

**IN THE COURT OF JUDGE, COMMERCIAL COURT
(DISTRICT JUDGE CADRE), COIMBATORE**

Present: **Thiru. K.Hariharan, M.L.,**
Judge,
Commercial Court (District Judge Cadre),
Coimbatore.

Tuesday, the 17th Day of February, 2026

I.A. No.4 of 2025

in

C.O.S. No.35 of 2025

[CNR No.TNCB22-000080-2025]

M/s. THROTTLERZ HOUSE

rep. by its Proprietor

... Petitioner / Defendant

// Vs //

1. M/s. THROTTLERZ PITSTOP

Rep. by its Trade Mark Owner Mr. Biju

2. M/s. THROTTLERZ PITSTOP,

Rep. by its Proprietor Mrs.Harshiny Krishna Ayyar

... Respondents / Plaintiff

The petition came up for final hearing before me on 07.02.2026 in the presence of **Thiru.M.Saleem**, Advocate for the petitioner / defendant and **Thiru.S.Y.SyedAman**, Advocate for the respondents / plaintiffs and upon perusing the records, hearing enquiry on both sides and having stood over for consideration till this date, this Court doth passes the following:-

ORDER

1. The petition has been filed by the petitioner / defendant seeking to reject the plaint under Order VII Rule 11 (a) & (d) of C.P.C.

2. **The petition averments which are found essential for the disposal of the petition is that:-**

a) The petitioner has sought for to reject the plaint as per Order VII Rule 11 (a), (d) and Section 20 of C.P.C. read with Section 134 (2) of the Trade Marks Act. It is the submission of the petitioner that the respondent / plaintiff has filed the suit for the relief of permanent injunction from infringing the trademark and passing off and for the relief of damages and for rendition of accounts along with the order of interim injunction. It is submitted by the petitioner that the petitioner / defendant is the proprietary concern and mentioned to have its principal place of business at Chennai and state that the defendant permanently resides at Chennai and submit that no part of cause of action had arisen within the jurisdiction of this Court under Section 20 (c) of C.P.C. and Section 134 (2) of the Trade Marks Act, 1999. Further the petitioner submits that the plaint is barred by limitation and submit that the plaintiff knows about the defendant in the year 2021 itself and the suit has been filed beyond the period of limitation. It is submitted by the petitioner / defendant that the defendant has started using the trademark THROTTLERZ HOUSE since the year 2019 in a wider manner and the plaintiff had issued a warning message on 16.04.2021 to the defendant's Instagram account to stop using the Trade Mark

THROTTLERZ. Further the petitioner mentions that there is no communication before the plaintiff subsequent to that and at present all of sudden on seeking the tremendous growth of the defendant, the plaintiff has instituted the present suit with reckless allegations and submit that the suit is barred by limitation.

b) Further it is also mentioned that the plaintiff has failed to seek the leave of this Court under Order II Rule 3 of C.P.C. for Joinder of cause of action and submit that the plaintiff is attempting to club two distinct cause of action i.e., trademark infringement and passing off, without filing the mandatory application seeking leave to combine both causes of action as required under Order II Rule 3 of C.P.C and submit that this is fatal defect rendering the entire plaint liable to be rejected. Further it is the submission of the petitioner that mere reproduction of the registered trademark in paragraph No.3 of the plaint without pleading a single instance of actual confusion or deception within the territorial jurisdiction of this Court does not constitute a cause of action and submit that the plaint is liable to be rejected. Further it is mentioned that the plaintiff has not pleaded even a single instance of actual commercial sale, offer for sale or advertisement by the defendant within the territorial jurisdiction of this Court. By mentioning that the plaint is abuse of process of Court and stating that the same has been filed only with an intention to harass the defendant and submit that the suit is barred by law and do not disclose a cause of action and sought for to reject the plaint by allowing this petition.

3. By denying the petition averments the respondents/plaintiffs have filed the counter. The sum and substance of the counter statement averments which are found essential for the Disposal of the petition is that:-

It is the submission of the respondents that the cause of action and the act of passing off have both arisen within the territorial jurisdiction of this Court at Coimbatore and submit that this Court has jurisdiction to entertain the present suit and state that the provisions referred under Section 20 (c) of C.P.C. and Section 134 (2) of the Trade Marks Act, 1999 by the petitioner are not applicable to the present dispute. Further, it is submitted that the act of infringement is continuous in nature and submit that no limitation period would be applicable for filing of the present suit. Further it is the contention of the respondents that the present petition has been filed only with an intention to protract the proceedings and to waste the valuable time of this Court. Further, it is the contention of the respondents that the petitioner has not approached this Court with clean hands and sought for to dismiss the petition.

4. Point for consideration:-

Whether the petition could be allowed?

Point:-

5. The petitioner / defendant has filed the present petition for rejection of plaint on the ground of limitation, on the ground of jurisdiction and on the ground of cause of action. It is admitted fact that the question of limitation is a

mixed question of facts and law. It is the submission of the petitioner that the respondents / plaintiffs are the aware of the petitioner / defendant using the present trademark in the year 2021 itself and submit that the suit is barred by limitation. Whereas the respondents / plaintiffs in the plaint have mentioned that the plaintiffs have come to know about the infringing of the trademark by the petitioner / defendant only on 30.03.2025. When it is mentioned by the plaintiffs that they have come to know about the infringement of the trademark only on 30.03.2025, the suit is considered to be filed within the limitation period. If at all the petitioner / defendant is able to establish that the suit is barred by limitation, the same could be taken only in the main suit proceedings and the question of limitation could not be decided in the petition to reject the plaint. Hence, this Court is of considered stand that for the reason of dispute on the point of limitation the petitioner seeking for to reject the plaint could not be sustainable.

6. The next limb of the contention of the petitioner is that the plaintiff do not disclose a cause of action in the present suit. It is submitted that the present suit has been filed without seeking permission of this Court for joinder of cause of action as contemplated under Order II Rule 3 of C.P.C. and submit that the plaintiffs have attempted to club two distinct cause of action, one is for trademark infringement and another is for the passing off, without filing the

mandatory application seeking leave to combine both cause of action as required under Order II Rule 3 of C.P.C. and submit that this is a fatal defect in filing the present suit and submit that on the ground of non disclosure of cause of action the petitioner has sought for to reject the plaint.

7. It is admitted fact that the petition under Order VII Rule 11 (e) of C.P.C. can be filed only when the plaint do not disclose a cause of action. As of now, the petitioner has disputed the joinder of cause of action and do not come up with the petition seeking for non disclosure of cause of action. When the question of non disclosure of cause of action itself has not been raised by the petitioner, the petitioner in the considered view of the Court cannot seek for rejection of plaint on the basis of cause of action. Apart from that to consider whether the plaintiff discloses a cause of action this Court is bound to look into the plaint averments and not any other averments. As of now when the plaint averments are considered, this Court is of considered stand that the plaint do disclose a cause of action and this Court also is of considered stand that the petitioner seeking to reject the plaint on the ground of failing to seek leave of this Court for joinder of cause of action cannot be a ground for rejection of the plaint.

8. The petitioner also has come up with the contention that the plaint do not disclose cause of action and submit that the plaintiffs have not specified

about any single instances of loss of business due to the act of the infringement of the trade mark. But when the plaint is perused, the plaintiffs have come up with several contentions regarding the infringement of trademark. Hence this Court is of considered stand that the petitioner's contention regarding the cause of action do not sustain.

9. The next limb of the contention on the part of the petitioner / defendant is that this Court has no jurisdiction to try this dispute, since the plaintiffs have filed the suit for infringement of trademark and passing off. It is admitted fact that for passing off action the suit has to be instituted in the place where the defendant resides. But the suit for infringement can be filed in the place where the plaintiff resides. The resident of the plaintiff and the place of business of the plaintiff is at Coimbatore. Whereas the business place of the defendant is at Chennai. The suit has been preferred for the combined relief of passing off and for the relief of infringement of trademark. This Court would consider that Section 134 of the Trade Marks Act do not bar this Court with jurisdiction to entertain the present suit dispute for the combined suit for infringement of trademark and passing off. Like wise the Section 134 of the Trade Marks Act 1999 also do not specify that in a combined suit for passing off and infringement of trademark shall be filed only before the Court having jurisdiction for the relief of passing off. Under the circumstances this Court do

not find any bar to entertain the present suit on the point of jurisdiction. Hence the petition seeking for to reject the plaint on all the three grounds in the considered view of the Court do not sustain. Hence the petition is considered to be dismissed.

10. In the result the petition is dismissed. No Costs.

Dictated to the Steno-Typist, computerized by him directly, Corrected and Pronounced by me, on the 17th Day of February 2026.

Judge,
Commercial Court,
(District Judge Cadre)
Coimbatore

List of Witnesses and Documents:- Nil

Judge,
Commercial Court,
(District Judge Cadre)
Coimbatore