

Wipro Limited vs Oushadha Chandrika Ayurvedic India (P) ... on 29 February, 2008

Equivalent citations: AIR 2008 MADRAS 165, 2008 (5) ALL LJ NOC 1003, 2008 A I H C (NOC) 630 (MAD), (2009) 1 CURCC 140, (2008) 37 PTC 269, (2008) 3 MAD LJ 1, (2008) 2 MAD LW 430, (2008) 4 RECCIVR 669, (2008) 3 CTC 724 (MAD)

Bench: A.P. Shah, F.M.Ibrahim Kalifulla

In the High Court of Judicature at Madras

Dated : 29..02..2008

C O R A M

The Honourable Mr. A.P. Shah, Chief Justice
and
The Honourable Mr. Justice F.M.Ibrahim Kalifulla

O.S.A. Nos.64 to 67 of 2008

1. Wipro Limited,
SP-26, Thiru Vi Ka Industrial Estate,
Guindy, Chennai-32, rep. by its
Legal Manager Vishal Mittal.

2. Wipro Chandrika Limited,
Doddakannelli,
Sarjapur Road, Bangalore-560 035,
Rep. by its Authorised Signatory
Vishal Mittal

.. Appellants

versus

1. Oushadha Chandrika Ayurvedic India (P) Limited,
Rep. by its Managing Director K.S. Kochumon,
Azad Road, Irinjalakuda-680 125, Kerala.

2. Oushadha Chandrika Research Centre,
Azad Road, Irinjalakuda-680 125, Kerala.

3. Narayana Stores,
Jaihind Market Building,

}
}

'C' Block, Room No.19,	}	.. Respondents in
Market Road, Thrissur-680 001.	}	OSAs.64 & 67/2008

Prayer : Appeals filed on the Original Side of this Court against the judgment and decre

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For Appellants : Mr. R. Muthukumarasamy,
Senior Counsel for Ms. Gladys Daniel

For Respondents : Mr. Madan Babu for M/s. Sathish Parasaran

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J U D G M E N T

(Delivered by The Honourable Chief Justice) Appeals admitted.

2. By consent of the learned counsel appearing for the parties, the appeals were finally heard and are being disposed of by this judgment. The issue in these appeals is whether the High Court of Madras has the jurisdiction to entertain the suits filed by the appellants being C.S. No.874 of 2007 and C.S. No.996 of 2007 under Section 134 of the Trade Marks Act, 1999 and Section 62(2) of the Copyright Act, 1957 respectively. We will refer to the appellants as plaintiffs and the respondents as defendants, for the sake of convenience. The learned single Judge rejected the suits on the ground that no part of cause of action had arisen within the jurisdiction of this Court and that the defendants are residing outside the jurisdiction of this Court and that prior leave to sue under Clause 12 of the Letters Patent was also not obtained. Being aggrieved, the appellants preferred these appeals which fell for consideration before us.

3. C.S. No.874 of 2007 is filed by the plaintiffs for a permanent injunction restraining the defendants from infringing their registered trade mark "Chandrika" and from manufacturing, selling, advertising and offering for sale, soaps or toilet preparation with prefix or suffix with the expression "Chandrika". In C.S. No.996 of 2007, the plaintiffs seek a permanent injunction restraining the defendants from infringing their copyright "Chandrika" and the colour scheme and get-up and restraining them from reproducing by selling, advertising or offering for sale, soaps by using the impugned copyright "Chandrika".

4. The first plaintiff Wipro is a Fast Moving Consumer Goods (FMCG) Company and is said to be carrying on business for nearly sixty years. The second plaintiff Wipro Chandrika Limited is a subsidiary of the first plaintiff by virtue of the first plaintiff having 90% shareholding. The case of the plaintiffs is that in the year 2004, the second plaintiff acquired the trade mark "Chandrika" along with its goodwill, rights, interest and property under separate assignment deeds from M/s. S.V.Products and M/s. Lal Products and M/s. Chandrika Products and by virtue of the said assignments, the second plaintiff is the exclusive owner of the registered trade mark "Chandrika". According to the plaintiffs, the trade mark "Chandrika" was conceived by one Kesavan Vaidiyar, who was trading under the trade name M/s. S.V. Products and he later obtained registration of the trade mark "Chandrika" in Registration No.177588 in Class-3 in respect of medicated and toilet soaps in the year 1956. In the year 1965, Kesavan Vaidiyar gave the concurrent rights to C.K. Manilal Trading as M/s. Lal Products and C.V. Revi Trading as M/s. Chandrika Products, both his immediate family

members, to use trade mark "Chandrika" for soaps, in different geographical locations. Kesavan Vadiyar himself was trading as M/s. S.V. Products using the trade mark "Chandrika" during this period. According to the plaintiffs, after the second plaintiff got the deed of assignment, the second plaintiff has executed License User Agreement in favour of the first plaintiff granting license to use the trade mark "Chandrika" and its copyright.

5. It is the case of the plaintiffs that they have spent huge amount in promoting their business and the annual sales figure of the plaintiff goods bearing trade mark "Chandrika" run into several crores of rupees every year. In and around August 2007, the plaintiffs learnt that the defendants are manufacturing and selling goods under the trade mark "Chandrika" with prefix "Oushadha". The defendants have used Oushadha Chandrika logo on their cartons in the exact manner in which it had been registered in the year 1956 and the subsequent registrations held by the plaintiffs. The plaintiffs allege that apart from adopting the trade mark "Chandrika", the defendants have adopted all the essential features of the plaintiffs' registered trade mark, its colour scheme and get-up with respect to packaging their soaps. The use of the plaintiffs' trade mark "Chandrika" with prefix "Oushadha" is calculated to give a wrongful impression to the members of the public. On the same averments, in suit C.S. No.996 of 2007, the plaintiffs alleged that the defendants have committed and are continuing to infringe the copyright of the plaintiffs with a view to practise deception on the public and to encash on the tremendous reputation and goodwill earned by the plaintiffs in respect of its product "Chandrika" brand.

6. On the interlocutory applications filed by the plaintiffs, an ex parte order of injunction came to be passed in favour of the plaintiffs on 4.1.2007. Alleging that this Court has no jurisdiction to try the suits, the defendants filed Application No.7356 of 2007 to reject the plaint filed in C.S. No.874 of 2007, Application No.7534 of 2007 in C.S. No.874 of 2007 to vacate the order of interim injunction and Application No.7535 of 2007 in C.S. No.874 of 2007 to suspend the order of interim injunction. On the same ground, the defendants filed Application No.7854 of 2007 to reject the plaint in C.S.No.996 of 2007. In their application to reject the plaint, the defendants inter alia contended that the plaintiffs are carrying on business at Bangalore and all the defendants are in Kerala and without any part of the cause of action having arisen in Chennai, the Court cannot entertain the suits. It was contended that as per Section 62 of the Copyright Act and Section 134 of the Trade Mark Act, the expression 'actually and voluntarily resides or carries on business' has to be meaningfully interpreted and would not cover a branch office carrying on business. It was further contended that the alleged infringed goods are not sold in Chennai and the plaintiffs have not obtained leave to sue under Clause 12 of the Letters Patent also and therefore, the High Court of Madras has no jurisdiction to entertain the suits.

7. The learned single Judge, inter alia, held that though Section 62(2) of the Copyright Act and Section 134(2) of the Trade Marks Act start with the non-obstante clause, the expression 'actually and voluntarily resides or carries on business or personally works for gain' is necessarily to be interpreted in the light of the explanation to Section 20 of the Code of Civil Procedure. Therefore, mere fact that the plaintiff's branch office is situated within the territorial jurisdictional limits of the Court is not sufficient to clothe the Court with the jurisdiction to entertain the suits. The learned single Judge also accepted the case of the defendants that no essential part of business of the

defendant takes place in Chennai. The learned single Judge further relying upon a judgment of Ashok Kumar, J. in *Maya Appliances vs. M/s. Pigeon Appliances*, [2004 (4) C.T.C. 334], which was followed by Justice S. Rajeswaran in the *Santoor Sandal and Turmeric Soap Wrapper matter in Laxmi Soap Factory v. Wipro Ltd.* [Application No.2447 of 2006 in C.S. No.434 of 2006 dated 11.4.2007], held that since the defendants are carrying on business in Kerala, prior leave to sue under Clause 12 of the Letters Patent ought to have been obtained. Consequently, both the suits were rejected.

8. On behalf of the plaintiffs, learned senior counsel Mr. R. Muthukumarasamy submitted that while considering whether the plaint is maintainable, the plaint averments alone could be germane and the pleas taken by the defendants in the written statement/counter affidavit are irrelevant. Learned senior counsel submitted that Section 134 of the Trade Marks Act and Section 62 of the Copyright Act have carved out an exception to the general rule and allows filing of a suit for infringement of trade mark or copy right at the District Court within whose local limits the person instituting the suit actually or voluntarily resides or carries on business. Learned senior counsel submitted that the expression 'carries on business' not merely refers to the principal place of business, but would also include the branch or the branches where the party is said to have carried on business. According to the learned senior counsel the place of business of the first plaintiff has been clearly set out as Thiru.Vi.Ka. Industrial Estate, Guindy, Chennai, and if the plaint averments are to be taken as they stand, this Court has the jurisdiction to try the suits. Learned senior counsel submitted that Section 62 of the Copyright Act as well as Section 134 of the Trade Marks Act contain a non-obstante clause, by virtue of which the Letters Patent is superseded by the legislation and hence, the leave to sue under Clause 12 of the Letters Patent need not be obtained.

9. On the other hand, Mr. Madan Babu, learned counsel appearing for the defendants submitted that the second plaintiff, who is the registered proprietor of the trade mark in question, is based at Bangalore and also the first plaintiff has its Corporate Office at Bangalore, which is outside the jurisdiction of this Court. According to him, the fact that the first plaintiff has got its branch office at Chennai is of no consequence and in any event, the first plaintiff is not carrying on any business in Chennai so as to invoke the jurisdiction of this Court under Section 62 of the Copyright Act or Section 134 of the Trade Marks Act. He submitted that the address of the branch office of the company does not find place in the plaintiffs' own website and the inclusion of Chennai address by the plaintiffs by way of clever drafting was only with a view to invoke the jurisdiction of this Court, which otherwise does not have jurisdiction. He submitted that the alleged infringed goods of the defendants are not sold in Chennai and therefore, no part of cause of action has arisen at Chennai and in any case, in the absence of the leave to sue, both the suits are liable to be rejected.

10. In order to appreciate the rival contentions raised by the learned counsel for the parties, it will be necessary to analyse the provisions of Clause 12 of the Letters Patent, Section 62 of the Copyright Act, 1957 and Section 134 of the Trade Marks Act, 1999. Clause 12 of the Letters Patent reads as hereunder :

"12. Original Jurisdiction as to suits. And We do further ordain that the said High Court of Judicature at Madras, in exercise of its ordinary original civil jurisdiction,

shall be empowered to receive, try, and determine suits of every description if, in the case of suits for land or other immovable property, such land or property shall be situated, or, in all other cases, if the cause of action shall have arisen, either wholly, or, in case the leave of the Court shall have been first obtained, in part, within the local limits of the ordinary original jurisdiction of the said High Court: or if the defendant at the time of the commencement of the suit shall dwell or carry on business or personally work for gain, within such limits; except that the said High Court shall not have such original jurisdiction in cases falling within the jurisdiction of the Small Cause at Madras, in which the debt or damage, or value of the property sued for does not exceed hundred rupees."

Section 62 of the Copyright Act, 1957 reads as hereunder :

"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 direct 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."

Section 134 of the Trade Marks Act, 1999 reads as hereunder :

"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."

11. While it is the contention of the plaintiffs that they can institute a suit either in a court within whose local limits the principal place of business or its branch or branches where its business is carried on, is situate, the defendants submitted that it is the principal place of business that is material. According to the defendants, it is the only reasonable interpretation of Section 62(2) of the Copyright Act and Section 134(2) of the Trade Marks Act, and therefore, as the head office of the plaintiffs is at Bangalore, courts in Bangalore alone will have jurisdiction. Section 62(1) of the Copyright Act stipulates the forum for institution of infringement proceedings, etc., to be the District Court. Section 62(2) of the Copyright Act provides that the term "District Court having jurisdiction", notwithstanding anything contained in the C.P.C or any other law for the time being in force, would include a District Court within the local limits of whose jurisdiction, the person, or one of the persons, instituting the suit actually or voluntarily resides or carries on business or personally works for gain. By inserting Section 134(2) of the Trade Marks Act, the legislature has brought the Trade Marks law in line with the provisions contained in the Copyright Act, as very often a trade mark is also registered as an artistic work under the Copyright Act. In Section 62(2) of the Copyright Act as well as in Section 134(2) of the Trade Marks Act, a deliberate departure is made from Section 20 of the C.P.C to enable the plaintiff to sue one who infringed his copyright in the court within whose local limit he carried on business at the time of the institution of the suit or other proceedings. If the contrast as between two expressions namely, "actually and voluntarily resides" and "carries on business" is correctly perceived, it would reveal that while there is limitation, regarding residence, there is no such restriction with reference to "carrying on business". This is a clear indication that the term "carries on business" is not confined to only principal place of business. If the Legislature intended to mean the principal place only, it would have suitably qualified the expression "carries on business". The plain meaning of the above expression will only convey that wherever there is a business activity be it the principal place or branch or branches the party is said to carry on business in all such places.

12. The provisions of Section 62 of the Copyright Act fell for consideration of the Supreme Court in *Exphar SA vs. Eupharma Laboratories Ltd.* [A.I.R. 2004 S.C. 1682]. Justice Ruma Pal, speaking for the Bench, observed as follows :

"We would like to emphasise the word include . This shows that the jurisdiction for the purposes of Section 62 is wider than that of the court as prescribed under the Code of Civil Procedure, 1908. The relevant extract of the report of the Joint Committee published in the Gazette of India dated 23-11-1956 which preceded and laid the foundation for Section 62(2) said :

In the opinion of the Committee many authors are deterred from instituting infringement proceedings because the court in which such proceedings are to be instituted is situated at a considerable distance from the place of their ordinary residence. The Committee feels that this impediment should be removed and the new sub-clause (2) accordingly provides that infringement proceedings may be instituted in the District Court within the local limits of whose jurisdiction the person instituting the proceedings ordinarily resides, carries on business etc. It is, therefore, clear that the object and reason for the introduction of sub-section (2) of Section 62 was not to restrict the owners of the copyright to exercise their rights but to remove any impediment from their doing so. Section 62(2) cannot be read as limiting the jurisdiction of the District Court only to cases where 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 presently works for gain. It prescribes an additional ground for attracting the jurisdiction of a court over and above the normal grounds as laid down in Section 20 of the Code."

(emphasis supplied)

13. In *Glaxo Operations U.K. Ltd., vs. Rama Bhaktha Hanuman Candle & Camphor Works, PTC (Suppl.)* (2) 293 (Mad.), a learned single Judge of this Court (J.Shanmukham, J) observed: -

" In Section 62(2) a deliberate departure is made from Section 20 of the Code of Civil Procedure to enable the plaintiff to sue one who infringed his copyright in the Court within whose local limit he carried on business at the time of the institution or other proceedings. That such a privilege extended to a plaintiff to the prejudice of the defendant cannot be doubted. This additional factor will also suggest that the expression 'carries on business is too wide to embrace the branch or branches where the business activities are carried'."

14. It is, thus, seen that Section 62 of the Copyright Act and Section 134 of the Trade Marks Act prescribe an additional ground for attracting the jurisdiction of a Court over and above the normal ground, as laid down in Section 20 of the C.P.C. In other words, a special right is conferred on the proprietor of the registered trade mark to institute a suit for infringement of any trade mark or copyright in the district within whose jurisdiction he resides or carries on business. The provision contained in non-obstante clause by using the phrase "notwithstanding anything contained in the C.P.C, 1908 (5 of 1908) or any other law for the time being in force" is made with a view to give a overriding effect to the said provision. It is equivalent to saying that the provision would hold the field notwithstanding anything contained in the C.P.C or any other law for the time being force. Moreover, by virtue of Section 120 of the C.P.C, the provisions of Section 20 are not applicable as far as High Court is concerned. Therefore, the scope of this section cannot be curtailed by reference to Section 20 of the C.P.C or Clause-12 of the Letters Patent. Therefore, in a case of infringement of trade mark or copyright covered by Section 134(2) of the Trade Marks Act or Section 62(2) of the Copyright Act, the question of plaintiff taking prior leave under Clause 12 of the Letters Patent does

not arise and the plaintiff need not take leave of the Court under Clause 12 of the Letters Patent even if only a part of the cause of action or no part of the cause of action arose within the jurisdiction of this Court, if the plaintiff ordinarily resides or carries on business within the jurisdiction of the Court.

15. In our opinion, the judgments relied on by the learned counsel for the defendants in *Maya Appliances vs. M/s. Pigeon Appliances*, and *Laxmi Soap Factory v. Wipro Ltd.* [supra] are based on complete misconstruction of Clause-12 of the Letters Patent. It has been held in these cases that since the defendants are carrying out businesses outside the jurisdiction of this court, prior leave to sue under Clause-12 of the Letters Patent ought to have been obtained. Under Clause-12 of the Letters Patent a suit can be filed in the High Court in its Original Side if at the time of commencement of an action, the defendant was carrying on business within its territorial limits. Similarly, when the cause of action has wholly or partly arisen within its territorial limits, the High Court has jurisdiction to try the suit notwithstanding the fact that the defendant does not carry on business within its territorial limits. In other words, the jurisdiction based on the cause of action and the jurisdiction based on the person of the defendant are two independent categories and they have no relation with each other. A plain reading of Clause-12 of the Letters Patent would show that it is only in cases where a part of the cause of action has arisen within the jurisdiction of this Court that Clause-12 requires a leave to be obtained. The present case is not covered by Clause-12 of the Letters Patent, but a case covered by Section 62(2) of the Copyright Act and Section 134(2) of the Trade Marks Act. Therefore, the suit is maintainable in this Court.

16. In our opinion, the legal position is correctly laid down in *Arvind Laboratories Vs. Hahnemann Laboratory Pvt. Ltd.*, 2007 (35) PTC 244, where a learned single Judge of this Court has held as follows:-

"23. The defendant has not disputed the fact that the plaintiff is carrying on business within the jurisdiction of this Court and that the plaintiff is the Proprietor of a registered trade mark, of which, infringement is complained of in the present suit. It is seen from Section 134 of the Trade Marks Act, 1999, that it contemplates three types of suits viz., (a) suit for infringement of a registered trade mark (b) suit relating to any right in a registered trade mark and (c) suit for passing off. In view of sub-section (1) of Section 134, all the above three types of suits are to be instituted only in a Court not inferior to a District Court having jurisdiction to try the suit. Sub-section (2) of Section 134, defines the expression 'District Court having jurisdiction' found in sub-section (1), to include a District Court within whose jurisdiction the plaintiff resides or carries on business at the time of institution of the suit, if the suit is in respect of a registered trade mark. Therefore, a special privilege is conferred upon the Proprietor of a registered trade mark to institute a suit for infringement or a suit relating to any right in a registered trade mark, in the District Court within whose jurisdiction, he resides or carries on business. This privilege is conferred by Section 134(2), with a non obstante Clause, by using the phrase 'notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908) or any other law for the time being in force'. Since Section 134(2) declares that it

would hold the field, notwithstanding anything contained in the CPC or any other law for the time being in force, the same cannot be annulled or rendered nugatory, by importing the requirements of Clause 12 of the Letters Patent into a case covered by Section 134(2) of the Trade Marks Act, 1999. The non obstante Clause automatically excludes the operation of the Letters Patent also, to a case covered by Section 134(2) of the Trade Marks Act, 1999. Therefore, in a case of infringement of a trade mark, covered by Section 134(2) of the Trade Marks Act, 1999, the question of the plaintiff taking prior leave of the Court, under Clause 12 of the Letters Patent, does not arise. In other words, in a suit for infringement covered by Section 134(2), a plaintiff need not take the leave of the Court under Clause 12 of the Letters Patent, even if only a part of the cause of action or no part of the cause of action, arose within the jurisdiction of this Court.

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27. Moreover, the question of the plaintiff taking the prior leave of the Court under Clause 12 did not arise at all in this case, for one more reason. Admittedly, no part of the cause of action arose within the jurisdiction of this Court, in view of the averment in paragraph 14 of the plaint that the plaintiff could not find the product of the defendant in the market. It is only in cases where a part of the cause of action arises within the jurisdiction of this Court, that Clause 12 requires a leave to be obtained. If no part of the cause of action arises within the jurisdiction of this Court or if the defendant does not reside or carry on business within the jurisdiction of this Court or if the land or immovable property in respect of which the suit is laid, is not situate within the jurisdiction of this Court, then this Court has no jurisdiction at all to try such a suit. In such cases, no leave can ever be obtained. In other words, one cannot take the leave of the Court under Clause 12, in respect of a suit, which does not fall under any of the four categories mentioned in the said Clause. The present suit is not one for land; it is not one in which the whole or any part of the cause of action arose within the jurisdiction of this Court; and it is not one in which the defendant resides or carries on business within the jurisdiction of this Court. Therefore, the contention that the plaintiff ought to have obtained leave under Clause 12 goes against the very tenor of Clause 12. This is not a case covered by Clause 12 of the Letters Patent, but a case covered by Section 134(2) of the Trade Marks Act, 1999 and hence, I hold that the suit is maintainable on the file of this Court. Therefore, the application under Order VII Rule 11 CPC, A.No.3704 of 2006 is dismissed."

17. In the present case, when an objection to jurisdiction was raised by way of demurrer and not at the trial, the objection must proceed on the basis that the facts as pleaded by the initiator of the impugned proceedings are true. The submission in order to succeed must show that granted those

facts the Court does not have jurisdiction as a matter of law. In rejecting a plaint on the ground of jurisdiction, the learned single Judge ought to have taken allegations contained in the plaint to be correct. However, the learned single Judge examined the counter affidavit filed by the defendants in which it was claimed that the first plaintiff did not carry on business within the jurisdiction of the Madras High Court. Having considered the factual statement made by the respondents, the learned single Judge observed in para-42 thus: -

"For the purpose of carrying on business, mere location of branch office is not sufficient. It appears that no essential part of the business seems to have taken place in Chennai."

The learned single Judge again in para-46 observed: -

"The learned counsel for the defendants has meticulously collected the first plaintiff's web site, Home Page and its address available from its Web site. The first plaintiff WIPRO LTD. has got its Corporate Office all over the country. It does not mean that the suit can be filed anywhere in the country on the premise that Branch Office is located. In Chennai alone, WIPRO Technologies has its office in various places. It appears several Branch Offices are located in and around Chennai. There is nothing to link Thiru.Vi.Ka.Industrial Estate to carry on business in respect of WIPRO Ayurvedic Soap. While number of offices of WIPRO Limited are located in and around Chennai, in the absence of acceptable evidence, it cannot be held that Thiru.Vi.Ka.Industrial Estate is the Branch Office associated with the business in respect of CHANDRIKA Ayurvedic Soap."

18. In our opinion, the learned single Judge is clearly in error in going beyond the statements contained in the plaint. It has been repeatedly held by the Supreme Court that for the purpose of deciding an application under clauses (a) and (b) of Order VII Rule 11 of the C.P.C, the averments made in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage. (See O.N.Bhatnagar v. Rukibai Narsindas, 1982 (2) SCC 244; Roop Lal Sathi v. Nachhattar Singh Gill, 1982(3) SCC 487 & Sopan Sukhdeo Sable v. Asst.Charity Commr., 2004 (3) SCC 137).

19. In view of the foregoing discussion, the appeals are allowed. The suits are restored to file. Ad interim injunction granted on 4.1.2007 stands revived. The matter is remitted back to the learned single Judge to consider the applications for interim injunction on merits. Consequently, M.P. Nos.1, 1, 1 and 1 of 2008 in the respective appeals are closed.

ab/pv/sm