial Court framed the following issue:

*"Whether the plaintiff proves that this Court has territorial jurisdiction to try the suit?"*

8. After hearing the arguments of the parties and judgments relied upon by the parties, the Trial Court by order dated 11.04.2023 has allowed I.A.No.4 filed by the defendants and ordered for return of the plaint to the plaintiffs to present the same before the jurisdictional court, as this Court has no territorial jurisdiction to try the suit. Being aggrieved by the same, the plaintiffs have filed this appeal.

9. Mr.Aditya Sondhi, learned senior counsel appearing for Ms.Deepa.J and Mr.Puneet Yadav, learned counsel for the plaintiffs has contended that the Trial Court has erred in holding that Section 20 of CPC is not applicable for the cases filed for infringement and passing off of the trademark. He further contended that the plaint cannot be rejected



on the basis of the allegations made in the written statement or in the application filed by the defendants. The court has to read the entire plaint as a whole.

10. The learned senior counsel further contended that the plaintiffs have specifically pleaded in the plaint that the defendants are selling the product in the City of Bengaluru. Even in the written statement, the defendants have admitted the same. Therefore, it is clear that plaintiffs have made out a case for filing the suit within the territorial jurisdiction of Civil Court, Bengaluru. But the Trial Court has erred in rejecting the plaint at its threshold. In support of this contention, he has relied upon the decision of the Apex Court in the case of **Mayar (H.K.) Ltd. & Others -v- Owners & Parties, Vessel M.V. Fortune Express & Others** reported in **2006(3) SCC 100**.

11. The learned senior counsel further contended that the Trial Court has misconstrued the decision of this Court rendered in the case of **M/S. Unilever Australasia –v- M/S. Shingar Cosmetics Private Limited** reported in **(2010) 3 Kar.L.J. 381** and Division Bench decision of Delhi High Court in the case of **Ultra Home Constructions Private Limited –v- Purushotham Kumar Chaubey and others** reported in **2016 SCC Online Delhi 376**. In the said decisions, the respective courts have considered Section 134(2) of The Trade Marks Act, 1999 and Section 62 of the Copyrights Act. The Courts have never held that Section 20 of CPC is not applicable for the matters filed for infringement and passing off of the trade marks.

12. The learned senior counsel has further contended that infact, the Apex Court in the case of **Indian Performing Rights Society Limited –v-**

**Sanjay Dalia and another** reported in **(2015) 10 SCC 161** in paragraph-14 has held that Section 134(2) of the Trade marks Act does not oust the applicability of Section 20 of CPC.

13. Per contra, Mr.Venkatesh R Bhagat, learned counsel for the respondents-defendants has contended that a reading of the plaint, it clearly shows that there is no cause of action arising in Bengaluru to file a suit in Bengaluru. The plaintiffs having invoked the cause of action on the basis of Section 134(2) of Trade Marks Act. As per the settled law as laid down in the case of **Indian Performing Rights Society Limited** (supra) reported in **(2015) 10 SCC 161**, the Civil Court Bengaluru has no jurisdiction to try the suit. He further contended that neither the plaintiffs nor the defendants are residing within the jurisdiction of the Civil Court, Bengaluru and none of the parties are carrying on business within the local limits of the

Civil Court, Bengaluru. He further submitted that as per Section 134(2) of the Act, there is a clear bar to invoke Section 20 of the CPC. Therefore, the suit filed by the plaintiffs is not maintainable.

14. The learned counsel for respondents further contended that as per Section 134(2) of the Trade Marks Act, there is a non obstacle clause which excludes the applicability of Section 20 of the CPC, for the cases filed for infringement and passing off of the trademark. The plaintiffs cannot maintain the suit within local jurisdiction of Civil Court, Bengaluru. The Trial Court has relied upon the judgment of this Court in the case of **M/s.Unilever Australasia** (supra) reported in **(2010) 3 Kar.L.J. 381**, judgment of Apex Court in the case of **Indian Performing Rights Society Limited** (supra) reported in **(2015) 10 SCC 161** and judgment of Delhi High Court in the case of **Ultra Home Consturctions Private Limited** (supra)

reported in **2016 SCC Online Delhi 376** and has rightly allowed the application, i.e., I.A.No.4. Hence, he sought for dismissal of the appeal.

15. Heard Mr.Aditya Sondhi, learned senior counsel for the appellants and Mr.Venkatesh R Bhagat, learned counsel for the respondents.

16. After hearing the arguments of the respective learned counsel for the parties, the point that arises for consideration in this appeal is:

*"Whether the Trial Court is justified in holding that Section 20 of CPC is not applicable for the cases filed for infringement and passing off of trademark ?"*

17. For better understanding, it is relevant to extract Section 134 of the Trade Marks Act, 1999; Section 62 of the Copyrights Act and Section 20 of CPC:

18. Section 134 of the Trade Marks Act, 1999 is extracted hereunder and it reads as follows:

*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.*

18. Section 62 of the Copyrights Act is extracted hereunder and it reads as follows:

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

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

*(2) For the purpose of sub-section (1), a "district court having jurisdiction" shall,*

*notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, include a district court within the local limits of whose jurisdiction, at the time of the institution of the suit or other proceeding, the person instituting the suit or other proceeding or, where there are more than one such persons, any of them actually and voluntarily resides or carries on business or personally works for gain.*

19. Section 20 of CPC is extracted hereunder and it reads as follows:

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

*(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or*



*carries on business, or personally works for gain; or*

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

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

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

20. The Parliament has enacted the legislation called 'Trade Marks Act, 1999' with an object to amend and consolidated the law relating to trade marks, to

provide for registration and better protection of trade marks for goods and services and for the prevention of the use of fraudulent marks.

21. Section 134 of the Trade Marks Act was introduced under the umbrella of Section 20 of CPC, which provides almost similar right to the plaintiffs with respect to the jurisdiction of the forum, where the registered owner or registered user resides or carries on business. This provision is a departure from traditional principle, which requires the suit to be instituted at the defendant's place of residence or business or where the cause of action arises inside India. The main object of enacting Section 134(2) of the Act is to create an additional forum to the plaintiffs.

22. The objects and reasons prescribed under Section 134 of the Trade Marks Act, this clause

stipulates the forum for institution of infringement proceedings, etc., to be the District Court. It is proposed that the term "District Court having jurisdiction" would include a District Court within the local limits of whose jurisdiction, the person, or one of the persons, instituting the suit or other proceedings, actually or voluntarily resides or carries on business or personally works for gain. This amendment would bring the trade marks law in line with the provisions contained in the Copyright Act, 1957 as very often a trade mark is also registered as an artistic work under the Copyright Act.

23. By plain reading of Section 134 of Trade Marks Act and its objects and reasons, it is understood that for infringement of a registered Trade Mark or relating to any right in a registered trade mark, suit shall be instituted in District Court having jurisdiction to try the suit. 'District Court having jurisdiction' includes a

District Court within the local limits of whose jurisdiction at the time of institution of the suit or other proceeding, registered proprietor and the registered user resides or carries on business. If the suit is only for passing off, the suit shall be instituted before District Court having jurisdiction to try the suit.

24. From conjoint reading of provisions of Section 134(2) of the Trade Marks Act and Section 20 of CPC, it is clear that an additional forum has been provided, which includes a District Court within whose limits, the plaintiff actually and voluntarily resides or carries on business or personally works for gain. The object of the provisions was to enable the plaintiff to institute a suit at a place where he or they resided or carried on business.

25. The expression 'notwithstanding anything contained in the Code of Civil Procedure' does not oust

the applicability of the provisions of Section 20 of CPC. It is clear that additional remedy has been provided to the plaintiff so as to file a suit, where he resides or carries on business as the case may be.

26. The very intendment of insertion of the provisions of Section 62 of the Copyrights Act and Section 134 of the Trade Marks Act is to provide an additional forum to the plaintiff.

27. The Apex Court in the case of **Indian Performing Rights Society Limited** (supra) reported in **(2015) 10 SCC 161** has held that Section 134 of the Trade Marks Act provides for an additional forum to the plaintiff to file a suit, in addition to Section 20 of CPC. Paragraph 14 of the said decision is relevant and same is extracted below:

*"14. Considering the very language of section 62 of the Copyright Act and section 134 of the Trade Marks Act, an additional*

*forum has been provided by including a District Court within whose limits the plaintiff actually and voluntarily resides or carries on business or personally works for gain. The object of the provisions was to enable the plaintiff to institute a suit at a place where he or they resided or carried on business, not to enable them to drag defendant further away from such a place also as is being done in the instant cases. In our opinion, the expression "notwithstanding anything contained in the Code of Civil Procedure" does not oust the applicability of the provisions of section 20 of the Code of Civil Procedure and it is clear that additional remedy has been provided to the plaintiff so as to file a suit where he is residing or carrying on business etc., as the case may be. Section 20 of the Code of Civil Procedure enables a plaintiff to file a suit where the defendant resides or where cause of action arose. Section 20(a) and section 20(b) usually provides the venue where the defendant or any of them*

*resides, carries on business or personally works for gain. Section 20(c) of the Code of Civil Procedure enables a plaintiff to institute a suit where the cause of action wholly or in part, arises. The Explanation to Section 20 C.P.C. has been added to the effect that Corporation shall be deemed to carry on business at its sole or principal office in India or in respect of any cause of action arising at any place where it has subordinate office at such place. Thus, 'corporation' can be sued at a place having its sole or principal office and where cause of action wholly or in part, arises at a place where it has also a subordinate office at such place."*

28. From the discussions above, it is clear that Section 134(2) of the Trade Marks Act has not ousted the applicability of provisions of Section 20 of CPC. In fact, an additional forum has been provided to the plaintiff so as to file the suit, where he resides or carries on business etc. But the Trial Court has erred

in holding that as per Section 134(2) of the Trade Marks Act, Section 20 of CPC is not applicable for the cases filed for infringement and passing off of trade marks.

29. The Trial Court has misconstrued the decision of this Court in the case of **M/s.Unilever Australasia** (supra) reported in **(2010) 3 Kar.L.J. 381** and in the Division Bench decision of Delhi High Court in the case of **Ultra Home Constructions Private Limited** (supra) reported in **(2016 SCC Online Delhi 376)**. The said judgments primarily deals with and interprets with the manner in which Section 134 of the Trade Marks Act and Section 62 of the Copyrights Act can be invoked, but it does not dilute the principles of Section 20 of CPC, in any manner whatsoever.

30. Under the circumstances and in view of the above observations and discussions, the matter



requires to be remanded to the Trial Court for reconsidering I.A.No.4 filed under Order 7 Rule 11(a) of CPC afresh. The point raised by this Court is answered accordingly.

31. In the result, I pass the following order:

**ORDER**

- a) The appeal is **allowed**.
- b) The order dated 11.04.2023 passed by the XVIII Additional City Civil Judge, Bengaluru on I.A.No.4 in O.S.No.6788/2022, is set aside.
- c) The matter is remitted back to the trial court with a direction to reconsider I.A.No.4 filed under Order 7 Rule 11(a) of CPC in accordance with law, keeping in view the above observations made by this court.

d) The parties are directed to appear before the Trial Court on **07.07.2023** without awaiting for any notice from the Trial Court.

e) Interim order granted by this court earlier, is extended till 07.07.2023.

**Sd/-  
JUDGE**

DM