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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(COMM) 452/2021 & I.A. 12015/2021, I.A. 2413/2022**

STANLEY BLACK AND DECKER, INC. Plaintiff

Through: Ms. Anuradha Salhotra, Mr.
Zeeshan Khan and Ms. Saloni Chawdhry,
Adv.

versus

STANLEY SWITCHGEAR PRODUCTS Defendant

Through: Mr. Abhishek Mishra, Mr.
Anuraj Tirthankar and Ms. Atiga Singh,
Adv.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER

% **16.12.2022**

I.A. 2413/2022 in CS(COMM) 452/2021

1. This order disposes of the present application, preferred by the defendant against the plaintiff, seeking rejection of the plaint in CS(Comm) 452/2021 under Order VII Rule 11 of the Code of Civil Procedure 1908 (CPC).

2. Mr. Abhishek Mishra, learned Counsel for the defendant, restricts his ground of challenge, insofar as the present application is concerned, to the aspect of territorial jurisdiction. He submits that, as the suit is bad for want of territorial jurisdiction, the plaint is liable to be rejected under Order VII Rule 11(d) of the CPC.

3. It is well-settled that, while deciding an application under Order VII Rule 11, the court cannot proceed outside the averments in the plaint read with the documents accompanying the plaint. That said, it
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is also settled in *T.Arivandam v. T.V. Satyapal*¹, that, by artful drafting, the plaintiff cannot be permitted to create a cause of action where there is none. The latter principle, however, would not be relevant in the present case as it applies essentially to Order VII Rule 11(a) of the CPC rather than Order VII Rule 11(d).

4. One may refer, in this context, to the judgment of the Supreme Court in *Urvashiben v. Krishnakant Manuprasaad Trivedi*², *Kamala v. K.T. Eashwara Sa*³ and *Vaish Aggarwal Panchayat v. Inder Kumar*⁴.

5. The only aspect that the court has to see is, therefore, whether, if the allegations in the plaint are treated as correct, the plaint is nonetheless bad for want of territorial jurisdiction. The suit has been instituted by the plaintiff against the defendant alleging infringement, by the defendant, of the plaintiff's registered "Stanley" trademarks. The defendant is also using the trade mark "Stanley" in respect of goods which, according to the plaintiff, are similar to the goods for which the plaintiff possesses registration of the said mark.

6. The plaintiff also relies on an undertaking dated 25th January 1975. The undertaking was given by the defendant in the context of oppositions by the plaintiff to applications filed by the defendant for registrations of the mark "Stanley" in respect of certain categories of goods. By the said undertaking, the obligations cast on the defendant under the said undertaking was subject to the plaintiff allowing the defendant to register its mark "Stanley" in respect of "electric circuit

¹ (1977) 4 SCC 467

² (2019) 13 SCC 372

³ (2008) 12 SCC 661

⁴ (2020) 12 SCC 809

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closers, contact device (electric) electric switches and electric cut out (fuses)", all including in Class 9 of the Schedule to the Trademarks Rules.

7. The grievance of the plaintiff in the present suit is that the defendant is using the mark "Stanley" in respect of goods other than the goods to which the undertaking restricts the defendant and has not only applied for registration of the said marks in respect of such other goods, but has also opposed the applications by the plaintiff for registration of its "Stanley" marks in respect of such goods. As such, the plaintiff avers, *inter alia*, that the defendant is in breach of the aforesaid undertaking.

8. Independently, the plaintiff avers that the use of the mark "Stanley", by the defendant, in respect of goods other than the goods to which the undertaking restricted it, would infringe the plaintiff's registered trade mark.

9. Para 38 in the plaint, which deals with territorial jurisdiction, reads thus:

"38. This Hon'ble Court has jurisdiction to entertain and try the present suit under Section 20 of the Code of Civil Procedure, 1908 as-

- a. the Defendant is selling the impugned infringing goods under the impugned STANLEY and STANLEY formative trade marks across the country including in New Delhi, thus giving rise to the cause of action in Delhi i.e., within the territorial jurisdiction of this Hon'ble Court.
- b. The Defendant has, sworn on affidavit, filed in support of evidence in the matter concerning the Plaintiff's application no. 2575109, that their products are sold across the length and breadth of the country and their products are available in Delhi.

- c. The Defendant's products under the mark STANLEY were



also available for sale through the website [www.shoption.in](https://shoption.in/productcategory/mcb-fuse-kitkat/fuse-kitkat/) ([https://shoption.in/productcategory/mcb-fuse-kitkat/fuse kitkat/](https://shoption.in/productcategory/mcb-fuse-kitkat/fuse-kitkat/)) and an order concluding a commercial transaction was placed for delivery in New Delhi as on November 5, 2020 and the Defendant's products were delivered to an address in Delhi on December 11, 2020.

d. The Defendant's products are also listed and advertised for sale on the interactive website www.indiamart.com at the links.

i. <https://www.indiamart.com/proddetail/stanleymain-switch-8049215573.html>;

ii. <https://www.indiamart.com/proddetail/stanleykitkat-fuse-19102882548.html> and

iii. <https://www.indiamart.com/proddetail/stanley-make-electrical-main-switch-fuse-6873074888.html>.

Thus, the Hon'ble Court has the jurisdiction to entertain and try the present suit."

10. The plaintiff has, in para 38 of the plaint, clearly sought to justify the invocation of the jurisdiction of this Court, under Section 20 of the CPC, on the grounds that (i) the defendant is selling its goods, containing the allegedly infringing trade marks in, *inter alia*, New Delhi, (ii) the defendant has sworn an affidavit, filed by way of evidence in support of the opposition to the plaintiff's Trademark Application no. 2575109 that the defendant's products are sold across the length and breadth of the country and are available in Delhi, (iii) the defendant's products were available for sale through the website [www.shoption.in](https://shoption.in/productcategory/mcb-fuse-kitkat/fuse-kitkat/) ([https://shoption.in/productcategory/mcb-fuse-kitkat/fuse kitkat/](https://shoption.in/productcategory/mcb-fuse-kitkat/fuse-kitkat/)) whereunder a commercial transaction was placed, on 5th November 2020, pursuant to which the defendant delivered the goods allegedly containing the infringing mark, to an address in Delhi, on 11th December 2020 and (iv) the defendant's products were listed and advertised for sale on the interactive website www.indiamart.com.



11. Insofar as the aspect of territorial jurisdiction is concerned, in *Ultra Home Construction Pvt. Ltd. v. Purushottam Kumar Chaubey*⁵, a Division Bench of this Court has clearly held that territorial jurisdiction can be invoked either on the basis of Section 134 of the Trade Marks Act, 1999 or Section 20 of the CPC, and that as Section 20 of the CPC provides grounds for invocation of territorial jurisdiction which are in addition to those available under Section 134 of the Trade Marks Act.

12. One may refer to the following passage from *Ultra Home*⁵:

“13. By virtue of the Supreme Court decision in *Sanjay Dalia*⁶ (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

⁵ 2016 SCC OnLine Del 376

⁶ (2015) 10 SCC 161

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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.

18. On a due and anxious consideration of the provisions contained in Section 20 CPC, Section 62 of the Copyright Act and Section 134 of the Trade Marks Act, and the object with which the latter provisions have been enacted, it is clear that if a cause of action has arisen wholly or in part, where the plaintiff is residing or having its principal office/carries on business or personally works for gain, the suit can be filed at such place(s). **The plaintiff(s) can also institute a suit at a place where he is residing, carrying on business or personally works for gain dehors the fact that the cause of action has not arisen at a place where he/they are residing or any one of them is residing, carries on business or personally works for gain. However, this right to institute suit at such a place has to be read subject to certain restrictions, such as in case the plaintiff is residing or carrying on business at a particular place/having its head office and at such place cause of action has also arisen wholly or in part, the plaintiff cannot ignore such a place under the guise that he is carrying on business at other far-flung places also.** The very intendment of the insertion of provision in the Copyright Act and the Trade Marks Act is the convenience of the plaintiff. The rule of convenience of the parties has been given a statutory expression in Section 20 CPC as well. The interpretation of provisions has to be



such which prevents the chief of causing inconvenience to the parties. ”

13. The above enunciation of the law has subsequently been followed by this Court in several decisions, including ***Vintage Distillers Ltd. v. Ramesh Chand Parekh***⁷ and ***Lifestyle Equities C.V. v. Amazon Sellers Service Private Limited***⁸.

14. Further, on the aspect of interactive websites which could be assessed from anywhere in the country, a Division Bench of this Court has, in ***Tata Sons Private Limited v. Hakunamatata Tata Founders and Ors.***⁹ held that courts having jurisdiction over any place where the website could be assessed would be competent to adjudicate on claims of infringement and passing off of trademarks.

15. In that view of the matter, necessary averments, which could suffice to attract the jurisdiction of this Court, are contained in para 38 of the plaint.

16. The court cannot travel beyond this and examine the defence of the defendant, while adjudicating an application under Order VII Rule 11 of the CPC.

17. That being so, no case rejecting the present plaint Order VII Rule 11 of the CPC can be said to exist in the present case.

18. This application is accordingly rejected.

⁷ 2022 SCC OnLine Del 3863

⁸ MANU/DE/3852/2022

⁹ 2022 SCC OnLine Del 2968
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**I.A. 12015/2021 (under Order XIX Rules 1 and 2 CPC) in
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19. At request of learned Counsel for the defendant, list for disposal of this application on 31st January 2023.

C. HARI SHANKAR, J.

DECEMBER 16, 2022
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