



under the trade mark and label "Officer's Choice" have acquired an enviable reputation and goodwill, as a result of its excellent quality, distinctive packaging and characteristics namely, palatable taste, flavour, blending etc. It is considered as one of the largest selling whiskies' in India and the plaintiff has been incurring extensive expenditure towards promotional campaigns in order to promote and publicize its product under the mark "Officer's Choice". It is averred that the plaintiff is registered proprietor of the trade mark "Officer's Choice" in various classes as set out herein under:

Trade Mark	Registration No.	Date	Class	Goods
Officer's Choice (word)	489582	21/04/88	33	Alcoholic beverages being whisky
Officer's Choice (device)	538927	26/10/90	33	Alcoholic beverages being whisky
Officer's Choice	610451	27/10/93	32	Mineral Water
Officer's Choice No.1 Classic Brandy	1036570	13/08/01	33	Brandy
Officer's Choice	1623359	21/11/07	33	Whisky, rum, vodka, gin, wine, brandy, liqueurs, spirits, cocktails and other alcoholic beverages

Officer's Choice 1647607 29/01/08 33 Whisky, Rum, Vodka, Gin, Wine, Brandy, Liqueurs, Spirits, Cocktails And Other Alcoholic Beverages Officer's 819448 16/09/98 34 Tobacco Choice including cigarettes, cigars and smokers articles Officer's 819449 16/09/98 03 Substances for Choice laundry use including soaps, detergents and cleaning preparations and substances and toiletries.

Officer's Choice	819450	16/09/98	21	Glassware's and containers including mugs
Officer's Choice	819447	16/09/98	25	Clothing including hosiery goods
Officer's	1683553	05/05/08	30	Coffee, Tea, Cocoa, Sugar, Ice

Choice

etc.

5. The aforesaid registrations in the name of the plaintiff are valid and subsisting having been duly renewed as required under law. It is averred that the "Officer's Choice" word mark has the word 'Choice' disclaimed. However the plaintiff has acquired common law trade mark rights in the overall combination by virtue of exclusive and extensive use of the said mark since 1988 and hence, the plaintiff has proprietary rights in the combination of the said words which is unique and has acquired a secondary meaning by virtue of continuous and extensive use and promotion ever since it was first adopted. It is averred that apart from "Officer's Choice", the plaintiff has coined, used and is also the registered proprietor of a series of 'Officer' formative marks which are used and associated with the plaintiff and/or are considered as emanating from the plaintiffs repertoire of sprits/alcohol as well as non alcoholic products. It is averred that the plaintiff has adopted and has been using the trademark "Officer's Choice" in a distinctive design, colour scheme, layout, get up as its trade dress/label and the said trade dress/logo have become exclusively associated with the plaintiffs products. The colour combination, layout, get up and the lettering style used on the logo, i.e. white base, gold border, font style and letters in red colour constitute an original artistic work within the meaning Section 2(c) of the Copyright Act, 1957 and the same has been registered in 1999. Hence, the said label/trade dress of the plaintiffs "Officer's Choice" as reproduced below, is exclusively associated with the plaintiff.

It is stated that the "Officer's Choice" trade mark has become distinctive to the plaintiffs whisky products, and is also popularly known among consumers and members of the trade by its abbreviate name "O.C.".

6. The plaintiff has averred that the "Officer's Choice" label/trade dress was updated and a new label/trade dress was first used around May 2009 by the plaintiff for its whisky products. It is stated that the said label was specifically created in order to keep the plaintiffs products in tune with the changing consumer attitude and tastes and to give the plaintiffs products a fresh new appeal and look. It is stated that the notable features of the said label are in an overall combination of red, white and gold with a distinctive gold border and a 'V' shaped gold border separating bottom red half from top white half of the label. The layout in red color divided by gold line running from side to side at bottom half and white on top half and bears a coat of arms aligned in the centre at the top of the label with the "OC" stylized mark. The said artistic work has a unique arrangement of features, get up, lay-out and colour combination which constitutes an original artistic work. The same has been duly registered on June 12, 2013. At this stage, I may reproduce the said label as well as the updated label of the plaintiff:-

7. It is averred that the old label is now being used in many states across India such as Himachal Pradesh, Andhra Pradesh, - Uttar Pradesh, Delhi, Punjab, Uttarakhand, West Bengal, Orissa,

Jharkhand, Assam, Tripura, Arunachal Pradesh, Maharashtra, Nagaland, Madhya Pradesh, Chhattisgarh, Kerala etc. It is stated that the plaintiff may move back to the old label if the market situation so requires. It is averred that during the financial year 2011-2012, the sale of "Officer's Choice" whisky crossed 16.2 million cases and during 2012-2013 the sales were a little over 17.55 million cases. New York based "Impact International" and IWSR rated "Officer's Choice" as the largest selling Indian spirit brand which attained growth of 7.5%. In support of its stand that the "Officer's Choice" trademarks and label have acquired substantial reputation, the sales of the plaintiffs products bearing the "Officer's Choice" between 1995-2012 have been given in para 14 of the plaint. It is also averred that the plaintiff also has extensive sales and operations within the city of Delhi. In para 15 of the plaint, the plaintiff has given details of the sales promotion incurred between 1994 to 2012. It is the case of the plaintiff that defendant is engaged in the business of blending, manufacturing, producing and selling alcoholic beverages, including whisky and it is believed that the defendant is offering for sale and selling whisky products under the mark "Regular Choice". The impugned mark is deceptively and confusingly similar to the plaintiffs registered and well known trademark "Officer's Choice" and further, bears a label which is a blatant and substantial reproduction of the plaintiffs "Officer's Choice" label.

8. It is contended that the plaintiff first became aware of the defendant's infringing activities in October, 2013 when the plaintiffs representatives obtained a sample of the defendant's whisky product being sold under the impugned mark and label in the state of Andhra Pradesh. On conducting market enquiries, the plaintiff learnt that the impugned product was introduced by the Defendant in May, 2011. It is stated that the plaintiff therefore, came to learn that defendant is using the impugned mark which is confusingly similar to its proprietary trademark "Officer's Choice". Further, the impugned label with its red, white and gold colour combination, gold border and the word "Regular Choice" written in a stylized font in red colour had a colour scheme/pattern similar to the plaintiffs label, which evidences infringement of the plaintiffs rights in its trademark as well as its copyright in the artistic work in the label as well as the intention to pass off its products as that of the plaintiff. The plaintiff has used the mark "Officer's Choice" extensively, continuously and uninterruptedly for over 20 years and the defendant's use of the prefix "Regular" to the suffix "Choice" in the impugned mark is a dead give-away as to the intent and mala fide of the defendant, which would create confusion in the mind of the customer and to encash upon the goodwill and reputation enjoyed by the plaintiff's product. It is stated that the defendant has no reasons whatsoever to adopt the plaintiff's label. The plaintiff is the prior adopter, user and registered proprietor of the said label that was specifically commissioned by it for its own whisky products. It is also stated that the dishonesty is apparent from the fact that the impugned mark and label are being used with respect to identical goods i.e. whisky that are sold through the same trade channels. The sale and distribution of the defendant's whisky products bearing the impugned mark and label would result in great harm and prejudice to the plaintiffs business, rights and interests. It is averred that there is an unauthorized use of the impugned mark and label by the defendant for export and distribution abroad.

9. The defendant, who has filed its written statement as well as reply to the application, has stated that initially, the defendant had started as a proprietorship concern consisting of six partners. Later four partners retired and two partners continued to run the business. It is vast experience in liquor

industry and excellent understanding in identifying the business opportunities had improved a manufacturing process and marketing network thereby creating substantial demand for the brands. It is stated that the defendant was registered with the Registrar of Companies on April 29, 2010. Today, the defendant has a market share of 3% in Andhra Pradesh and holds a niche market for 90ml whiskey segment in production and sale in the economy range of IMFL and constitutes approximately 50% of the market share. It is stated in the written statement that some of the popular brands under which the defendant is trading today are inter-alia Regular Choice, Royal Life Premium Whisky, Kings Life Whisky and Good Day Malted Whisky. The written statement in para 10 reveals the annual turnover of the defendant and its predecessors in title between the period 2008-2009 to 2013-2014. It is also averred that sometime in April 2007, the defendant entered into a MOU and a Supplementary Deed with Greenfield Distilleries, Mangalore vide which, one of the partners purchased the land, building, plant and machinery, liquor blend, branded labels and all other assets including trade marks John, Bull, Boss, City, Regular Choice, Green Field and Boss from Greenfield Distilleries. In other words, it is their case that the trade mark "Regular Choice" was registered with Green Field Distilleries. In the year 2011-2012, the defendant launched the mark 'Regular Choice' with a unique label in the market. In para 14, the defendant has depicted the sales figures with respect to 'Regular Choice'. It is the stand of the defendant, in its written statement that most of the applications/registrations that the plaintiff is relying on are not related to class 33 (liquor industry). Moreover the plaintiff has not filed any applications whatsoever of the disputed label as alleged by the plaintiff. It is also averred that the word „Choice has been disclaimed by the plaintiff, hence, the plaintiff has no exclusive right over the word „Choice. The defendant denies any common law rights attained by the plaintiff by virtue of extensive and exclusive use of the mark. It is stated that the records of the Registrar of trade marks would reveal that there are more than 200 marks that are existing in the liquor industry with the word "Choice". The word "Choice" on account of use by various traders in the liquor industry is common to trade and cannot be associated with any single source or origin. It is stated that, it is for the said reason the plaintiff is not provided any exclusive rights over the same and has been disclaimed by the plaintiff. It is also stated that the marks "Regular Choice" and "Officer's Choice" when determined as a whole are visually and phonetically are entirely different from each other. Such is the distinction between the two marks that even an illiterate person who is purchasing whiskey from the shop for the very first time would not confuse between the two marks. With regard to the label, it is the case of the defendant that there is a difference between the two. While the plaintiff's new label is divided in two colour segment (red and white) which are of course common to the whiskey industry and specifically contains a coat of arms and a device of crest, the defendant's label has a single background colour without any coat of arms or device of crest. The single most prominent feature in the defendant's label is the mark "Regular Choice" of the defendant with is undisputedly distinct and visually and/or phonetically different from the plaintiff's mark "Officer's Choice". It is stated that when the plaintiff's old label is compared vis-a-vis the label of defendant, it would again be candid that there are marked differences between the two. The single most prominent feature in the defendant's label is the mark "Regular Choice" is far too distinct in the defendant's label so as to create any possibility of confusion/similarity.

10. Mr. Rajiv Nayar, learned Senior Counsel appearing for the petitioner has made detailed submissions on the merit of the application seeking restraint order against the defendant and also

on the plea of the defendant that this Court does not have the territorial jurisdiction to entertain the suit. On the latter plea of jurisdiction, Mr. Nayar would submit that the plaintiff has an office in Delhi and in terms of Section 134 of the Trade Marks Act, 1999 and Section 62 of the Copyright Act, the present petition is maintainable. He would state, there is an apprehension of infringement of Trade Marks and Copyright Act and passing off of the trade mark in Delhi. Hence, the cause of action under Section 20(c) of the Code of Civil Procedure, 1908 has arisen in Delhi. He would state, that whether the plaintiff has a business in Delhi, is an issue to be determined in the trial and till such time, the issue, which has a bearing on this Court having territorial jurisdiction to entertain the suit, this Court would be within its right to consider the application filed by the plaintiff under Order XXXIX Rule 1 & 2 of the Code and grant the injunction, as sought for.

11. He, in support of his submission would rely on the following judgments to contend that this Court has territorial jurisdiction to entertain the suit. I reproduce the written submission made by the plaintiff on the plea of jurisdiction, as under:-

"B. JURISDICTION

1. Case law:

- i. Exphar SA and Another vs. Eupharma Laboratories Ltd & Another, (2004) 3 SCC 688;
- ii. IPRS vs. Sanjay Dalia 2015 SCC Online SC 616 -

overlap of cause of action and Plaintiff's business is a question of trial;

iii. IPRS is limited to interpreting S. 134 of Trademarks Act and S. 62 of the Copyright Act.

iv. IPRS upheld Exphar.

2. There is apprehension of infringement and passing off in Delhi, hence cause of action under S. 20(c) CPC has arisen in Delhi:

i. Paragraphs 28 of the plaint-at this stage only the plaint is to be looked at.

ii. The defendant's impugned trademark registration does not have a territorial limitation.

iii. Defendant in paragraph 11 of its amended written statement has disclosed its related entity M/s GSB. GSB works for companies that have business in Delhi. Case Law:

i. Teva Pharmaceuticals Industries Ltd. vs. Natco Pharma Ltd. 2014 SCC Online Del 3373;

- ii. Mars Incorporated vs. Kumar Krishna Mukherjee 2003 (26) PTC 60 Del;
- iii. LG Electronics India Pvt. Ltd. vs. Bharat Bhogilal Patel & Ors 2012 (51) PTC 513 (Del);
- iv. Exphar SA and Another vs. Eupharma Laboratories Ltd and Another (2004) 3 SCC 688."

12. On the other hand Mr. Vikramjit Banerjee, learned Counsel for the defendant would state that the present petition is not maintainable in this Court. According to him, plaintiff's headquarter is in Mumbai. It is not case of the plaintiff that the defendant is selling "Regular Choice Whiskey" in Delhi. At the most it is a case of the plaintiff that defendant is selling Whiskey in Andhra Pradesh. Hence, as no part cause of action has arisen in Delhi, the present petition is liable to be dismissed. He would rely on the judgment of the Supreme Court in the case of Indian Performing Rights Society vs. Sanjay Dalia & Ors. 2015 (10) SCC 161, and on the judgment of the Division Bench of this Court in the case of Ultra Home Construction Pvt. Ltd. v. Purushottam Kumar Chaubey and Ors. FA (OS) 494/2015 decided on 20.01.2016. In support of his contention he would state that the jurisdiction in a matter of this nature is decided on the basis of 3 eventualities. First, it is the place where the plaintiff has its sole office, in such an eventuality even if the cause of action has arisen at a different place, the plaintiff can institute a suit at the place of sole office. Second, it is a 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 principal office, in such a case, the plaintiff may sue at the place of principal office, but cannot sue at the place of subordinate office. The third is where the plaintiff has a principal office at one place and cause of action has arisen at the place where its subordinate office is located, in that eventuality, the plaintiff would be deemed to carry on business at the place of its subordinate office and not at the place of principal office. According to him, as no cause of action has arisen in Delhi, and mere apprehension would not give rise to cause of action, the suit itself is liable to be dismissed.

13. As the issue of jurisdiction goes to the root on the maintainability of the suit in this Court, I intend to decide the said issue first and if required, proceeding further on the merit of the application of the plaintiff seeking injunction against the defendant. To answer the issue of jurisdiction, it is the averments, as made in the plaint, need to be considered. The cause of action para (para 27) reads as under:

"The cause of action arose for the first time in October, 2013 when the plaintiff came across the Defendant's product being sold under the impugned label and mark "Regular Choice" in the State of Andhra Pradesh. The plaintiff has approached this Hon'ble Court at the earliest possible opportunity. The cause of action against the Defendant is still continuing from day to day till the filing of the present suit and will

continue until the Defendant is restrained by an order of injunction by this Hon'ble Court."

14. The jurisdiction para (para 28) in the amended plaint reads as under:-

"This Hon'ble Court has the territorial jurisdiction to try and entertain the instant suit by virtue of Section 62 (2) of the Copyright Act, 1957 and Section 134 (2) of the Trade Marks Act, 1999 as the plaintiff being the owner of the copyright and the registered proprietor of the trademark in issue has its office located at A-61/5, Ground Floor, G.T. Karnal Road, Industrial Area, Azadpur, Delhi. Moreover, the plaintiff is also carrying on its business within the territorial limits of this Hon'ble Court in a variety of ways such as (but not limited to) sale of its products under the relevant marks in New Delhi. The scale of business and activity of the Defendant is not known at present and it is apprehended as being highly likely that the product sold under the impugned mark "Regular Choice" will be made available at New Delhi. As the scope and extent of the Defendant's business is not known at present, it is believed that they have a reasonably large scale business around India and it is therefore strongly apprehended that they will launch the impugned product in New Delhi and would be available within the jurisdiction of this Hon'ble Court. It is submitted that the threat that the Defendants will sell and / or offer for sale the impugned product within the jurisdiction of this Hon'ble Court is credible and imminent. There is a reasonable apprehension that the Defendant is likely to sell its products bearing the impugned mark and label within the jurisdiction of this Hon'ble Court. Thus, giving rise to a substantial and integral part of the cause of action within the jurisdiction of this Hon'ble Court. This Hon'ble Court therefore has the necessary jurisdiction by virtue of Section 20 of the Code of Civil Procedure, 1908."

15. From the reading of the abovesaid paras, it is noted that the cause of action arose in favour of the plaintiff when it came across, defendant is selling the whisky (product) under the impugned trade mark „Regular Choice in the State of Andhra Pradesh and the same is continuing day to day till the filing of the present suit and is restrained by an order of injunction. It is stated by the plaintiff that it apprehends, the defendant shall launch the product in Delhi. In other words, the product with impugned trademark/label, is not available in Delhi.

Further, a reading of the plaint, it is clear that the case of the plaintiff is also that the defendant is infringing the plaintiff's trademark/label and passing off its goods as that of the plaintiff. The plaintiff concedes that the product with impugned trademark is available in Andhra Pradesh. The prayer is not for seeking a restraint order from launching the product in Delhi. It is a restraint order, in the nature of permanent injunction directly or indirectly dealing with label/product bearing trademark „Regular Choice etc. An order of this nature would have its effect all over India including the places where the goods with impugned marks are being sold. If that be so, this Court would not have the territorial jurisdiction to entertain the present suit. In a recent pronouncement, the Supreme Court in the case of Indian Performing Rights Society Ltd. (supra), has considered the aspect of the jurisdiction of a Court to entertain a suit in relation to the provisions under Section 62



of the Copyright Act and Section 134 of the Trade Marks Act, 1999. In paras 14, 15, 18 to 22 and 52, the Supreme Court has held as under:

"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 the 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 CPC 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.

15. The learned author Mulla in Code of Civil Procedure, 18th Edn., has observed that under clauses (a) to (c) of Section 20, the plaintiff has a choice of forum to institute a suit. The intendment of the Explanation to Section 20 of the Code of Civil Procedure is that once the corporation has a subordinate office in the place where the cause of action arises wholly or in part, it cannot be heard to say that it cannot be sued there because it did not carry on business at that place. The linking of the place with the cause of action in the Explanation where subordinate office of the corporation is situated is reflective of the intention of the legislature and such a place has to be the place of the filing of the suit and not the principal place of business. Ordinarily the suit has to be filed at the place where there is principal place of business of the corporation."

xxxx xxxx xxxx xxxx xxxx "18. On a due and anxious consideration of the provisions contained in Section 20 CPC, Section 62 of the Copyright Act and Section 134 of the Trade Marks Act, and the object with which the latter provisions have been enacted, it is clear that if a cause of action has arisen wholly or in part, where the plaintiff is residing or having its principal office/carries on business or personally works for gain, the suit can be filed at such place(s). The plaintiff(s) can also institute a suit at a place where he is residing, carrying on business or personally works for gain

dehors the fact that the cause of action has not arisen at a place where he/they are residing or any one of them is residing, carries on business or personally works for gain. However, this right to institute suit at such a place has to be read subject to certain restrictions, such as in case the plaintiff is residing or carrying on business at a particular place/having its head office and at such place cause of action has also arisen wholly or in part, the plaintiff cannot ignore such a place under the guise that he is carrying on business at other far- flung places also. The very intendment of the insertion of provision in the Copyright Act and the Trade Marks Act is the convenience of the plaintiff. The rule of convenience of the parties has been given a statutory expression in Section 20 CPC as well. The interpretation of provisions has to be such which prevents the mischief of causing inconvenience to the parties.

19. The intendment of the aforesaid provisions inserted in the Copyright Act and the Trade Marks Act is to provide a forum to the plaintiff where he is residing, carrying on business or personally works for gain. The object is to ensure that the plaintiff is not deterred from instituting infringement proceedings "because the court in which proceedings are to be instituted is at a considerable distance from the place of their ordinary residence". The impediment created to the plaintiff by Section 20 CPC of going to a place where it was not having ordinary residence or principal place of business was sought to be removed by virtue of the aforesaid provisions of the Copyright Act and the Trade Marks Act. Where the corporation is having ordinary residence/principal place of business and cause of action has also arisen at that place, it has to institute a suit at the said place and not at other places. The provisions of Section 62 of the Copyright Act and Section 134 of the Trade Marks Act never intended to operate in the field where the plaintiff is having its principal place of business at a particular place and the cause of action has also arisen at that place so as to enable it to file a suit at a distant place where its subordinate office is situated though at such place no cause of action has arisen. Such interpretation would cause great harm and would be juxtaposed to the very legislative intendment of the provisions so enacted.

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

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

22. There is no doubt about it that the words used in Section 62 of the Copyright Act and Section 134 of the Trade Marks Act, "notwithstanding anything contained in CPC or any other law for the time being in force", emphasise that the requirement of Section 20 CPC would not have to be complied with by the plaintiff if he resides or carries on business in the local limits of the court where he has filed the suit but, in our view, at the same time, as the provision providing for an additional forum, cannot be interpreted in the manner that it has authorised the plaintiff to institute a suit at a different place other than the place where he is ordinarily residing or having principal office and incidentally where the cause of action wholly or in part has also arisen. The impugned judgments, in our considered view, do not take away the additional forum and fundamental basis of conferring the right and advantage to the authors of the Copyright Act and the Trade Marks Act provided under the aforesaid provisions."

xxxx xxxx xxxx xxxx xxxx "52. In our opinion, the provisions of Section 62 of the Copyright Act and Section 134 of the Trade Marks Act have to be interpreted in the purposive manner. No doubt about it that a suit can be filed by the plaintiff at a place where he is residing or carrying on business or personally works for gain. He need not travel to file a suit to a place where the defendant is residing or cause of action wholly or in part arises. However, if the plaintiff is residing or carrying on business, etc. at a place where the cause of action, wholly or in part, has also arisen, he has to file a suit at that place, as discussed above."

16. Even in *Ultra Home Construction Pvt. Ltd. Vs. Purushottam Kumar Chaubey* (supra), a Division Bench of this Court, after relying upon the judgment of the Supreme Court in *Indian Performing Rights Society Ltd. (supra)*, has in para 14 and 15 of the judgment has held as under:

"14. It is evident from the above observations that the interpretation given to the expression "carries on business" in the context of a defendant under section 20 of the Code has also been employed in the context of a plaintiff under the said sections 134(2) and 62(2). Thus, in addition to the places where suits could be filed under section 20 of the Code, the plaintiff can also institute a suit under the Trade Marks Act, 1999 and the Copyright Act, 1957, as the case may be, by taking advantage of the provisions of section 134(2) or section 62(2), respectively. Both the latter provisions are in *pari materia*. Under these provisions four situations can be contemplated in the context of the plaintiff being a corporation (which includes a company). First of all, is the case where the plaintiff has a sole office. In such a case, even if the cause of action has arisen at a different place, the plaintiff can institute a suit at the place of the sole office. Next is the case where the plaintiff has a principal office at one place and a subordinate or branch office at another place and the cause of action has arisen at the place of the principal office. In such a case, the plaintiff may sue at the place of the principal office but cannot sue at the place of the subordinate office. The third case is where the plaintiff has a principal office at one place and the cause of action has arisen at the place where its subordinate office is located. In this eventuality, the plaintiff would be deemed to carry on business at the place of his subordinate office and not at the place of the principal office. Thus, the plaintiff could sue at the place of the subordinate office and cannot sue (under the scheme of the provisions of section

134(2) and 62(2)) at the place of the principal office. The fourth case is where the cause of action neither arises at the place of the principal office nor at the place of the subordinate office but at some other place. In this case, the plaintiff would be deemed to carry on business at the place of its principal office and not at the place of the subordinate office. And, consequently, it could institute a suit at the place of its principal office but not at the place of its subordinate office. All these four cases are set out in the table below for greater clarity:

15. The present case falls under S. No. 3 in the above table. The appellant / plaintiff has its principal office in Delhi (place A). Its subordinate office is at Deogarh, Jharkhand (place B) where it runs one of its hotels (Amrapali Clarks Inn), albeit in collaboration with Clarks Inn hotels. The alleged cause of action has accrued at Deogarh, Jharkhand (place B). Therefore, the appellant/plaintiff could, in respect of the alleged cause of action in this suit, institute a suit against the defendants at Deogarh, Jharkhand (place B) but not in Delhi. Thus, the conclusion arrived at by the learned single judge that this court did not have the territorial jurisdiction to entertain the suit cannot be faulted".

17. Insofar as the judgments relied upon by Mr. Rajiv Nayar are concerned, in Teva Pharmaceuticals Industries Ltd. (supra), the facts reveal that the Court was dealing with a case where allegation is of infringement of a patent, the rights being regulated under the Patents Act. The said judgment would not be applicable to the facts of this case, more particularly when the plea of infringement is of trademark and copyright. The case of the appellants/plaintiffs in that case was that the plaintiffs were within their rights, preventing others from offering for sale or selling patented products in view of provisions of Section 48(b) of the Patents Act. Section 48(b) of the Patents Act inter-alia stipulates as under:-

"48(b) where the subject matter of the patent is a process, the exclusive right to prevent third parties, who do not have his consent, from the act of using that process, and from the act of using, offering for sale, selling or importing for those purposes the product obtained directly by that process in India"

18. It is in this background, this Court in Teva Pharmaceutical Industries Ltd. (supra) has held that where the appellants/plaintiffs in that case have pleaded apprehension of selling/marketing in Delhi of the patented product, the Courts in Delhi would have jurisdiction to entertain the suit.

19. Similar is the case of this Court in L.G.Electronics India Pvt. Ltd. (supra), wherein, on the allegation of infringement of patent, this Court, noting the averments made in the plaint to the extent of likely damage or apprehension and seeking protection before such damage actually occurred, held that such a question of jurisdiction on the basis of apprehension, is a mixed question of fact and law and the same was thus deferred uptill establishment of further facts in trial and it could not be said at this stage that as a matter of law, the Court had no territorial jurisdiction to entertain and try the proceedings. Suffice to state, the judgment of this Court in Teva Pharmaceutical Industries Ltd. (supra) and L.G.Electronics India Pvt. Ltd. (supra) would not be

applicable to the facts of this case which is related to infringement of Copyright and Trademark and not Patents and no provision has been shown in the Trademarks Act/Copyright Act para-materia to Section 48(b) of the Patents Act.

20. Similarly, in *Exphar SA and Anr.* (supra), it is noted that the jurisdiction of this Court was sought to be attracted on the basis that; (a) Copyright of the plaintiffs in the *Maloxine Carton* was being infringed by the respondents; (b) the plaintiffs carry on business in Delhi and one of them has registered office in New Delhi. It was also stated that the defendants carry on business for profit in Delhi within the jurisdiction of the High Court. On facts, the case is distinguishable. In the case in hand, on a perusal of the jurisdiction para, as noted above, it is seen that, it is not the case of the plaintiff that the defendant has infringed the copyright/label of the plaintiff nor it has been averred that the trademark has been infringed/passed off by the defendant, as the goods of the plaintiff in Delhi. In the absence of such averments, this Court would not have any territorial jurisdiction to entertain the suit which has been filed for infringement/passing off of trademark/label.

21. Insofar as the judgment in the case of *Mars Incorporated* (supra), is concerned, the facts in the said case are that the plaintiff therein was the proprietor of trademark „MARS“. The said trademark was registered in India and in as many as 170 countries. It was used in respect of chocolates, confectionery, preserved food products and other foodstuffs in India. The plaintiff came into action when it found that defendant had incorporated a Company under the name and style of *Mars Food Pvt. Ltd.* According to the plaintiff, the object clause of the Company projects the intention to conduct a business in the food sector namely bakery and food items, canned and tinned foods, ready to eat foods, machinery for food processing and food manufacturing and packing. Admittedly, the defendant has neither commenced the manufacturing nor commenced the sale of goods (emphasis supplied). It was contended on behalf of the plaintiff that the adoption and use of their mark by the defendant, as part of their corporate name and trading style is clearly dishonest, since the trademark registrations of the plaintiff being a matter of public record constitute constructive notice to the defendant of the plaintiff's statutory rights and the defendant is deemed to have knowledge of such rights vested in the plaintiff and therefore, the object of the defendant in adopting the trademark is mala fide and/or to encash upon the goodwill and reputation of the plaintiff. This Court had posed for itself, a question whether the plaintiff is entitled to initiate an action against threatened invasion on its trademark. This Court in para 27, has held as under:-

"27. The plaintiff has the same degree of right to protect its trade name from infringement as it has against infringement of registered name or in an action of passing off in respect of manufacturing or selling or offering to sell the goods by the defendants under the plaintiff's trade name. The genesis is the underneath intention which is not difficult to fathom. Why one should choose or pick up the name or mark which has already become famous and well known and whose reputation and goodwill is all pervading and is obviously hard earned. The only intention or object is the thrive upon the goodwill and reputation and confuse the purchasers of his goods into believing that the defendants' goods or business in one way or other is connected with the plaintiff. Obvious object is to cash on and exploit the goodwill, reputation, name and trade mark of the plaintiff. The threat becomes imminent if there is

indication in the objects of the memorandum filed at the time of incorporation by the defendant that it will start manufacture and sell the goods under the said trade mark in near future. It is immaterial whether or not there is a real or tangible possibility of starting a business. Such a threat will ever loom large over the head of the plaintiff and therefore, entitle him to resort to Quia Timet Action as the intentions are bad, designs are dubious. There is no other object of such a defendant than to hoard the trade mark and black mail the plaintiff in order to use it in future. Thus, in both the cases, the action and proposed activities are manifestly malafide and calculated to deceive the public or would be purchasers as to the connection of the defendants with the plaintiff."

22. The Court had also said that the evil should be nipped in the bud, so is the nature of Quia Timet Action where the injury is apprehended and the invasion is threatened though no actual injury or damage has been caused. In para 32, it went on to hold as under:-

"32. The plaintiff's apprehension of real and tangible possibility that the defendants may start manufacturing in the food sector in neither imaginary or misplaced. It is the plaintiff which will suffer a greater hardship than the defendants. All these factors lead to the most ineluctable conclusion that injunction by Quia Timet Action is not only appropriate but essential also as misconception of the defendants about the importance of trade mark or trade name in the world of commerce and trade needs to be erased at the threshold before they open up their business."

23. A reading of the aforesaid judgment would reveal, the issue decided by the Court was whether on an apprehension, an injunction can be granted. The issue was not relatable to territorial jurisdiction. The said suit was a Quia Timet suit and not a case of infringement of trademark/copyright and passing off, as is the case in hand. In that case, the product was not launched, whereas in the case in hand, the product with impugned mark/label is in the market, not in Delhi, but in Andhra Pradesh. The judgment is of no help to the case of plaintiff.

24. That apart, it is not the case of the plaintiff that it has a registered office in Delhi. Rather, it is noted that the registered office of the plaintiff is in Mumbai. The averments as noted in para 8 above, the cause of action, if any has occurred in Andhra Pradesh and not in Delhi. The present case falls under serial No.3 of the table set out by the Division Bench of this Court. It would be either a Court in Mumbai or in Andhra Pradesh, which would have jurisdiction to entertain the suit but surely, not this Court. The submission of Mr.Nayar, that, the plaintiff has a Branch office in Delhi would not be relevant, when no cause of action has arisen in Delhi. Hence, the plea of the learned counsel for the defendant needs to be upheld. Accepting the plea of the defendant on the issue of jurisdiction, the plaint and connected application as filed by the plaintiff needs to be returned to the plaintiff in view of the provision of Order VII Rule 10 CPC, to enable the plaintiff to present the plaint in an appropriate Court, having the jurisdiction. Ordered accordingly. The aforesaid must not be construed as an expression on the merit of the prayer seeking injunction.

(V.KAMESWAR RAO) JUDGE JULY 27, 2016/jg