

Ultra Home Construction Pvt. Ltd. Vs Purushottam Kumar Chaubey and Others

Court: DELHI HIGH COURT

Date of Decision: Jan. 20, 2016

Acts Referred: Civil Procedure Code, 1908 (CPC) - Order 7 Rule 10, Section 20, Section 20(a), Section 20(b), Section 20(c)

Copyright Act, 1957 - Section 62, Section 62(2)

Trade Marks Act, 1999 - Section 134, Section 134(2)

Citation: (2016) 227 DLT 320 : (2016) 65 PTC 469 : (2016) 4 RAJ 352

Hon'ble Judges: Badar Durrez Ahmed and Sanjeev Sachdeva, JJ.

Bench: Division Bench

Advocate: Rakesh Kumar and Bipin Kumar, for the Appellant; Vinay P. Tripathi, for the Respondent

Final Decision: Disposed off

Judgement

Badar Durrez Ahmed, J.

1. This appeal has been filed against the judgement dated 20.07.2015 delivered by a learned single judge of this

court in CS (OS) 2065/2015. By virtue of the impugned judgement the learned single judge has dismissed a suit filed by the appellant/plaintiff on

the ground that this court does not have the territorial jurisdiction to entertain the same. The said dismissal of the suit was in limine, without requiring

the presence of the defendants / respondents.

2. The suit was filed by the appellant/plaintiff seeking an injunction against the defendants, alleging infringement of its trademark "AMRAPALI".

The appellant / plaintiff, as alleged in the plaint, carries on the business of building, developing, colonising and promoting residential, commercial

and industrial buildings, cinema houses, amusement parks, hotels and deals in all kinds of immovable properties. It is further alleged that the

appellant / plaintiff (Ultra Home Construction Private Limited) is the flagship company of the AMRAPALI GROUP and has a number of other

affiliate/associate companies in which it has a controlling stake either by itself or through the shareholding members or has common directors and

shareholders. It is further alleged that due to the popularity of the appellant company and its trademark AMRAPALI, the same has become the

mark of the group as such and that is how the entire group is known as the AMRAPALI GROUP. According to the appellant / plaintiff, the

AMRAPALI GROUP is the leader in real estate development industry. It is further stated in the plaint that the appellant / plaintiff has its principal

place of business (registered office) at 307, Third floor, Nipun Tower, Community Centre, Karkardooma, Delhi-92.

3. It is also stated in the plaint that the plaintiff/appellant is inter alia operating a hotel at Deogarh, Jharkhand in association with Clark-Inn hotel

group. The said hotel is being run under the name - Amrapali Clark-Inn. It is alleged that the defendants/respondents have launched a residential

project at Deogarh, Jharkhand under a deceptively similar name - AMBAPALI GREEN. Paragraph 39 of the plaint is relevant and is set out

herein below:-

39. That the defendants are purportedly launched residential project by the deceptively similar name i.e. AMBAPALI GREEN which shall

definitely create confusion in the mind of general public who will start considering this project as an extension of plaintiff's earlier project

AMRAPALI GREEN. The plaintiff's has long back presence in the town of Deogarh (Jharkhand) where the defendants have launched the

impugned project AMBAPALI GREEN. The plaintiff has its hotel in Deogarh which is operational and running in profit and plaintiff's trademark

has been known to the local residents and tourists who throng to that place for worship. It is pertinent to mention here that plaintiff's project

Amrapali Green is a successful group housing residential complex having sprawling ambience and consisting of approximately 354 flats/apartments

of varying sizes in Indira Puram, Ghaziabad. The project has already been completed in 2008 and possession has been handed over to the

respective customers. The launch of impugned project is a calculated move of defendants to injure the plaintiff in his trade or business by unfair

competition. By launching project of deceptively similar name, the defendants have made false representation to prospective customers about his

business to pass off its goods as the goods of plaintiff. The impugned project is also launched with the illegal motive to reduce force or value of

plaintiff's trademark and to gradually tamper the commercial value of its marks and reputation slice by slice.

Paragraph 52 of the plaint, through which the territorial jurisdiction of this court is invoked, is relevant and is set out below:-

52. That this Hon'ble Court has the territorial jurisdiction to entertain and decide the present suit as the plaintiff operates in Delhi through its

registered office at: 307, 3rd floor, Nipun Tower, Community Centre, Karkardooma, Delhi-92. The plaintiff company carries on its business in

Delhi through its several exclusive agents. The plaintiff has extensive goodwill and reputation under the said trademark on account of voluminous

sales and advertisement within the jurisdiction of this Hon"ble Court. By virtue of above said this Hon"ble Court has the territorial jurisdiction

within the meaning of section 134(2) of the Trade Marks Act, 1999 and also under section 62(2) of the Copyright Act, 1957 and the Code of

Civil Procedure, 1908.

4. It is evident that the appellant/plaintiff had invoked the jurisdiction of this court on the ground that its principal office (registered office) was

located in Delhi and that, therefore, it carried on business in Delhi. Consequently, it was stated that this court has territorial jurisdiction within the

meaning of section 134(2) of the Trade Marks Act, 1999 and also under section 62(2) of the Copyright Act, 1957 and the Code of Civil

Procedure, 1908. The learned single judge, placing reliance on the recent decision of the Supreme Court in Indian Performing Rights Society Ltd.

v. Sanjay Dalia: , (2015) 10 SCC 161, disagreed. The learned single judge also observed as under:-

7. I may note that it is conceded on behalf of the plaintiff that at the place where the defendants are infringing the trademark at the ogle,

Jharkhand, plaintiff has a hotel, and if the plaintiff as a hotel can surely the plaintiff is carrying on business at that particular place and carrying on of

the hotel business is very much a part of carrying on of the business of the plaintiff and therefore the race of the judgement in Indian Performing

Rights Society Ltd"s case (supra) clearly applies. The plaintiff is running the hotel with the Clark-Inn Hotel Group i.e. plaintiff company does have

a share in the profits and losses in the hotel which is being run along with the Clark-Inn Hotel Group at the Deogarh, Jharkhand. Once that is so,

there is a running business and plaintiff is therefore carrying on business at Deogarh, Jharkhand, and consequently the ratio of the judgement in the

case of Indian performing rights Society Ltd. (supra) applies and hence this court would not have territorial jurisdiction.

5. The learned counsel for the appellant / plaintiff submitted that the learned single judge had not correctly appreciated the finding and the ratio of

the decision of the Supreme Court in the case of Sanjay Dalia (supra). It was contended that the Supreme Court did not hold that the jurisdiction

of the court where the principal place of business or the registered office of the proprietor of the registered trademark and that of the copyright was

situated would be ousted if the cause of action had arisen at another place where the plaintiff also had some activities. It was contended that the

learned single judge erred in dismissing the suit of the plaintiff/appellant and in holding that this court did not have territorial jurisdiction although the

registered office of the appellant/plaintiff was located in Delhi, merely on the ground that the appellant/plaintiff owned a hotel named ""AMRAPALI

CLARKS INN"" at Deogarh, the place where the cause of action arose. Placing reliance on the Supreme Court decision in Dhoda House v. SK

Maingi: , (2006) 9 SCC 41 it was contended that merely owning a hotel at a place would not mean the carrying on of business at that place. It was

submitted that even though the appellant/plaintiff has a hotel at Deogarh, Jharkhand it cannot be said that it is carrying on business at Deogarh,

Jharkhand. It was also contended that the learned single judge had erred in law in dismissing the suit in limine. It was submitted that the learned

single judge, if he found that this court did not have the territorial jurisdiction to entertain the suit, could only have returned the plaint to the

appellant/plaintiff for filing before a court of competent jurisdiction and the suit could not have been dismissed in limine.

6. The learned counsel appearing on behalf of the respondents submitted that the learned single judge had correctly held that this court does not

have territorial jurisdiction for entertaining the suit. It was contended that the appellant/plaintiff had clearly admitted that it was carrying on business

at Deogarh, Jharkhand inasmuch as it had a hotel, albeit in collaboration with Clarks Inn, at that place. It was also admitted that the alleged cause

of action had arisen at Deogarh, Jharkhand because it was alleged that the defendants/respondents had established a residential project at that

place by the name of ""AMBAPALI GREEN"". All the respondents, as would be evident from the memo of parties itself, reside and/or carry on

business at Deogarh, Jharkhand. Therefore, it is Deogarh, Jharkhand where the suit could have been filed and not Delhi since no part of the cause

of action arose in Delhi. The mere fact that the appellant/plaintiff had its principal office (registered office) in Delhi would not enable it to file the suit

in Delhi because the cause of action arose at Deogarh which was a place where it carried on its business. It was submitted that the learned single

judge had correctly understood and applied the ratio of the supreme court decision in Sanjay Dalia (supra).

7. It would be necessary to set out the relevant provisions of the Code of Civil Procedure, 1908 (hereinafter referred to as "the code"), the Trade

Marks Act, 1999 and the Copyright Act, 1957. They are as under:-

Section 20 of the Code of Civil Procedure, 1908:

20. Other suits to be instituted where defendants reside or cause of action arises.--Subject to the limitations aforesaid, every suit shall be instituted

in a Court within the local limits of whose jurisdiction-

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

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

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries

on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or

carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

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

Explanation.--A corporation shall be deemed to carry on business at its sole or principal office in India or, in respect of any cause of action arising

at any place where it has also a subordinate office, at such place.

(underlining added)

Section 134 of the Trade Marks Act, 1999:-

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.

(underlining added)

Section 62 of the Copyright Act, 1957:-

62. Jurisdiction of court over matters arising under this Chapter.--(1) Every suit or other civil proceeding arising under this Chapter in respect of the

infringement of copyright in any work or the infringement of any other right conferred by this Act shall be instituted in the district court having

jurisdiction.

(2) For the purpose of sub-section (1), a "district court having jurisdiction" shall, notwithstanding anything contained in the Code of Civil

Procedure, 1908 (5 of 1908), or any other law for the time being in force, include a district court within the local limits of whose jurisdiction, at the

time of the institution of the suit or other proceeding, the person instituting the suit or other proceeding or, where there are more than one such

persons, any of them actually and voluntarily resides or carries on business or personally works for gain.

(underlining added)

8. On examining the provisions of section 20 of the code, it is evident that a defendant could be sued inter alia where the defendant carried on

business. If the defendant was a corporation (which expression includes a company), by virtue of the explanation after clause (c), it would be

deemed to carry on business:-

(1) if it had a sole office in India then at the place of the sole office;

(2) if it had a principal office at one place as well as a subordinate office at another place then:-

(i) in case the cause of action arose at the place of the subordinate place, at that place; or

(ii) in case no part of the cause of action arose at the place of the subordinate office, at the place of the principal office.

9. This position was explained in Patel Roadways Ltd. v. Prasad Trading Co.: , (1991) 4 SCC 270, as follows:-

12. We would also like to add that the interpretation sought to be placed by the appellant on the provision in question renders the Explanation

totally redundant. If the intention of the legislature was, as is said on their behalf, that a suit against a corporation could be instituted either at the

place of its sole or principal office (whether or not the corporation carries on business at that place) or at any other place where the cause of action

arises, the provisions of clauses (a), (b) and (c) together with the first part of the Explanation would have completely achieved the purpose. Indeed

the effect would have been wider. The suit could have been instituted at the place of the principal office because of the situation of such office

(whether or not any actual business was carried on there). Alternatively, a suit could have been instituted at the place where the cause of action

arose under clause (c) (irrespective of whether the corporation had a subordinate office in such place or not). This was, therefore, not the purpose

of the Explanation. The Explanation is really an Explanation to clause (a). It is in the nature of a clarification on the scope of clause (a) viz. as to

where the corporation can be said to carry on business. This, it is clarified, will be the place where the principal office is situated (whether or not

any business actually is carried on there) or the place where a business is carried on giving rise to a cause of action (even though the principal office

of the corporation is not located there) so long as there is a subordinate office of the corporation situated at such place. The linking together of the

place where the cause of action arises with the place where a subordinate office is located clearly shows that the intention of the legislature was

that, in the case of a corporation, for the purposes of clause (a), the location of the subordinate office, within the local limits of which a cause of

action arises, is to be the relevant place for the filing of a suit and not the principal place of business. If the intention was that the location of the sole

or principal office as well as the location of the subordinate office (within the limits of which a cause of action arises) are to be deemed to be places

where the corporation is deemed to be carrying on business, the disjunctive "or" will not be there. Instead, the second part of the Explanation

would have read "and, in respect of any cause of action arising at any place where it has a subordinate office, also at such place".

13. As far as we can see the interpretation which we have placed on this section does not create any practical or undue difficulties or disadvantage

either to the plaintiff or a defendant corporation. It is true that, normally, under clauses (a) to (c), the plaintiff has a choice of forum and cannot be

compelled to go to the place of residence or business of the corporation and can file a suit at a place where the cause of action arises. If a

corporation desires to be protected from being dragged into litigation at some place merely because a cause of action arises there it can save itself

from such a situation by an exclusion clause as has been done in the present case. The clear intendment of the Explanation, however, is that, where

the corporation has a subordinate office in the place where the cause of action arises, it cannot be heard to say that it cannot be sued there because

it does not carry on business at that place. It would be a great hardship if, in spite of the corporation having a subordinate office at the place where

the cause of action arises (with which in all probability the plaintiff has had dealings), such plaintiff is to be compelled to travel to the place where

the corporation has its principal place. That place should be convenient to the plaintiff; and since the corporation has an office at such place, it will

also be under no disadvantage. Thus the Explanation provides an alternative locus for the corporation's place of business, not an additional one.

(underlining added)

10. This view was endorsed in *New Moga Transport Co. v. United India Insurance Co. Ltd.*, (2004) 4 SCC 677 as follows:

9. Normally, under clauses (a) to (c) the plaintiff has a choice of forum and cannot be compelled to go to the place of residence or business of the

defendant and can file a suit at a place where the cause of action arises. If the defendant desires to be protected from being dragged into a litigation

at some place merely because the cause of action arises there it can save itself from such a situation by an exclusion clause. The clear intendment of

the Explanation, however, is that where the corporation has a subordinate office in the place where the cause of action arises it cannot be heard to

say that it cannot be sued there because it does not carry on business at that place. Clauses (a) and (b) of Section 20 *inter alia* refer to a court

within the local limits of whose jurisdiction the defendant inter alia ""carries on business"". Clause (c) on the other hand refers to a court within the

local limits of whose jurisdiction the cause of action wholly or in part arises.

10. On a plain reading of the Explanation to Section 20 CPC it is clear that the Explanation consists of two parts: (i) before the word ""or

appearing between the words ""office in India"" and the words ""in respect of"", and (ii) the other thereafter. The Explanation applies to a defendant

which is a corporation, which term would include even a company. The first part of the Explanation applies only to such corporation which has its

sole or principal office at a particular place. In that event, the court within whose jurisdiction the sole or principal office of the company is situate

will also have jurisdiction inasmuch as even if the defendant may not actually be carrying on business at that place, it will be deemed to carry on

business at that place because of the fiction created by the Explanation. The latter part of the Explanation takes care of a case where the defendant

does not have a sole office but has a principal office at one place and has also a subordinate office at another place. The expression ""at such place

appearing in the Explanation and the word ""or"" which is disjunctive clearly suggest that if the case falls within the latter part of the Explanation it is

not the court within whose jurisdiction the principal office of the defendant is situate but the court within whose jurisdiction it has a subordinate

office which alone has the jurisdiction ""in respect of any cause of action arising at any place where it has also a subordinate office"".

11. Section 20, before the amendment of CPC in 1976, had two Explanations being Explanations I and II. By the Amendment Act, Explanation I

was omitted and Explanation II was renumbered as the present Explanation. Explanation which was omitted reads as follows:

Explanation I.--Where a person has a permanent dwelling at one place and also a temporary residence at another place, he shall be deemed to

reside at both places in respect of any cause of action arising at the place where he has such temporary residence.

12. This Explanation dealt with the case of place of residence of the defendant and provided with regard to a person having a permanent dwelling

at one place and also temporary at another place, that such person shall be deemed to reside at both places in respect of any cause of action

arising at the place where he has such temporary residence. The language used in Explanation II, on the other hand, which is the present

Explanation, was entirely different. Had the intention been that if a corporation had its principal office at one place and a subordinate office at

another place and the cause of action arose at the place where it had its subordinate office it shall be deemed to be carrying on business at both

places, the language used in Explanation II would have been identical to that of Explanation I which was dealing with a case of a person having a

permanent dwelling at one place and also temporary residence at another place.

(underlining added)

11. Thus, for the purpose of section 20 of the Code, a company having both a principal office and a subordinate office at a different place would

be deemed to carry on business either at the principal office or at the place of the subordinate office but not at both places. If the cause of action

arose at the place of the subordinate office then the company would be deemed to carry on business at the place of the subordinate office alone.

On the other hand, if the cause of action did not arise at the place of the subordinate office then the company would be deemed to carry on

business at the place of its principal office.

12. By virtue of the Supreme Court decision in Sanjay Dalia (supra) this deeming provision contained in the explanation in section 20 of the Code

has been read into section 134(2) of the Trade Marks Act, 1999 and section 62(2) of the Copyright Act, 1957 for the purposes of isolating the

place where the plaintiff can be said to carry on business. It will be noted that though the expression ""carries on business"" is used in all the three

provisions (i.e., section 20 of the Code, section 134(2) of the Trade marks Act, 1999 and section 62(2) of the Copyright Act, 1957), the deeming

provision contained in the Explanation in section 20 of the Code has not been expressly incorporated in the other two provisions. But, the Supreme

Court has, in the said decision, given the expression ""carries on business"" used in relation to a corporation in the context of a defendant in section

20 of the Code the same meaning when it is used in relation to a plaintiff under the said sections 134(2) and 62(2). It would be instructive to note

the following observations of the Supreme Court in the said decision:

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.

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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 de hors 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.

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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.

13. 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:

14. 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.

15. We may point out that the learned counsel for the appellant/plaintiff had also urged that there was some conflict between the decisions of the

Supreme Court in Dhodha House (supra) and Sanjay Dalia (supra). But, that argument is not available to the learned counsel for multiple reasons.

The first and only reason that we may allude to is that in Sanjay Dalia (supra) itself, the Supreme Court, considered its decision in Dhodha House

(supra) and held that there was nothing in the interpretation put forth in Sanjay Dalia (supra) which militated against the observations / conclusions

in Dhodha House. The exact language used by the Supreme Court on this aspect is as under:-

42. In Dhodha House [Dhodha House v. S.K. Maingi, , (2006) 9 SCC 41], the question which is posed before us did not come up for

consideration and it has been observed that the Act provides for an additional forum. Such additional forum was provided so as to enable a

plaintiff who may not be otherwise in a position to file a suit at different places where the copyright was violated. We have anxiously considered the

aforesaid observations made and the object of the Act, we find that the interpretation made by us does not militate against the observations made

by this Court in Dhodha House [Dhodha House v. S.K. Maingi, , (2006) 9 SCC 41], the precise question which is before us, was not involved in

the aforesaid case. A decision is not to be construed like a statute nor by inferential process can it be assumed that this Court has decided the

question also which is before this Court in the instant cases.

16. Interestingly, in the present case, even if the deeming fiction of the Explanation in section 20 of the Code is not imported into either of the said

sections 134(2) or 62(2), on the basis of the averments made in the plaint itself it becomes clear that the plaintiff carries on business at, inter alia,

Deogarh. In Dhodha House (supra) itself it was observed as follows:

46. The expression ""carries on business"" and the expression ""personally works for gain"" connote 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 on 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..

(underlining added)

17. The appellant / plaintiff has a clear and admitted interest in the business of its hotel - Amrapali Clarks Inn - at Deogarh. On the basis of the

averments in the plaint, the plaintiff carries on business through the said hotel at Deogarh. To recapitulate, the plaintiff had stated the following in

paragraph 39 of the plaint:

The plaintiff's has long back presence in the town of Deogarh (Jharkhand) where the defendants have launched the impugned project

AMBAPALI GREEN. The plaintiff has its hotel in Deogarh which is operational and running in profit and plaintiff's trademark has been known to

the local residents and tourists who throng to that place for worship.

(underlining added)

18. Clearly, on the basis of the averments in the plaint itself and in the backdrop of the observations in Dhodha House (supra), the appellant /

plaintiff carries on business in Deogarh, Jharkhand. It may also carry on business at Delhi. But, because the cause of action has allegedly arisen in

Deogarh, Jharkhand, and not in Delhi, the appellant/plaintiff cannot sue the defendants/respondents in Delhi in view of the decision in Sanjay Dalia

(supra). Thus, this court does not have the territorial jurisdiction to entertain the suit. And, on this count, the decision of the learned single judge

cannot be faulted. But, the suit ought not to have been dismissed. As this court did not have jurisdiction, the plaint ought to have been returned

under order 7 rule 10 CPC. Only to that extent, the learned single judge had erred.

19. In sum, the dismissal of the suit is set aside. Since this court does not have the territorial jurisdiction to entertain the suit, the plaint is directed to

be returned to the appellant/plaintiff for presentation before the proper court. The appeal stands disposed of. The parties shall bear their own

costs.