

The Jay Engineering Works Ltd. vs Sh. Ramesh Aggarwal on 7 November, 2006

Equivalent citations: MIPR2007(1)58, 2006(33)PTC561(DEL)

Author: Reva Khetrapal

Bench: Reva Khetrapal

JUDGMENT

Reva Khetrapal, J.

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1. By this order I propose to dispose of the above-mentioned two applications, both of which have been filed by the defendant seeking to oust the present suit from the jurisdiction of this Court. Though the first application is styled as one under Order VII Rule 11 of the Code of Civil Procedure and the second as one under Section 21 of the Code, de hors their garb both applications are under Order VII Rule 10 of the Code for return of the plaint on the ground that this Court is not clothed with territorial jurisdiction to entertain the suit.

2. Although initially counsel for plaintiff sought to urge that Section 21 of the Code of Civil Procedure could be invoked only in the appellate and revisional forum and not in the original forum and, in any event, precludes a Page 3633 prayer for return of the plaint, subsequently he contended himself by urging that without prejudice to his aforesaid contentions and assuming both applications to be a case of "defective labelling", the merits of the defendant's plea of lack of jurisdiction may be gone into in the backdrop of the averments made in the plaint alone, without looking into the defense of the defendant.

3. Order VII Rule 1 of the Code makes it imperative for the plaintiff to incorporate in the plaint the particulars as to the facts constituting the cause of action and the facts showing the court has jurisdiction. It is, therefore, trite that the question of jurisdiction has to be decided by looking into the averments made in the plaint and not by the defense which may be set up by the defendant. It is also legally well-established that as cause of action is a bundle of facts which, if arises within the jurisdiction of the Court concerned empowers the Court to entertain the matter, it is not enough to look only at the paragraph of plaint concerning cause of action (or any other paragraph in isolation). The entire plaint must be taken into consideration and viewed in its entirety to determine the conferment of jurisdiction in the court concerned. Bearing in mind these broad principles, I embark upon an examination of the plaint.

4. It is relevant to mention at this juncture that the present suit is a composite suit under the following enactments:

- a) Trade and Merchandise Marks Act, 1958 claiming infringement of trademark based on right in the trade mark and passing off.
- b) Copyright Act, 1957 for infringement of registered and unregistered copyright and
- c) Designs Act, 2000 for infringement of registered design

5. The plaintiff has made allegations against the defendant which are incorporated in paragraphs 19, 20 and 21 of the plaint, which are reproduced as under:

19. That in or around March 2002, to the shock of the plaintiff, it was discovered that someone was manufacturing, exporting and selling ceiling fans in the Middle East countries under the brand name "ASHA" which amounts to infringement of the plaintiff's registered copyrights, trademarks, designs and constitutes passing off the goods as those of the plaintiff's goods. In or around the middle of March 2002, the plaintiff obtained one ceiling fan of the brand name "ASHA" from Dubai and was shocked to see that the fan and the packaging constituted infringement of the plaintiff's copyrights, trademarks, designs and that some one was passing off its goods as those of the plaintiff's goods.

20. It is relevant to point out that on the packaging and the ceiling fan there was no indication of who the manufacturer was. The only indication given was of the name of the importer being Bin Wahlan Trading Co. L.L.C., Dubai. After making inquiries the plaintiff in April 2002 came to know that the ceiling fans were being supplied from Hyderabad or Bombay. On further inquiries, the plaintiff came to know that the defendant was the supplier of the said ASHA fans. But the plaintiff did not have any proof. The plaintiff has now on 10th May 2002 obtained a copy of the invoice cum delivery challan prepared by the defendant for exporting the fans to the said importer, M.s, Bin Wahlan Page 3634 Trading Co. (L.L.C.). From the said manifest it is clear that it is the defendant which is supplying the infringing ceiling fans with ASHA brand (sic.).

21. Furthermore, the ceiling fans manufactured and exported by the defendant is packaged in cardboard containers bearing a design, which is almost identical with that of the plaintiff's cardboard containers. A description of the defendant's containers clearly demonstrate this point. The following are the remarkable similarities between the packaging and the product of defendant's ASHA (Presidency Model) ceiling fan and those of the plaintiff's USHA ceiling fan (Pulsar Model)....

6. The plaintiff in para 60 of the plaint, pertaining to the cause of action, states as under:

60. The cause of action arose in or around 10th May 2002 when the plaintiff discovered that it was the defendant who was supplying goods which infringed the plaintiff's trademarks, copyrights, registered designs and which passed off as goods of the plaintiff. The cause of action for the present suit is a continuing one and arises each day the Defendant manufacturers, offers for sale, and sells and exports the said ceiling fans which are in violation of the plaintiff's aforesaid trademarks, copyrights and designs.

7. In para 61 of the plaint, which relates to the jurisdiction of this Court, the plaintiff states:

61. This Hon'ble Court has jurisdiction to try and entertain the suit as the plaintiffs are voluntarily carrying on business within the territorial jurisdiction of this Hon'ble Court. The jurisdiction of this Hon'ble Court is attracted in view of Section 62(2) of the Copyright Act. Since the suit based on Copyright is available in this Hon'ble Court, the plaintiffs are entitled to sue the defendant in this Hon'ble Court for passing off as well as infringement of trademarks and registered designs.

8. At this juncture, it may pertinently be pointed out that the defendant is not disputing the jurisdiction of this Court under Section 62(2) of the Copyright Act, 1957 (though the infringement of copyright is naturally disputed), but seeks to anchor its case on the judgment delivered by the Apex Court in 2006 (32) PTC 1 (SC) Dhoda House and Patel Field Marshal Industries v. S.K. Maingi and P.M. Diesel Ltd. The contention of the defendant is that the plaintiff in the jurisdiction paragraph, as set out above, has claimed jurisdiction of this Court on the basis of a wrong view of law that: "Since the suit based on copyright is available in this Hon'ble Court, the plaintiffs are entitled to sue the defendant in this Hon'ble Court for passing off as well as infringement of trademarks and registered designs". This proposition of the plaintiff, the defendant asserts, is contrary to the law laid down by the Hon'ble Supreme Court in the case of Dhoda House (supra).

9. Learned Counsel for the defendant highlights that the relevant paragraph of the plaint, that is, para No. 61 concerning the jurisdiction of this Court is singularly lacking in the allegation/averment by the plaintiff that the Page 3635 defendant is selling or offering for sale or exposing for sale fans under the alleged trade mark, copyright, design, etc. or is passing off the fans in Delhi or in any part of India.

10. Indeed, it seems to be common ground between the parties that no sale of the infringing fans has taken place or is contemplated to take place in India. Plaintiff in para 19 has explicitly stated that the defendant was discovered by it to be "manufacturing, exporting and selling ceiling fans in the Middle East countries". Again, in para 20 it is the allegation of the plaintiff that the ceiling fans were being "supplied from Hyderabad or Bombay" to the importer M/s. Bin Wahlan Trading Co. (L.L.C.) in Dubai by the defendant. Para 21 of the plaint reiterates the allegation of manufacture and export by the defendant to Middle East countries.

11. In paragraph 5 of its Written Statement (preliminary objections), the defendant admits that it is manufacturing and exporting the alleged infringing ceiling fans to Dubai. The said para is as follows:

5. That the defendant is not selling the fans under the trade mark, copyright and design complained of in any part of India and is manufacturing and putting the mark under the instructions of the buyer namely BIN WAHLAN TRADING CO. (L.L.C.) from Dubai who is the owner of the trade mark ASHA in Dubai. All the goods which have been manufactured and marketed by the defendant under the mark complained off have been exported to the aforementioned party.

12. The short question which, therefore, arises in the present case is whether Section 62(2) of the Copyright Act, 1957 is sufficient to confer jurisdiction on this Court for the infringement of trademark under the Trade and Merchandise Marks Act, 1958, for the infringement of design under the Designs Act, 2000 and for passing off?

13. Section 62 of the Copyright Act undoubtedly makes a significant departure from Section 20 of the Civil Procedure Code in that it provides an additional forum of jurisdiction to the aggrieved party to ventilate its grievance. While Section 20 keeps in kind the convenience of the defendant, Section 62 of the Copyright Act, 1957, on the premise that the Copyright Act protects valuable statutory rights, vests in the person instituting the suit the right to institute the same at the place where he "actually and voluntarily resides or carries on business or personally works for gain", thereby dragging the wrong-doer to the forum of the choice of the plaintiff.

14. The question whether such an additional forum is available to the plaintiff in terms of the Trade and Merchandise Marks Act, 1958 has been categorically answered in the negative by the Apex Court in the Dhodha case (supra). At page 11 of its Report, the Hon'ble Supreme Court observed as follows:

47. A cause of action in a given case both under the 1957 Act as also under the 1958 Act may be overlapping to some extent. The territorial jurisdiction conferred upon the court in terms of the provisions of the Code of Civil Procedure indisputably shall apply to a suit or proceeding under the 1957 Act as also the 1958 Act. Sub-section (2) of Section 62 of the 1957 Act provides for an additional forum. Such additional Forum was provided so as to enable the author to file a suit who may not Page 3636 otherwise be in a position to file a suit at different places where his copyright was violated. The Parliament while enacting the Trade and Merchandise Marks Act in the year 1958 was aware of the provisions of the 1957 Act. It still did not choose to make a similar provision therein. Such an omission may be held to be a conscious action on the part of the Parliament. The intention of the Parliament in not providing for an additional Forum in relation to the violation of the 1958 Act is, therefore, clear and explicit. The Parliament while enacting the Trade Marks Act, 1999 provided for such an additional Forum by enacting Sub-section (2) of Section 134 of the Trade Marks Act. The court shall not, it is well-settled, readily presume the existence of jurisdiction of a court which was not conferred by the statute. For the purpose of attracting the jurisdiction of a court in terms of Sub-section (2) of Section 62 of the 1957 Act, the conditions precedent specified therein must be fulfilled, the requisites whereof are that the plaintiff must actually and voluntarily reside or carry on

business or personally work for gain.

48. In *Dhodha House* (supra), admittedly the plaintiff-Appellant neither resided at Ghaziabad nor carried on any business at the place of residence of the respondent....

49. The expression 'carries on business' and the expression 'personally works for gain' connotes two different meanings. For the purpose of carrying on business only presence of a man at a place is not necessary. Such business may be carried at a place through an agent or a manager or through a servant. The owner may not even visit that place. The phrase "carries on business" at a certain place would, therefore, mean having an interest in a business at that place, a voice in what is done, a share in the gain or loss and some control thereover. The expression is much wider than what the expression in normal parlance connotes, because of the ambit of a civil action within the meaning of Section 9 of the Code. But it is necessary that the following three conditions would be satisfied, namely:

(1) The agent must be a special agent who attends exclusively to the business of the principal and carries it on in the name of the principal and not a general agent who does business for any one that pays him. Thus, a trader in the mufassil who habitually sends grain to Madras for sale by a firm of commission agents who have an independent business of selling goods for others on commission, cannot be said to "carry on business" in Madras. So a firm in England, carrying on business in the name of A.B. & Co., which employs upon the usual terms a Bombay firm carrying on business in the name of C.D. & Co., to act as the English firm's commission agents in Bombay, does not "carry on business" in Bombay so as to render itself liable to be sued in Bombay.

(2) The person acting as agent must be an agent in the strict sense of the term. The manager of a joint Hindu family is not an 'agent' within the meaning of this condition.

(3) To constitute "carrying on business" at a certain place, the essential part of the business must take place in that place. Page 3637 Therefore, a retail dealer who sells goods in the mufassil cannot be said to "carry on business" in Bombay merely because he has an agent in Bombay to import and purchase his stock for him. He cannot be said to carry on business in Bombay unless his agent made sales there on his behalf. A Calcutta firm that employs an agent at Amritsar who has no power to receive money or to enter into contracts, but only collects orders which are forwarded to and dealt with in Calcutta, cannot be said to do business in Amritsar. But a Bombay firm that has a branch office at Amritsar, where orders are received subject to confirmation by the head office at Bombay, and where money is paid and disbursed, is carrying on business at Amritsar and is liable to be sued at Amritsar. Similarly a Life Assurance Company which carried on business in Bombay and employs an agent at Madras who acts merely as a Post Office forwarding proposals

and sending moneys cannot be said to do business in Madras. Where a contract of insurance was made at place A and the insurance amount was also payable there, a suit filed at place B where the insurance Co. had a branch office was held not maintainable. Where the plaintiff instituted a suit at Kozhikode alleging that its account with the defendant Bank at its Calcutta branch had been wrongly debited and it was claimed that that court had jurisdiction as the defendant had a branch there, it was held that the existence of a branch was not part of the cause of action and that the Kozhikode Court therefore had no jurisdiction. But when a company though incorporated outside India gets itself registered in India and does business in a place in India through its agent authorized to accept insurance proposals, and to pay claims, and to do other business incidental to the work of agency, the company carries on business at the place of business in India. [See Mulla on the Code of Civil Procedure (Act V of 1908) - Fifteenth Edition - Volume I, Pages 246 - 247].

15. As stated at the outset, there is no dispute that for the relief of infringement of Copyright, this Court is vested with jurisdiction by virtue of Section 62(2) of the Copyright Act, in as much as the plaintiff admittedly has its registered office in Delhi and carries on business and works for gain in Delhi. There is no quarrel thus far. The contention of the defendant, however, is that in view of the law laid down by the Apex Court in *Dhodha House* (supra), this Court has no territorial jurisdiction in respect of the cause of action pertaining to infringement of trade mark, infringement of design and passing off, which part of the cause of action will be governed by Section 20 of the CPC. The defendant is from Hyderabad from where it is manufacturing and exporting its products to the Middle East. It neither resides nor carries on business in Delhi. Admittedly also, no part of the cause of action has arisen in Delhi as it is the common case of the parties that the goods are not being sold in Delhi, but are being exported from Hyderabad to Dubai.

16. The provisions of Order II Rule 3 CPC envisage that more than one cause of action can be joined in one suit, the caveat being that the court in which the said suit is filed should have jurisdiction in respect of all the causes Page 3638 of action. In *State of Bihar v. Oriental Coal Co. Ltd.*, the following pertinent observations were made by the Hon'ble Supreme Court:

The fact that the plaintiff based his claim on three alternative grounds, for one of which alone a part of the cause of action can at best be said to have arisen in Calcutta but not for others, cannot confer jurisdiction on the Calcutta High Court to try the suit on the basis of grounds in respect of which no part of the cause of action arose in Calcutta. The cause of action, within the contemplation of law is that which relates to a tenable plea.

17. Courts have consistently taken the view that joinder of causes of action is subject to the sine qua non that court has jurisdiction in respect of all causes of action involved. In *Surender Kumar Maingi v. Dhodha House* 1998 PTC (18) 249, the Allahabad High Court at page 255 of the Report laid down the following dicta, which was subsequently approved by the Apex Court.

It is urged that the trial Court has completely ignored to consider the provisions of Section 105 of the Trade and Merchandise Marks Act and in view of the aforesaid provisions the Court at Ghaziabad had no territorial jurisdiction to entertain the suit with respect to matters enumerated therein. In support of this proposition, learned Counsel has placed reliance on H.P. Marketing & Processing Corporation v. M.M. Breweries wherein it was held that in a suit for passing off or injunction on account of infringement of trade mark, the cause of action partly or wholly can arise in a given jurisdiction only if the defendant is proved to have directly made sale of goods under the impugned trade mark, within that jurisdiction, not to an individual consumer but to a distributor, whole-saler or retailer and that such a sale is on a commercial scale. Reliance is also placed on C.B. Demola Trading v. Bharat Sewing Machine Co. . It is also urged that unless the Court has jurisdiction to try all the causes of action, such different causes of action cannot be joined together in one suit....A bare perusal of the plaint would show that the suit is based upon alleged infringement of registered trade mark or relating to any right in a registered trade mark or for passing off by the defendant of any trade mark which is identical with or deceptively similar to the plaintiff's trade mark. Such a suit cannot be entertained by the Court at Ghaziabad in view of Section 105 of the Trade and Merchandise Marks Act. The mere fact that the court may have jurisdiction to entertain the suit with respect to a cause of action under the Copyright Act under Section 62 of the Act can be of no avail. I am, therefore, of the opinion that the Court at Ghaziabad has no territorial jurisdiction to try the suit.

18. The above view of the Allahabad High Court was endorsed by the Apex Court in paras 53, 54 and 57 of its judgment in Dhodha House (supra). While dealing with the judgment of Division Bench of this Court in Patel Field Page 3639 Marshal Industries (supra), the Hon'ble Supreme Court at page 14 of the Report held as follows:

53. In this case, the Delhi High Court could not have invoked its jurisdiction in terms of the 1957 Act. The primary ground upon which the jurisdiction of the original side of the High Court was invoked was the violation of the 1958 Act, but in relation thereto, the provisions of Sub-section 2 of Section 62 of the 1957 Act could not be invoked.

54. The plaintiff was not a resident of Delhi. It has not been able to establish that it carries on any business at Delhi. For our purpose, the question as to whether the defendant had been selling its produce in Delhi or not is wholly irrelevant. It is possible that the goods manufactured by the plaintiff are available in the market of Delhi or they are sold in Delhi but that by itself would not mean that the plaintiff carries on any business in Delhi.

57. For the purpose of invoking the jurisdiction of a court only because two causes of action joined in terms of the provisions of the Code of Civil Procedure, the same would not mean that thereby the jurisdiction can be conferred upon a court which had jurisdiction to try only the suit in respect of one cause of action and not the other. Recourse to the additional Forum, however, in a given case, may be taken if both the causes of action arise within the jurisdiction of the Court which otherwise had the

necessary jurisdiction to decide all the issues.

19. Strong reliance has been placed by learned Counsel for the plaintiff on a recent decision of the learned Single Judge of this Court (Hon'ble Mr. Justice A.K. Sikri) in Dabur India limited v. K.R. Industries reported in 2006 (33) PTC 107 (Del.). The suit in the said case was a composite suit titled as suit for permanent injunction restraining infringement of copyright, passing off, rendition of accounts, delivery up and damages, etc. As in the instant case, insofar as the alleged infringement of passing off was concerned, the suit was filed under the provisions of the old Act, i.e., the Trade & Merchandise Act, 1958. In para 7 at page 112 of the Report, the learned Single Judge held as follows:

7. The plaintiff could not dispute that the defendant is carrying on business in Andhra Pradesh. It could not also point out any sale of its products made in Delhi by the defendant. In a suit for passing off under the Act of 1958 place of suing has to be where the cause of action or part of (cause of) action (arises) or where the defendant resides; or carries on business or works for gain. This is because of the reason that having regard to the provisions of Sections 105 and 106 of the Act of 1958, territorial jurisdiction of the Court would be determined on the touchstone of Section 20 of the CPC. This has been consistent view taken by various courts as well as this Court. Without elaborating, purpose can be served by mentioning some of these judgments:

(i) Haryana Milk Foods Ltd. v. Chambel Dairy Products 2002(25) PTC 156 (Del).

(ii) Lok Nath Prasad Gupta v. Bijay Kumar Gupta .

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(iii) Gupta Brothers Conduit Pipe Manufacturing Co. Pvt. Ltd. v. Anil Gupta and Anr. 2001 (24) PTC 159 (Del).

(iv) Himachal Pradesh Horticulture Produce Marketing and Processing Corporation Ltd. Shimla v. Mohan Meaking Breweries Limited, Solan (Himachal Pradesh), .

20. In para 13 at page 115 of the Report after observing that normally the judgments in the cases Glaxo Operations U.K. Ltd. Middlesex (England) and Ors. v. Samrat Pharmaceuticals Kanpur and Roop Chand Arya Industries v. Kiran Soap Works and Anr. in Suit No. 565/1980 decided on 7th October, 1980, which are judgments of this Court allowing joinder of causes of actions under trademark and copyright law (in the first case court had no jurisdiction in respect of trademark and in the second case in copyright) would have been binding upon him, the learned Single Judge held that this was no longer so as the controversy had been set at rest by the Supreme Court in Dhodha House (supra).

21. In paras 16 to 18 at page 118 of the Report, it was observed as follows:

16. It is thus, clear from the aforesaid discussion that the Supreme Court has now conclusively determined that the two causes of action could not be combined. When the Supreme Court overruled the Division Bench judgment of this Court laying contrary principles, by implication, single Bench judgments of this Court in Glaxo Operations UK Ltd., Middlesex (supra) & Roop Chand Arya Industries (supra) also stand overruled.

17. Following this judgment of the Supreme Court, which applies to the facts of this case as well, I have no option but to allow the present application of the defendant. The plaint is returned for filing in the Court of competent jurisdiction.

18. Pending IAs also stand disposed of along with the suit. No costs.

22. On an appeal from the above judgment, a Division Bench of this Court (Hon'ble Dr. Justice Mukundakam Sharma and Hon'ble Ms. Justice Hima Kohli) in FAO (OS) No. 455 of 2006 Dabur India Limited v. K.R. Industries, in the penultimate and ultimate paragraphs of its decision observed as under:

So far the relief for passing off is concerned, in our considered opinion, the ratio of the decision of the Supreme Court in Dhodha House & Patel Field Marshal Industries v. S.K. Maingi & P.M. Diesel Ltd. reported as 2006 (32) PTC 1 (SC) is squarely applicable. The learned Single Judge has also held that so far as the aforesaid relief relating to passing off is concerned, Delhi court does not have any territorial jurisdiction as the respondent/defendant is from Andhra Pradesh and there is no documentary evidence to show that the respondent was selling goods in Delhi. We agree with the aforesaid findings and conclusions recorded Page 3641 by the learned Single Judge. Accordingly, we find no merit in the submissions of the counsel appearing for the appellant that a composite suit of infringement of copyright and passing off would lie in the same forum. We also do not find any error in the judgment of the learned Single Judge as in our considered opinion so far the relief for passing off is concerned, the same is covered by the decision of the Supreme Court in Dhodha House case.

So far the relief claimed as against the infringement of copyright is concerned, it is clearly established that the trial court will have the territorial jurisdiction and, therefore, we also agree with the conclusions and findings recorded by the learned Single Judge that in the case of infringement of copyright, this Court will have the jurisdiction. The learned Single Judge has directed that the plaint be returned to the appellant/plaintiff for filing of the same in the court of competent jurisdiction. We make it clear that it will be open to the appellant/plaintiff to file a fresh suit in the court of competent jurisdiction in accordance with law with a further observation that so far as the relief for infringement of copyright is concerned, this Court will have jurisdiction.

In terms of the aforesaid order, the appeal stands disposed of.

23. Learned Counsel for the plaintiff in a bid to buttress his case that a composite suit for infringement of copyright, trade mark and designs and for passing off, etc. is maintainable relied upon three decisions of this Court, namely:

(i) Smithkline Beechan, PLC and Anr. v. Sunil Singhi and Anr. ,

(ii) Pfizer Products, Inc v. Rajesh Chopra and Ors. and

(iii) LG Corporation and Anr. v. Intermarket Electropastics (P) Ltd. and Anr. 2006 (32) PTC 429 (Del.).

24. The aforesaid judgments of this Court, in my view, are of no avail to the plaintiff as they in no manner further the case of the plaintiff.

25. The judgment in Smithkline Beecham (supra) was rendered by a learned Single Judge of this Court (Hon'ble Mr. Justice Vikramjit Sen), relying upon the earlier judgments of this Court in Glaxo Operations (supra) and Tata Oil Mills Company Ltd., Delhi v. Reward Soap Works AIR 1983 Delhi page 286. In Glaxo Operations (supra), this Court had held that where a Company had its registered office at Bombay and a branch office at Delhi and had filed a combined suit for breach of copyright as also for infringement of registered trademark, the action in Delhi was maintainable. In Tata Oil Mills Company (supra), it was held that in view of the undoubted jurisdiction of this Court in relation to the infringement of copyright, Court would be justified in granting injunction of both the trade mark and copyright.

26. As stated above, Supreme Court has now conclusively opined in Dhodha House (supra) that two cases of action could not be combined merely because Page 3642 one cause of action clothes the concerned court with jurisdiction, and by necessary implication judgments to the contrary such as in Glaxo Operations (supra) stand overruled.

27. In Pfizer Products (supra), a learned Single Judge of this Court (Hon'ble Mr. Justice Bader Durrez Ahmed), after minutely examining the ratio of the decision of the Supreme Court in Dhodha House (supra), came to the conclusion, and I think rightly so, that the findings of the Court in Jawahar Engineering Company and Ors. Ghaziabad v. Jawahar Engineers Pvt. Ltd., Sri Rampur, Distt. Ahmedabad 1983 PTC 207 have not been unsettled by the Hon'ble Supreme Court in the Dhodha House case. In Jawahar Engineering (supra), it was held that the real point which gives the court jurisdiction is not the place where the trademark advertisement has appeared, but the fact that the trade mark is sought for sale in Delhi amongst other places. I do not see how the decision of this Court in Pfizer Products (supra) is of any assistance to the plaintiff in the instant case. It is not the case of the plaintiff that defendant has sought registration of its trade mark for sale of goods at Delhi and on the contrary the defendant asserts that the infringing trade mark is registered by the importer at Dubai for sale in the Middle East countries. It is also not the case of the plaintiff that it faces any threat perception of sale of plaintiff's products in Delhi.

28. In LG Corporation (supra), it was held that it was the sale of goods in Delhi by the defendant which had given cause to the plaintiff to enforce the legal remedy for redress. Again, the facts of the said case were entirely different from the facts of the present case and consequently the reliance placed by counsel for plaintiff on the aforesaid case is entirely misplaced.

29. In view of the aforesaid discussion, it must be held that the ratio of the decision of the Supreme Court in Dhoda House (supra) is squarely applicable. So far as the reliefs pertaining to infringement of trademark, design and passing off are concerned, this Court will have no jurisdiction to entertain the present suit. Needless to state that for the relief against infringement of copyright, this Court has the jurisdiction. Accordingly, it will be open to the plaintiff to file a fresh suit in the court of competent jurisdiction so far as the reliefs for infringement of trademark, design and passing off are concerned. The present suit shall be amended by the plaintiff so as to relate only to the relief for infringement of copyright.

30. The applications are disposed of accordingly. There will be no order as to costs.

List the matter before the Joint Registrar for further proceedings on 20.11.2006.