

Caterpillar Inc. Vs Kailash Nichani and Others

Court: Delhi High Court

Date of Decision: Dec. 21, 2001

Acts Referred: Civil Procedure Code, 1908 (CPC) – Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 4, Order 7 Rule 11, 151

Copyright Act, 1957 – Section 62

Citation: (2002) 2 AD 894 : (2002) 97 DLT 304 : (2002) 24 PTC 405

Hon'ble Judges: A.K. Sikri, J

Bench: Single Bench

Advocate: Pravin Anand and Binny Kalra, for the Appellant; Deepak Bhattacharya, Prabir Chaudhary and Seema Sharma, for the Respondent

Judgement

A.K. Sikri, J.

The aforesaid three IAs filed in the suit are being disposed of by this common order. Facts which are necessary for disposal

of these IAs only are stated :-

The instant suit filed by the plaintiff is for permanent injunction restraining the infringement of copyright, passing of, damages and delivery up, etc.

plaintiff is a company incorporated under the laws of the State of Delaware, U.S.A. It is having its principal place of business at Illinois, U.S.A. It is

the proprietor of the trade mark CATERPILLAR and CAT. The plaintiff claims that the CATERPILLAR trade mark was first used in the U.S.A.

in 1904 by Benjamin Holt and registered as Reg. No. 79056 in the U.S.A. in 1910. This registration is still valid and subsisting. Caterpillar Tractor

Co. was incorporated in California, U.S.A. in 1925 by the merger of two predecessor companies, i.e., Holt and Best. In 1986, Caterpillar Tractor

Co. changed its name to Caterpillar Inc. Since incorporation in 1925, the mark/name CATERPILLAR has become extremely well known around

the world, primarily for the manufacture of heavy machinery for the construction, mining, road building and agricultural industries.

2. It is also stated in the plaint that the products manufactured by the plaintiff include Track-type tractors, Waster Disposal Arrangements,

Agricultural products, Motor Grades, Excavators, Mass Excavators, Front shovels. Articulated Trucks, Wheel Tractors, Soil Compactors,

Landfill Compactors, Track-Loaders, Integrated Tool Carriers, Backhoe Loaders, Wheel Loaders, Cold Planers, Asphalt Pavers, Road

Reclaimers/Soil Stabilisers, Vibratory Compactors, Pneumatic Tired Compactors, Log Loaders, Feller Bunchers, Forest Machines, Track

Skidders, Pipe-layers, Scrapers, Trucks, Tractors, Engines, etc.

3. It is further stated in the plaint that the plaintiff's earth moving equipment, engines, construction and road building equipment have been regularly

imported to India for the last several decades. Consequently, the plaintiffs trade marks CAT/CATERPILLAR are well known in India. The

plaintiff's product were distributed through Larsen & Toubro, General Marketing and Manufacturing Company Limited and Tractors (India)

Limited, in India. The plaintiff has entered into a collaboration agreement with Hindustan Motors Limited and the latter, in technical collaboration

with the plaintiff, manufactures and sells engines. The plaintiff is at present selling its earth moving equipment, construction and road building

equipment and other heavy equipment through Hindustan Power Plus Limited, Hosur.

4. Apart from the aforesaid products, the plaintiff-company uses the trade mark CATERPILLAR/CAT in relation to boots and shoes, wide range

of garments, including sweaters, jackets, shirts, T-shirts, sweat-shirts, gloves and other sporting good and out door wear, etc. The plaintiff also

claims that it enjoys specific reputation and good-will among the elite class of customers in India and other countries in respect of its foot wear and

clothing articles bearing the trade marks CAT and CATERPILLAR. These trade marks are registered in over 75 countries. In India also these

trade marks are registered in respect of goods specified in Class VII and Class XII, namely, basically for Tractors, tractor engines, equipment and

fittings of tractors, diesel engines and other power supply machinery as well as scrapers, sugar mills, rollers, etc.

5. Admittedly in India there is no registration under the trade marks CATERPILLAR and CAT in respect of foot wear and clothing. However, the

plaintiff has claimed that even these products enjoys good reputation in India. The plaintiff is also claiming protection of these marks under Indian

Copyright Act, 1957. It is stated that every licensed product of the plaintiff carries a circular seal bearing the CAT logo within an inner circle and

the statement ""A Licensed Product of Caterpillar Inc."" on the tongue. The plaintiff is the owner of copyright in the said CAT/CATERPILLAR logo,

a specimen whereof is filed in these proceedings. The said logo comprises of a distinctive get up, lay out, arrangement of features and colour

scheme, the combination of which is an original artistic work created for and on behalf of the plaintiff. By virtue of the provisions of the

International Copyright Order, 1959 (as amended up to 1991) the copyright of the plaintiff extends to India and is liable to protection under the

provisions of the Indian Copyright Act, 1957. It is submission of the plaintiff that apart from being a source identifier for the plaintiffs goods, the

trade mark CATERPILLAR also forms a predominant feature of the plaintiff's corporate name and trading style. The new Oxford Dictionary

defines CATERPILLAR as a proprietary name. There is, thus, no doubt that the trade mark CATERPILLAR is known the world over. In a

recent decision of the Hon'ble Madras High Court in Suit No. 785/96 instituted by the plaintiff against one M/s. Jorange, the Division Bench of the

said Court has taken note of the repute of the plaintiff's trade marks in respect of articles of clothing and granted an interim injunction restraining

the defendant from using the trade marks CAT and CATERPILLAR for garments.

6. The cause of filing the present suit is the adoption of the trade marks CATERPILLAR/CAT by the defendants in respect of garments

particularly branded jeans. It is stated that by adopting the name of CATERPILLAR branded jeans, the defendants are indulging in counterfeiting

by dishonestly copying the plaintiff's trade marks CAT/CATERPILLAR and infringing the copyright of the plaintiff in respect of these trade marks.

The defendant No. 2 is engaged in export of garments. The defendant No. 1 is the proprietor of the defendant No. 2 and the defendant No. 3 is a

concern which is manufacturing and selling labels which are stitched on to the garments by the garment manufacturers. The plaintiff states that in

December 1998, the plaintiff's Regional Distributor for Bahrain made enquiries about export of CATERPILLAR branded jeans into Bahrain.

During this exercise, the aforesaid Regional Distributor obtained an invoice and packing list for counterfeit CATERPILLAR branded jeans. A

perusal of the invoice and packing list indicated Cosmos Fashions, the defendant No. 2 to be the origin of the counterfeit goods. Thereafter when

the efforts of the plaintiff's representatives to ascertain the exact source of the counterfeit labels did not yield results, the plaintiff finally engaged the

services of an investigator to investigate the scope, nature and extent of the Defendant No. 2 activities. Accordingly, on 9th March, 1999, one of

the operatives of the plaintiff's investigator visited the premises of Defendant No. 2 and met with Mr. Kailash Nichani, the defendant No. 1, who

identified himself as the proprietor of the defendant No. 2 concern. It is pertinent to note that the plaintiff's investigator had made several visits

earlier to the premises of the defendant No. 2, but was unable to meet with the defendant No. 1 as he was not available at the time of the

operative's visits. During his visit on 9th March, 1999 the defendant No. 1 showed the operative sample jeans bearing the trade mark

CAT/CATERPILLAR and quoted the price range in US dollars as being between US \$ 6 to US \$ 7. The defendant No. 1 further informed the

operative that he was engaged exclusively in the export business and did not supply locally. On 19th March, 1999 the operative returned to the

premises of the defendant No. 2 and this time met with an employee of the defendant No. 2 concern who identified himself as one Mr. Laxmikanth.

The operative noticed stocks of about 50 pairs of jeans and 30 pairs of trousers, all of which were branded with the CAT/CATERPILLAR

marks. The operative also noticed several CAT/CATERPILLAR branded labels lying in a card board box together with other branded labels. On

being queried by the operative about details of label manufacturers, Mr. Laxmikanth referred Shah Brothers, the defendant No. 3 concern. On 19th

April, 1999 the operative visited the premises of the defendant No. 3 concern and met with Mr. Nilesh Shah who showed him an album containing

CAT/CATERPILLAR branded labels. The operative also spoke with two employees of the defendant No. 3 concern who confirmed that the said

defendant dealt in labels, tokens and other items branded with the CAT/CATERPILLAR mark.

7. The plaintiff further alleges that operations of the defendants are spread far beyond the city of Mumbai and their major area of sale is also in

Delhi among other places which is also evidenced by the fact that the defendants had a internet site namely, www.memberstripod.com.cf.

8. Along with the plaint, the plaintiff filed IA. 7522/99 which is an application under Order XXXIX, Rules 1 and 2 read with Section 151, CPC

praying for grant of ex-parte ad interim injunction Order. On 9th August, 1999 while registering the Suit and directing service of summons on the

defendants, ex-parte ad interim Order was passed restraining the defendants 1 and 2, their partners, or proprietors, their officers, servants, agents,

distributors, stockists and representative from using the trade mark CAT/CATERPILLAR in any of their products. A local Commissioner was also

appointed to visit the premises of the defendants 1 and 2 and to prepare an inventory and to release the goods on superdari to the defendants 1

and 2. The Local Commissioner visited the premises and has submitted his report dated 18th August, 1999.

9. After the service of summons, counsel for the defendant appeared and prayed for time to file the written statement and reply to this IA. Written

statement and reply was not filed for almost one year and in these circumstances by Order dated 31st August, 2000 the Interim Order was made

absolute. The appearance was entered into only on behalf of the defendants 1 and 2 who were given further time to file the written statement

subject to payment of Rs. 5000/- as costs. The defendant No. 3 was proceeded ex-parte because of non-appearance,

10. Written statement has not been filed till date inspire of aforesaid order. Instead the defendants 1 and 2 have filed IA. 10789/2000 under Order

XXXIX Rule 4, CPC dated 28th September, 2000 for recalling/modifying Order dated 31st August, 2000. Simultaneously the defendants have

also filed IA. 12882/2000 which is an application under Order VII Rule 11 read with Section 151, CPC and Section 62 of The Copyright Act,

1957. In IA. 10789/2000 it is stated by the defendants that the defendants wanted to file application under Order VII, Rule 11, CPC read with

Section 62 of the Copyright Act challenging the territorial jurisdiction of this Court to try the present Suit filed by the plaintiff. However, on 31st

August, 2000 when the case came up for hearing, learned counsel for the plaintiff could not appear as he was suffering from high fever and severe

shoulder ache from 24th August, 2000 and was totally bed ridden. Therefore, he had requested one of his colleagues to take an adjournment. The

proxy counsel requested for an adjournment which was however opposed and Order dated 31st August, 2000 was passed. In these

circumstances prayer is made for recalling/modifying Order dated 31st August, 2000 passed by the Court imposing cost of Rs. 5000/- and making

the Interim Order absolute.

11. In IA. 12882/2000 the maintainability of the suit in this Court is challenged on the ground that this Court has no territorial jurisdiction.

12. Thrust of both the applications, Therefore, is that this Court lacks territorial jurisdiction to entertain the present suit. In fact the learned counsel

for the defendants argued this aspect only and was candid enough to admit that IA. 7522/99 filed by the plaintiff in fact stood disposed of by

Order dated 31st August, 2000 whereby Interim Order was made absolute although it was not stated in that Order in specific words that this

application stood disposed of. Learned counsel for the defendants was also candid in submitting that he was not arguing the injunction application

on merits and was confining his submissions only on the territorial jurisdiction. Therefore, in these applications the only point which calls for

consideration is as to whether this Court has territorial jurisdiction to entertain the present suit.

13. As already pointed out above, the plaintiff has its registered office in U.S.A. All the defendants have their offices in Mumbai. On this basis,

learned counsel for the defendants 1 and 2 submitted that the present suit could not be filed in Delhi. It was more so, when the plaintiff did not

submit any prima facie evidence to prove that the defendant No. 1 sold any fool wear/garments in Delhi. It was also submitted that as per the

plaintiff's own showing in the plaint. It's Regional Director in Bahrain observed in certain customs documents of Bahrain that the registered trade

mark/logo CATERPILLAR/CAT of the plaintiff had been used by the defendants. Therefore, it is not that something of this nature was allegedly

used by the defendants in Delhi. However, as per the allegations made in the plaint, the plaintiff's trade mark CAT/CATERPILLAR covered a

wide gamut of commodities starting from heavy equipments at one end and foot-wear, fine garments at the other end and the license in India was

given to Hindustan Motors Ltd. only in respect of manufacturing and selling of engines and it was selling earth moving equipments, construction and

road building equipments and other heavy equipments through Hindustan Photo Ltd., Hosur. As far as foot-wear and garments are concerned

there was no such license given to any company in India. The plaintiff did not have its own outlets in India or, for that matter, in Delhi. Even as per

the averments made in para 22 of the plaint relating to cause of action had arisen when its original distributor at Bahrain came to know about the

use of the plaintiff's trade mark. Thus it arose outside the jurisdiction of this Court. Thus neither the plaintiff was carrying on any business activity

in respect of foot-wear/garments in Delhi nor the defendants were residing or working for gain in Delhi and Therefore this Court had no territorial

jurisdiction to entertain the present suit.

14. Amplifying the aforesaid submission, based on factual matrix, support of legal provision was also taken. It was submitted that the case of the

plaintiff could neither fall u/s 20 of the CPC (CPC) or Section 62(2) of the Copyright Act, 1957 and the reliance on these provisions placed by the

plaintiff was misconceived.

15. In so far as applicability of Section 20 CPC is concerned it was submitted that no cause of action or part of cause of action arose in Delhi as

the defendant did not reside or worked for gain or carry on any business in Delhi. u/s 20 CPC it is the place where the defendant resides that gives

jurisdiction to the Court but Section 62(2) of Copyright Act alters this principle and defines the place where the plaintiff resides or carries on

business as the place where the suit has to be filed. It is only for this reason Section 62(2) of the Copyrights Act uses non-obstante clause but in

other aspects, it is the CPC which is applicable. It was also submitted that the object of territorial jurisdiction u/s 20 CPC was that Justice should

be brought as near as possible to everyman's hearthstone and the defendant is not to be put to the trouble and expose to travel long distance to

defend himself in cases where he is involved.

16. Learned counsel summed up by submitting that :-

(a) Section 62(2) confers jurisdiction over matters under Chapter XII only.

(b) Section 62(2) confers jurisdiction in respect of "the person instituting the suit or other proceedings.

(c) Section 55 of Chapter XII states that the owner of a copyright shall be entitled to institute the proceedings.

(d) Section 54 states that the owner of copyright may include an exclusive licensee. Hence, the "person" in Section 62(2) is either owner of

copyright or its exclusive licensee. In this case, the plaintiff is the owner of copyright.

(e) Either of them, according to Section 62(2) may invoke jurisdiction at Delhi if he actually or voluntarily resides or carries on business or

personally work for gain in the desired jurisdiction.

(f) Section 56 deals with protection of several rights comprising the same copyright which, when read with Section 30, states that owner of

copyright may grant interest in the right by license under the same copyright and protection thereof will be as per provisions of Section 56. The said

licensee can invoke jurisdiction in this Hon'ble Court if he carries on business at Delhi.

(g) Admittedly, the plaintiff, inter alia, invokes jurisdiction through TIL Ltd. who is a licensee for heavy earthmoving equipments and it does not

possess any right through license for foot wear/garments.

(h) At best it can be said that TIL is carrying on business at Delhi for heavy earthmoving equipments and not the plaintiff.

17. Learned counsel also took support of two cases namely, (i) Wiley Eastern Ltd. v. Indian Institute of Management, 2995 PTR 53 - In this case

this Court decided that M/s. Wiley Eastern Ltd. can claim jurisdiction in New Delhi since they have their registered office here and, as such,

resides" in New Delhi, (ii) Surendra Kumar Maingi v. Dodha House AIR 1998 ALL. 43 - The mere fact that the Court may have jurisdiction to

entertain the suit with respect to a cause of action under the Copyright Act, 1957 can be of no avail in deciding the jurisdiction to entertain the suit

in view of Section 105 of the Trade and Merchandise Marks Act, 1958.

18. On the other hand, learned counsel for the plaintiff also pressed in service the same provisions of the Copyright Act which were relied on by

the learned counsel for the defendant No. 1. Trying to give his own interpretation to these provisions and particularly Sub-section (2) of Section 62

of the Copyright Act it was emphasised that this provision was a significant departure from Section 20 CPC inasmuch as in respect of violation of

Copyright the suit could be filed even at a place where the person instituting the suit actually and voluntarily (i.e. the plaintiff) resides or carries on

business or personally works for gain as opposed to Section 20, CPC where suit could be filed at a place where the defendant actually and

voluntarily resides or carries on business or personally works for gain. It was submitted that this section was interpreted by this Court in number of

cases and the consistent view which was taken was that if the plaintiff resides or carries on business in Delhi, this Court will have jurisdiction to

entertain the Suit. Reliance was placed on :

(i) para 13 of the judgment in the case of Deepchand Arya Industries v. Kiran Soap Works, 1981 PTC 108 : ""The plaintiffs admittedly reside and

carry on their business in Delhi. Section 62 of the Copyright Act clearly gives jurisdiction to this Court to entertain the suit"".

(ii) The Tata Oil Mills Company Ltd. Vs. Reward Soap Works, :-

The defendant resists the suit and opposes the application for injunction, inter alia, on the grounds that the mark consisting of the numerals 507

does not constitute an infringement of the plaintiff's mark consisting of numerals 501 and is not identical with or deceptively similar to the mark of

the plaintiff, that the wrapper used by the defendant is also neither identical with not deceptively similar to the wrapper used by the plaintiff in the

marketing of its goods. Defendant, however, does not deny that the numerals 501, as in-deed, the design of the wrapper are registered trade

marks of the plaintiff and the design of the wrapper is also registered under the Copyright Act. Defendant, however, challenges the jurisdiction of

the Court in relation to the action of infringement of trade mark and of passing off on the ground- that the defendant carries on its business in

Nagpur and has neither manufactured nor marketed the goods within the territorial jurisdiction of this Court. Defendant does not dispute the

territorial jurisdiction of this Court in relation to the claim based on infringement of copyright by virtue of Section 62(2) of the Copyright Act, 1957

but maintains that, that by itself, would not give jurisdiction to this Court to deal with the claim of infringement of trade mark either in relation to the

numerals or in relation to the wrapper.

The comparative scopes of a copyright and trade mark registration are different, even though where a design on a wrapper is registered under the

Copyright Act, there is, to an extent, an overlapping between the two remedies. Some controversy is no doubt possible if the mere jurisdiction of

the Court to entertain an action for infringement of copyright would also give the court the necessary jurisdiction to deal with the corresponding

infringement of trade mark, where both constitute part of a composite suit. 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 the copyright at this stage of the proceedings,

particularly, where there is a specific averment in the plaint, whatever it may be worth, that the plaintiff has been shifting the goods, inter alia, within

the territorial jurisdiction of this Court.

(iii) Judgment of this Court in Nirex Industries (P) Ltd. v. Manchand Footwears and Anr. 1984 IPLR 70:-

The said word means nothing and according to the learned counsel it is an artistic work. Section 62(2) of the Copyright Act states that a suit in

respect of the infringement of the copyright may be instituted in a court within the local limits of whose jurisdiction, the person instituting the suit or

other proceedings actually and voluntarily resides or carries on business or personally works for gain. It is not disputed that the plaintiff carry on

business in Delhi. Therefore, in my opinion, this Court would have jurisdiction to try the present suit by virtue of the provisions of Section 62(2) of

the Act. I may at this stage also observe that in the plaint it has been categorically stated that the defendants are selling the infringed goods in Delhi

and, Therefore, this Court has jurisdiction to try this suit. It is true that there is no document which has been filed in support of this submission but

that is a matter which will be gone into at the time of trial of the suit.

(iv) Following observations in the case of Glaxo Orthopedic U.K. Ltd. Vs. Samrat Pharma,

It is apparent from a plain reading of the aforesaid provision that the territorial jurisdiction with respect to any suit or other civil proceeding in

respect of infringement of the copyright shall be the place where the plaintiffs or if there are more than one, any one of them is residing, carrying on

business or personally works for gain. In this case it is stated by the plaintiffs that the plaintiff No. 2 has registered office at Dr. Annie Besant Road,

Bombay and has local office at Mathura Road, New Delhi. It is apparent from what has been stated by the defendant in the written statement

(reproduced above) that the defendant does not deny the existence of local office of plaintiff No. 2 at Delhi. Having regard to the fact that the local

office of plaintiff No. 2 is situated at Delhi, the said plaintiff is obviously carrying on business at Delhi. That being so, this Court has jurisdiction with

respect to the present proceedings which relate to the infringement of copyright.

(v) Learned counsel also relied upon the Division Bench judgment of Madras High Court in the case of Brooke Bond India Ltd. v. Balaji Tea India

Pvt. Ltd. 1993 (18) IPLR 14.

19. Following observation in the aforesaid judgment may be quoted :-

Sub-section (2) of Section 62 of the Act makes a departure from the normal law that a suit should be instituted at the place where the defendant

resides or carries on business or personally works for gain. The language of Sub-section (2) is also significant. The sub-section only includes a

Court within whose jurisdiction the plaintiff resides or carries on business etc. It is very clear that the plaintiff is given a choice of forum and he can

institute the suit either in the District Court of the place where the defendant resides or carries on business according to general law or at the place

where he himself resides or carries on business.

20. After analysing almost all the aforesaid judgment and some more case law, this Court in a recent judgment in the case of Smithkline Beecham

Plc and Anr. v. Sunil Singhi and Anr. 2001 PTC 321 observed that Section 62 of the Act makes an obvious and significant departure from the

norm that the choice of jurisdiction should primarily be governed by the convenience of the defendant. This shift is with considerable wisdom, since

the violation of the statutorily protected rights expose the transgressor/pirate with inconvenience rather than compelling the sufferer to chase after

the former. Granting the injunction and negating the arguments on want of jurisdiction the penultimate para of this judgment reads as under :-

In the present case, it is palpably evident, and in my view incontestable, that the Defendants have deliberately infringed the plaintiff's well known

mark namely PANADOL and PANADOL EXTRA in choosing the marks PAMACOL AND PARAMOL EXTRA. Even packaging of the

Defendants' products, in the choice of colours and style of writing is intended to deceive the public at large into purchasing its products believing it

to be that of the plaintiffs. The plaintiff's territorial choice of Court in India is not without any basis, since the Defendants carry on its illegal business

activities, i.e. manufacturing as well as packaging of the offending PARAMOL EXTRA and PAMACOL, within India, Once, this averment is

countenanced, it is wholly immaterial that the Defendants' offending business activity is not carried out in New Delhi. The Act permits the plaintiff

to make a choice of the Court, and since plaintiff No. 2 has its Registered Office in New Delhi, the choice is well founded. The Trademark

PANADOL is registered in India. There is an assertion that plaintiff No. 2 has its registered office at E-46, Greater Kailash - I, New Delhi. The

legal propriety of piercing the corporate veil should not detain the decision at this threshold stage since it is intrinsically a mixed question of fact and

law. For all these reasons I am satisfied that this Court has territorial jurisdiction to entertain the suit.

21. In fact it cannot be disputed that the plaintiff can file the suit at a place where it carries on its business. In the present case, the plaintiff is a

company incorporated under the laws of the State of Delaware, U.S.A. The plaintiff has given distribution rights to Larsen & Toubro, General

Marketing and Manufacturing Company Ltd. and Tractor India Ltd. in India. It has also entered into collaboration agreement with Hindustan

Motors Ltd. It manufactures and sells engines. The case set up in the plaint is that the plaintiff-company is importing into India earth moving

equipment, engines, construction and road building equipments through aforesaid distributors. These companies are having its business activities in

Delhi is not in dispute. The plaintiff is Therefore, carrying on business in Delhi through the aforesaid companies.

22. However, the goods marketed through the aforesaid companies or manufactured in collaboration with its Indian counterpart are not the goods,

the infringement where of is alleged in the present suit inasmuch as the injunction sought is not in respect of earth moving equipment, engines,

construction and road building equipment but in respect of foot-wear and articles of clothing under the trade mark CAT/CATERPILLAR. Thus,

foot-wear and articles of clothing are not imported by the plaintiff in India through the aforesaid companies or manufactured here. Therefore, it was

the submission of the learned counsel for the defendant, that the provision of Section 62 are to be interpreted in relation to those goods which are

the subject-matter of suit and as in respect of these goods the plaintiff does not carry on any business in Delhi, this Court will not have jurisdiction

to entertain the present suit. Reference was made to para 25 of the plaint which is a prayer clause and on the basis of which it was submitted that

the relief sought was qua goods.

23. On the other hand, the submission of the learned counsel for the plaintiff was that copyright law is neutral to goods unlike Designs Act or Trade

and Merchandise Marks Act and Therefore, it was not necessary to show that the business being carried on by the plaintiff in Delhi should

necessarily be the business in respect of foot-wear and articles of clothing as well. It is sufficient if business was being carried on by the plaintiff in

Delhi and further that there was an infringement of plaintiff's copyright in respect of certain goods which were being sold by the defendants in

Delhi. It was submitted that in para 11 of the plaint the plaintiff had categorically stated that it was the owner of copyright in the said

CATERPILLAR/CAT logo as other licensed product of the plaintiff carries a circular seal bearing the CAT logo within an inner circle and the

statement "'A Licensed Product of Caterpillar Inc.'" on the tongue.

24. After giving my thoughtful consideration to the issue involved, I am inclined to agree with the submission of the learned counsel for the plaintiff.

As already pointed out above, Section 62 of the Copyright Act is a significant departure from the normal rule. This Court has already observed in

the case of Smithkline Beecham (supra) that this section of the Copyright Act makes an obvious and significant departure from the norm that the

choice of jurisdiction should primarily be governed by the convenience of the defendant. The Legislature in its wisdom introduced this provision

laying down absolutely opposite norm than the one set out in Section 20 CPC. It is done with a purpose. The purpose is to expose the

transgressor/pirate with inconvenience rather than compelling the sufferer to chase after the former. Once this purpose is kept in mind for which

Section 62 in the Copyright Act is enacted, it becomes very easy to answer the contention put forth by learned counsel for the defendant. The

permissive provision allowing the person to file the suit or other proceedings whether he carries on business or works for gain would not be limited

to the carrying on of business in respect of the goods involved. After all, no such limitation is attached to these words. The language of the section

is plain and clear. Moreover, it is the purposive interpretation which is required to be given to Section 62. If the contention of the defendant is

accepted, the very purpose in enacting Section 62 shall be defeated. Needless to mention, attempt of the Court should be to achieve the purpose

for which the particular provision in the statute is enacted rather than defeating the same.

25. In so far as the judgment in the case of Wiley Eastern Company Ltd. (supra) as quoted by learned counsel for the defendant is concerned the

same is not applicable to the facts and circumstances of the present case. It may be mentioned that this very judgment was also quoted by the

defendant in the case of Smithkline Beecham (supra) and was distinguished by the Court observing that the said decision would not apply to that

case since the action in that case was essentially one of a loss of a personal reputation of the plaintiff No. 2. For the same reasons this case is

distinguishable here as well. Another case cited by the learned counsel for the defendant was Surendra Kumar Maingi (supra) which is a judgment

of Allahabad High Court. With respect, I am not in agreement with the view taken therein which is contrary to the consistent view of this Court in

series of judgment already referred to above.

26. The suit of the plaintiff, Therefore, cannot be dismissed for want of territorial jurisdiction at this stage. One may usefully rely upon the following

observation of this Court in Nivex Private Ltd. (supra).

I may at this stage also observe that in the plaint it has been categorically stated that the defendants are selling the infringed goods in Delhi and,

Therefore, this Court has jurisdiction to try this suit. It is true that there is no document which has been filed in support of this submission but that is

a matter which will be gone into at the time of trial of the suit.

27. Therefore, the issue of jurisdiction will be thrashed out completely at the trial of Suit only. The plaint cannot be rejected for want of jurisdiction

at this stage.

28. IAs. 10789/2000 and 12882/2000 filed by the defendants are accordingly dismissed. Interim injunction Order dated 9th August, 1999 passed

in IA. 7522/99 was made absolute on 31st August, 2000. This IA. 7522/99 is accordingly disposed of with the observation that the said Order

shall remain in operation till the suit is finally decided.