

# Shyam Lal Mulwani & Anr vs Abc Chashmewale Llp on 28 November, 2022

**Author: Sanjeev Narula**

**Bench: Sanjeev Narula**

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IN THE HIGH COURT OF DELHI AT NEW DELHI

CRP-IPD 3/2022

SHYAM LAL MULWANI & ANR.

Through: Mr. Deepak Dhyani and  
Puri, Advocates.

versus

ABC CHASHMEWALE LLP

Through: Mr. Anirudh Bakhru, Mr.  
Amitabh Suman, Ms. Tej  
Chandrashekhar and Mr.  
Tyagi, Advocates instr  
K. Bansal, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA  
ORDER

% 28.11.2022 CM APPL. 43887/2022 (u/S 151 of the Code of Civil Procedure, 1908 (CPC) seeking condonation of delay in re-filing of accompanied civil revision petition)

1. For grounds and reasons stated therein, the application is allowed. Delay of 92 days in re-filing accompanied petition is condoned.

2. Accordingly, the application stands disposed of.

CM APPL. 43886/2022 (u/S 151 of CPC seeking exemption from filing legible, clear and translated documents)

3. Exemption is granted, subject to all just exceptions.

4. Petitioners shall file legible and clearer copies of exempted documents, compliant with practice rules, before the next date of hearing.

5. Accordingly, the application stands disposed of.

6. The delay in 94 days in filing of present petition is condoned.

7. Petitioners - Mr. Shyam Lal Mulwani and Mr. Vivek Mulwani<sup>1</sup> are Defendants in a suit [CS (Comm.) 327/2020] for permanent injunction restraining infringement of trademark, passing off, rendition of accounts, delivery up etc. filed by Respondent - ABC Chashmewale LLP,<sup>2</sup> pending adjudication before the District Judge (Commercial Court) - 01, South District, Saket Courts, New Delhi [hereinafter, "Trial Court"]. They are aggrieved with rejection of application filed under Order 7, Rule 11 r/w Section 151 of the Code of Civil Procedure, 1908 ["CPC"] by the Trial Court vide order dated 21st March, 2022 [hereinafter, "impugned order"], relevant portion whereof reads as under:

"10. Thus, in view of categorical averments of the plaintiff in para 22 to 24 of the plaint and particularly in view of the dictum Hon'ble Division Bench of Hon'ble Delhi High Court in 'M/s. RSPL Limited Vs. Mukesh Sharma & Anr.' (2016) 68 PTC 178 (DB), I do not find any substance in the arguments of the defendants that this Court lacks territorial jurisdiction to entertain the present suit. Accordingly, the application U/o 7 Rule 11 CPC filed by the defendant is devoid of merits and the same is hereby dismissed with the costs of Rs. 10,000/- payable by the defendants to the plaintiff. The said application stands disposed off accordingly."

8. Counsel for Petitioners makes following submissions to assail the impugned order:

8.1. No cause of action arose in Delhi for the Trial Court to entertain the hereinafter, interchangeably "Petitioners/ Defendants".

hereinafter, interchangeably "Respondent/ Plaintiff".

suit.

8.2. The plaint is not accompanied with any shred of document that would demonstrate that Petitioners have been carrying out business in Delhi. In absence of documentary proof, mere statements in the plaint that Petitioners are working in Delhi, are only ipse dixit averments of Plaintiff to bring the suit within territorial jurisdiction of the Trial Court. 8.3. Petitioners do not have a registered or corporate office within the jurisdiction of the Trial Court.

8.4. The judgment relied upon by the Trial Court is not applicable to facts of the present case. In M/s RSPL Limited (Supra), the Plaintiff therein had its corporate office within jurisdiction of High Court of Delhi and this was a decisive factor for entertaining the suit. This is not the situation in the present case as Plaintiff is also based outside Delhi. 8.5. Respondent's allegations that Petitioners have been advertising and soliciting their services through websites such as JustDial.com is fallacious as JustDial is merely a portal for customers to obtain information about sellers; it is not an interactive website whereon goods or and services are sold. Unless it is shown that Defendants have made their goods available for consideration online, they cannot be subjected to jurisdiction of courts in Delhi. Reliance is placed upon Bulgari SPA v. Notandas Gems Pvt. Ltd.<sup>3</sup> 8.6. Plaintiff has not cited any trap orders executed in Delhi so as to bring the case within the jurisdiction of Trial Court.

8.7. Petitioners' have not used Respondent's mark or even filed an application for registration thereof and as such, its suit for trademark infringement is baseless. Thus, on a misconceived suit, the Trial Court has wrongly ordered seizure of Petitioners' goods.

9. Although Petitioners had invoked Order VII Rule 11 of CPC before the Trial Court for rejection of plaint, thrust of their arguments is lack of territorial jurisdiction, which, in the opinion of the Court, would attract Order VII Rule 10. Nonetheless, the premise for seeking rejection of the plaint, or to put it aptly, return of the plaint, is that no cause of action occurred within territorial jurisdiction of Courts in Delhi.

10. In order to demonstrate lack of territorial jurisdiction, mindful of the position in law relating to proposition advanced, counsel for Petitioners essentially argues that Petitioners do not conduct operations in Delhi and merely on the basis of Respondent's averments, and without any documentary proof, the Trial Court has wrongly assumed jurisdiction. On this aspect, position in law is well-settled. This Court, in M/s RSPL Limited (Supra), held that if material facts have been pleaded by Plaintiff to the effect that Defendant has been transacting in infringed goods or services within the court's jurisdiction, the suit can be entertained on that basis, however, veracity of such statements would have to be proved by Plaintiff during the course of trial. In that light, the cause of action pleaded in the plaint reads as under:

"22. That in the month of April 2017, plaintiff for the first time came to know that the defendants have changed its Trade Name ABC CORNER to ABC CORNER CHASHMEWALE and also started using ABC CORNER CHASHMEWALE as its trademark in relation to impugned goods and business. Plaintiff vehemently objected this. Partners of Plaintiff and Defendants being members of same family, CS (COMM.) 658/2021.

plaintiff tried to avoid litigation however despite repeated objections defendants not relented. Plaintiff then in or around last week of April, 2020 noticed that the defendant no.1 has filed Cancellation Petition against Plaintiff's registered trademark ABC CHASHMEWALE registered under nos. 1613654, 3090490, 3090491, 3090492, 3090493 and 3090495 and opposition to the application for registration of trademark ABC CORNER bearing no. 3090496 on 25.01.2020 and has started promoting its business by the name ABC CORNER CHASHMEWALE by distributing leaf-lets and advertng materials. It is stated that the defendant filed the said Cancellation Petitions despite having knowledge of plaintiff right over the trademark ABC CHASHMEWALE since 1990 and grant of registration on 20.06.2014. The said Cancellation Petitions were filed to pre-empt the Plaintiff from taking legal action against illegal and violative use of impugned trademark and trade name ABC CORNER CHASHMEWALE which the defendants adopted and started using to cash in on the vast goodwill of the Plaintiff under the trademark and trade name ABC CHASHMEWALE. Plaintiff tiled detailed Counter- Statement in the said Cancellation Petitions and notice of opposition on 06.06.2020. Plaintiff's enquiry in the market and trade revealed that the defendants have recently in the month of October 2020,

started selling and supplying their impugned goods in the markets South Delhi in clandestine and surreptitious manner and have started soliciting/networking with various dealers/shopkeepers/retailers of spectacles/optical in the market of South Delhi viz. Saket, Mehrauli, Malviya Nagar, HauzKhas etc. and adjoining areas etc. for sell and distribution of their goods under the impugned trademark and trade name. Defendant is also conducting impugned activities through website like just dial.com which is accessed by the consumer is South Delhi.

23. That the cause of action for filing the present suit has been detailed in the preceding paras. Cause of action for the first time arose in the month of April 2017 when plaintiff for the first time came to know that the defendants have changed its Trade Name ABC CORNER to ABC CORNER CHASHMEWALE and also started using ABC CORNER CHASHMEWALE as its trademark in relation to impugned goods and business. Cause of action further arose on each time when Plaintiff objected the use of impugned trademark and trade name by the defendant though avoided litigations being the members of same family. Cause of action further arose when despite repeated objections defendants not relented and Plaintiff in or around last week of April, 2020 noticed that the defendant no.1 has tiled Cancellation Petition against Plaintiff's registered trademark ABC CHASHMEWALE and opposition to the application for registration of trademark ABC CORNER on 25.01.2020 as mentioned and they started promoting its business by the name ABC CORNER CHASHMEWALE by distributing leaf-lets and advertizing materials. Cause of action further arose when Plaintiff filed Counter-Statement in the said Cancellation Petitions and notice of opposition on 06.06.2020. Cause of action further arose when Plaintiff's enquiry in the market and trade revealed that the defendants have recently in the month of October, 2020 started selling and supplying their impugned goods in the markets South Delhi in clandestine and surreptitious manner and are soliciting/networking with various dealers/shopkeepers/retailers of spectacles/optical in the market of South Delhi viz. Saket, Mehrauli, Malviya Nagar, Hauz Khas etc. and adjoining areas etc. for sell and distribution of their goods under the impugned trademark and trade name. Cause of action in the present case is accruing day-to-day and shall continue to so accrue till the defendants cease with their impugned adoption and soliciting/networking impugned business under the impugned trademark and trade name and intended use of impugned trademark and trade name.

24. That this Hon'ble Court has the jurisdiction to entertain and try the instant suit. The defendants are selling and soliciting impugned goods and business under the impugned trademark and trade name in the markets of South Delhi. Defendants have every intention to sell/provide their impugned goods under the impugned trademark/ trade name in the markets of South Delhi viz. Saket, Mehrauli, Malviya Nagar, Hauz Khas etc. The defendant are committing the impugned acts of infringement and passing-off in the markets of South Delhi area viz. Saket, Mehrauli, Malviya Nagar, Hauz Khas and adjoining areas etc. within the jurisdiction of this

Hon'ble Court by selling, soliciting marketing networks in relation to the impugned goods under the impugned trademark and trade name. Defendant is conducting impugned activity through website like justdial.com which is accessed in South Delhi. Defendants' impugned activities are likely to have a dynamic effect on the Plaintiffs business, both current and forthcoming, within the jurisdiction of this Hon'ble Court as the plaintiff has tremendous goodwill and reputation its said trademark and trade name which are also made available within the jurisdiction of this Hon'ble Court which is being tarnished or likely to be so tarnished within the jurisdiction of this Hon'ble Court by the defendants' impugned activities. Hence a part of cause of action has arisen within the Jurisdiction of this Hon'ble Court."

[Emphasis Supplied]

11. The above-noted averments qua territorial jurisdiction make a positive statement that cause of action arose within the jurisdiction of the Court. Therefore, since material facts have been pleaded, at this juncture, the question of jurisdiction has to be decided on a demurrer by taking the statements made in the plaint to be true and absence of any documentary proof in support thereof, cannot be a ground to reject the plaint. These assertions have been vehemently controverted by Petitioner and therefore, Respondent would have to prove the same before Trial Court. Similar view has been adopted by the Supreme Court in *Exphar SA and Anr. v. Eupharma Laboratories Ltd. And Anr.*<sup>4</sup> and this Court in *Dassault Systemes S.E. and Anr. v. Automobile Corporation of Goa Limited and (2004) 3 SCC 688.*

Ors.<sup>5</sup> and *Allied Blenders & Distillers Pvt. Ltd. Vs. Prag Distillery Pvt. Ltd.*<sup>6</sup>

12. Further, since Petitioners' objections are based solely on the question of jurisdiction under Section 20 of CPC, their contentions qua Section 134 of Trademark Act, 1999 and the effect thereof, are not required to be examined by this Court. Thus, no infirmity is found in the view taken by Trial Court.

13. Accordingly, the present petition is dismissed.

SANJEEV NARULA, J NOVEMBER 28, 2022 d.negi (Corrected and released on 07th December, 2022) Neutral Citation No.-2022/DHC/004229 2017 III AD (Deihl) 633 (DB).