



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

% Judgment delivered on: 22.08.2025

+ **CM(M)-IPD 31/2025 & CM 180/2025**

SUSHIL KUMAR T/A DA POLO & ANR. Petitioners

Versus

THE POLO/ LAUREN COMPANY L.P.Respondent

Advocates who appeared in this case

For the Petitioners : Mr. Davesh Vashishtha, Mr. Uddyam Mukherjee & Mr. Himanshu Khulbe, Advocates (Through V.C.).

For the Respondent : Mr. Rishi Bansal, Mr. Arpit Singh & Mr. Rishabh Gupta, Advocates.

**CORAM:
HON'BLE MR. JUSTICE TEJAS KARIA**

JUDGMENT

TEJAS KARIA, J

1. The Petitioners (Defendants in the Suit) have filed the present petition under Article 227 of the Constitution of India, 1950 (“**Constitution of India**”) being aggrieved by the order dated 04.06.2025 (“**Impugned Order**”) in CS(COMM) 575/2024 filed by the Respondent (“**Suit**”) passed by the learned District Judge (Commercial-01), South District, Saket Court, New Delhi (“**Commercial Court**”) rejecting the Application filed by the



Petitioners (“**Application**”) under Order VII Rules 10 and 11 read with Sections 35, 35A and 151 of the Code of Civil Procedure, 1908 (“**CPC**”).

2. *Vide* the Application, the Petitioners sought dismissal of the Suit / rejection of Plaint on the ground that the Suit is under-valued and the learned Commercial Court lacked pecuniary jurisdiction to decide the Suit, the learned Commercial Court lacked territorial jurisdiction to try and entertain the Suit and no cause of action arises for filing of the Suit.

3. The Impugned Order, after considering the submissions made by the Parties and the applicable case laws, has dismissed the Application by considering the objection to the jurisdiction ‘by way of demurrer’.

4. Being aggrieved by the dismissal of the Application, the Petitioners have filed the present Petition challenging the Impugned Order.

FACTUAL BACKGROUND

5. The Respondent (Plaintiff in the Suit) filed the Suit before the learned Commercial Court seeking Permanent Injunction for restraining the Petitioners from infringing, passing off and infringement of copyright by the Petitioners through adoption of the Impugned Trade Mark / Label DA



POLO, , for identical class of goods and services. The Respondent is the registered proprietor of the Trade Mark / Label POLO, POLO, POLO RALPH LAUREN, POLO BY RALPH LAUREN, RALPH



POLO
RALPH LAUREN,

LAUREN, POLO DENIM, POLO SPORT,



and other formative variants inclusive of the POLO PLAYER device and other formative Trade Mark / Label. It was the Respondent's case that the Petitioners are advertising, soliciting, selling, intending to sell and networking its goods bearing the Impugned Trade Mark / Label through the website namely <https://www.dapolo.in> and also through e-commerce website like www.indiamart.com. Hence, the Respondent sought restraint order against the Petitioners from using, selling, soliciting, marketing etc. or by any other mode dealing in the course of trade in physical or online market place or through website, the impugned domain name or any other trade mark / label identical with or deceptively similar to the Respondent's Trade Mark and in any manner for infringement of the Respondent's registered mark and copyright in the artwork of the Respondent's Trade Mark / Label.

6. The Petitioners *vide* Application submitted that the Complaint did not disclose any cause of action and the relief claimed in the Suit was undervalued. It was also submitted that the learned Commercial Court did not have territorial jurisdiction as the Respondent failed to show actual sale or commercial transaction of any goods with the Impugned Trade Mark



within the jurisdiction of the learned Commercial Court. The Application mentioned that the Petitioners have their principal place of business in Sonipat, Haryana and Rohini, New Delhi and therefore the Respondent could have invoked the jurisdiction of the Courts at Sonipat or Rohini, but not of the learned Commercial Court.

7. The objection regarding the valuation of the Suit was taken by the Petitioners at the first instance before the learned Commercial Court. *Vide* order dated 16.01.2025, the learned Commercial Court dismissed the said objection observing that there was no infirmity in the valuation of the Suit. Despite that the said objection was again raised in the Application. Since the learned Commercial Court observed that the same objection, which was rejected earlier, cannot be re-agitated by the Petitioners, the learned Counsel for the Petitioners did not press the objection regarding the pecuniary jurisdiction before the learned Commercial Court.

8. The objection of the Petitioners with regard to '*Forum Conveniens*' and forum shopping by the Respondent by deliberately invoking the jurisdiction of the Commercial Court without any justifiable reason solely with the intent to harass the Petitioners was rejected by the learned Commercial Court on the ground that the Petitioners are advertising, soliciting, selling, intending to sell, networking the goods with the Impugned Trade Mark through their website <https://www.dapolo.in> and also through e-commerce website like Amazon, Flipkart, www.indiamart.com etc., which are interactive in nature.

9. In view of the above, the Application was dismissed by the learned Commercial Court.



SUBMISSIONS BY THE PETITIONERS:

10. The learned Counsel for the Petitioners submitted that there was no cause of action within the territorial jurisdiction of the learned Commercial Court. The Suit filed on the basis of the Petitioners soliciting, advertising and offering for sale the goods with the Impugned Trade Mark on their registered domain, www.dapolo.in, within the jurisdiction of the learned Commercial Court is entirely incorrect.

11. It was further submitted that the Respondent failed to establish jurisdiction of the learned Commercial Court as no document has been filed along with the Suit showing actual sale or commercial transaction of any goods within the jurisdiction of the learned Commercial Court. It was also submitted that the Petitioners are not carrying out business within the territorial jurisdiction of the learned Commercial Court.

12. The learned Counsel for the Petitioners submitted that the Respondent filed the suit before the learned Commercial Court with a *mala fide* intention to harass the Petitioners and to embroil them in litigation knowing that the principal places of business of the Petitioners are in Sonipat, Haryana and Rohini, New Delhi. The learned Counsel for the Petitioners relied upon the decision in *St. Ives Laboratories Inc. v. Arif Perfumers & Anr.* (2009) 40 PTC 104, which holds that:

“10. Looking at the entire plaint, it only seems that the plaintiff had filed this suit at Delhi only as a device of harassment calculated to force the defendant to come to Delhi, engage a Counsel at enormous expense and contest litigation. The plaintiff, who was resident of USA could have easily filed this suit at Courts at Bombay/Maharashtra and pursued the matter. Filing of suit in Delhi on the basis of value allegations that the goods of defendants were being sold clandestinely



throughout the country including Delhi makes no sense. No cause of action can be said to have arisen in Delhi. Such allegations of clandestine sale can be made against any person without any foundation and the plaintiff even during trial can always escape giving proof of such clandestine sale saying that he has stated in the plaint that the sale was clandestine and no bills were being issued. The Court cannot be used as a tool to put such a burden on the defendant that the defendant is unable to even defend the suit. The plaintiff cannot be given absolute liberty to choose the place of suing a defendant out of entire country on the basis of unfounded and vague allegations. In such a case CPC provisions regarding jurisdiction stand rendered useless.”

13. The learned Counsel for the Petitioners also submitted that at the stage of considering an application under Order VII Rule 11 of the CPC, there should be a meaningful-not merely formal – reading of the Plaint. If the Plaint is manifestly vexatious and meritless, and does not disclose a clear right to sue, the Court must exercise power under Order VII Rule 11 of the CPC. It was also submitted that where a clever drafting has been employed to create the illusion of a cause of action in abuse of process of law, the same ought to be nipped in the bud as held by the Supreme Court in ***Dahiben v. Arvindbhai Kalyanji Bhanushali (Gajra) Dead through Legal Representatives & Ors.*** (2020) 7 SCC 366 and also in ***Coromandel Indag Products India Ltd. v. Sumitomo Chemical Company Ltd. & Anr*** 2025 SCC OnLine Del 4647.

14. It was also submitted that mere existence of a website is not sufficient to confer jurisdiction unless it facilitates commercial transactions and is specifically targeted at customers within the territorial jurisdiction of the Court. The jurisdiction can only be assumed if there is a clear intention on part of the petitioners to target customers within the territorial jurisdiction of



the learned Commercial Court. Further, the Plaint does not disclose any material or cogent evidence showing that any commercial transaction involving the products containing the Impugned Trade Mark took place within the jurisdiction of the learned Commercial Court. It was further submitted that the website of the Petitioners is in a non-interactive platform that merely displays products without enabling any purchase or transaction. Petitioner No. 1 is doing business through offline stores only and provides product information through website of the offline stores thereby reinforcing the non-interactive nature of the website of the Petitioners. Further the Respondent has not placed any credible evidence on record to show that the products with the Impugned Trade Marks are available for purchase through third-party platforms. The Plaint contains bald and unsubstantiated assertions without any documentary evidence in support. In absence of any evidence of targeted commercial activity within the territorial jurisdiction of the learned Commercial Court, no cause of action has arisen for exercise of jurisdiction by the learned Commercial Court.

15. The learned Counsel for the Petitioners has relied upon the decision of ***Banyan Tree Holding Limited v. M. Murali Krishna Reddy & Anr.*** 2009 SCC OnLine Del 3780 wherein the Division Bench of this Court has held that:

*“39. **India TV** appears to be somewhat closer to the development of law in this regard since the decision in **Casio**. In **India TV**, the learned single Judge impliedly doubted the correctness of the decision in **Casio**. The learned single Judge in **India TV** acknowledged that a mere accessibility of website may not be sufficient to attract jurisdiction of the forum court. This, in the considered view of this Court, is the correct position in law.*



40. There was no occasion for this court even in **India TV** to examine the finer aspects of the question of jurisdiction based on the nature of the website, the intention of the host of the website to specifically target viewers outside its jurisdiction, and the effect of hosting such website on audiences outside such state. It appears to this court that for the purposes of a passing off action or an action for infringement where the Plaintiff is not carrying on business within the jurisdiction of the forum court, and where there is no long arm statute, the Plaintiff would have to show that the Defendant purposefully availed itself of the jurisdiction of the forum court. It is not enough merely to show that the website hosted by the Defendant is an interactive one. It would have to be shown that the nature of the activity indulged in by the Defendant by the use of the website was with an intention to conclude a commercial transaction with the website user.

41. This court is not able to accept the submission of the learned counsel for the Plaintiff that the test of “purposeful availment” must be replaced by the test of “purposeful avoidance” While the Defendant may in his defence show how he avoided the forum state, the initial burden is on the Plaintiff to show that the Defendant “purposefully availed” itself of the jurisdiction of the forum court. The issue of incorporating filters to block access to the website by viewers located outside the forum state will have to be considered while deciding if the Defendant had “purposefully avoided” the forum state. However, that question will arise only if the Plaintiff has been able to show that the website of the Defendant is interactive and permits commercial transactions to be concluded by the Defendant with a user of the website.

42. This Court holds that jurisdiction of the forum court does not get attracted merely on the basis of interactivity of the website which is accessible in the forum state. The degree of the interactivity apart, the nature of the activity permissible and whether it results in a commercial transaction has to be examined. For the ‘effects’ test to apply, the Plaintiff must necessarily plead and show prima facie that the specific targeting of the forum state by the Defendant resulted in an injury or harm to the Plaintiff within the forum state. For the purposes of a passing off or an infringement action (where the plaintiff is not located within the jurisdiction of the court), the injurious effect on the Plaintiff's business, goodwill or reputation within the forum state as a result of the Defendant's website being



accessed in the forum state would have to be shown. Naturally therefore, this would require the presence of the Plaintiff in the forum state and not merely the possibility of such presence in the future. Secondly, to show that an injurious effect has been felt by the Plaintiff it would have to be shown that viewers in the forum state were specifically targeted. Therefore the 'effects' test would have to be applied in conjunction with the "sliding scale" test to determine if the forum court has jurisdiction to try a suit concerning internet based disputes."

16. In view of the above, the learned Counsel for the Petitioners submitted that the decision in ***Banyan Tree Holding Limited*** (*supra*) holds that:

- i. Mere accessibility of a website would not enable the Court to exercise jurisdiction;
- ii. A passive website, with no intention to specifically target audience outside the State where the host of website is located, cannot vest the jurisdiction in the Court in other jurisdictions;
- iii. In addition to show that the website is an interactive one, it is necessary to show the nature of the activity by use of the website with the intention to conclude a commercial transaction with the website user;
- iv. It has to be shown that the Defendant 'purposefully availed' itself of the jurisdiction of the Court;
- v. The Plaintiffs must necessarily lead and show *prima facie* that the specific targeting by the Defendant resulted in injury or harm to the Plaintiffs within the forum State; and,



vi. To show that injurious effect has been felt by the Plaintiffs, it would have to be shown that users of the website in the forum State were specifically targeted.

17. The learned Counsel for the Petitioners also relied upon the decision of this Court in *Impresario Entertainment & Hospitality Pvt. Ltd. v. S&D Hospitality* 2018 SCC OnLine Del 6392, in which it is held that:

“58. We summarise our findings on the questions referred for our opinion as under:

Question (i) : For the purposes of a passing off action, or an infringement action where the plaintiff is not carrying on business within the jurisdiction of a court, in what circumstances can it be said that the hosting of a universally accessible website by the Defendants lends jurisdiction to such Court where such suit is filed (“the forum court”)

Answer : For the purposes of a passing off action, or an infringement action where the plaintiff is not carrying on business within the jurisdiction of a court, and in the absence of a long-arm statute, in order to satisfy the forum court that it has jurisdiction to entertain the suit, the plaintiff would have to show that the Defendant 3 SAGSR efAll) DIDileE’ itself of the jurisdiction of the forum court. For this it would have to be prima facie shown that the nature of the activity indulged in by the Defendant by the use of the website was with an intention to conclude a commercial transaction with the website user and that the specific targeting of the forum state by the Defendant resulted in an injury or harm to the plaintiff within the forum state.

Question (ii) : In a passing off or infringement action, where the defendant is sought to be sued on the basis that its website is accessible in the forum state, what is the extent of the burden on the plaintiff to prima facie establish that the forum court has jurisdiction to entertain the suit?



Answer : For the purposes of Section 20(c) CPC, in order to show that some part of the cause of action has arisen in the forum state by the use of the internet by the Defendant the plaintiff will have to show prima facie that the said website, whether euphemistically termed as “passive plus” or “interactive”, was specifically targeted at viewers in the forum state for commercial transactions. The plaintiff would have to plead this and produce material to prima facie show that some commercial transaction using the website was entered into by the Defendant with a user of its website within the forum state resulting in an injury or harm to the plaintiff within the forum state.

Question (iii) : Is it permissible for the plaintiff to establish such prima facie case through “trap orders” or “trap transactions”?

Answer : The commercial transaction entered into by the Defendant with an internet user located within the jurisdiction of the forum court cannot possibly be a solitary trap transaction since that would not be an instance of “purposeful” availment by the Defendant. It would have to be a real commercial transaction that the Defendant has with someone not set up by the plaintiff itself. If the only evidence is in the form of a series of trap transactions, they have to be shown as having been obtained using fair means. The plaintiff seeking to establish jurisdiction on the basis of such trap transactions would have to aver unambiguously in the plaint, and also place along with it supporting material, to prima facie show that the trap transactions relied upon satisfy the above test.”

18. The learned Counsel for the Petitioners submitted that ***Impresario Entertainment & Hospitality Pvt. Ltd.*** (*supra*) has relied upon the jurisdictional principal laid down in ***Banyan Tree Holding Limited*** (*supra*) and clarified that mere access to the Defendant’s website within the forum State does not automatically vest jurisdiction in that Court. A passive website, which does not intend to specifically target an audience outside the Defendant’s State, cannot be the basis for asserting the jurisdiction by a Court in another State.



19. The learned Counsel for the Petitioners also relied upon the decision in ***Karans Gurukul Classes & Ors. v. Gurukul Classes IIT Division & Ors.*** 2019 SCC OnLine Del 8444, in which it is held that:

“25. The plaintiffs in this suit for permanent injunction restraining infringement of trade mark and passing off and for ancillary reliefs, having opted to invoke the territorial jurisdiction of this Court only by pleading Section 134 of the Trade Marks Act, and which as per Ultra Home Construction Pvt. Ltd. supra is not available, and the plaintiffs having not opted to amend the plaint till date, it is now not open to the plaintiffs to argue beyond their pleaded case of this Court having territorial jurisdiction otherwise also. I may emphasize that had the plaintiffs taken any such plea in their plaint, the defendants would have had an opportunity to respond thereto and in the absence of the plea, the defendants had no opportunity to respond thereto.

27. As far back as in Banyan Tree Holding (P) Ltd. v. A. Murali Krishna Reddy, 2009 SCC OnLine Del 3780, it was held by the Division Bench of this court that (i) mere accessibility of the defendants' website in Delhi would not enable this Court to exercise jurisdiction; (ii) a passive website, with no intention to specifically target audiences outside the State where the host of the website is located, cannot vest the forum court with jurisdiction; (iii) it is not enough to show that the website hosted by the defendant is an interactive one; it would have to be shown that the nature of the activity indulged in by the defendant by use of the website was with the intention to conclude a commercial transaction with the website user; (iv) the plaintiff has to show that the defendant “purposefully availed” itself of the jurisdiction of the forum court; (v) the plaintiff must necessarily plead and show prima facie that the specific targeting of the forum state by the defendant resulted in an injury or harm to the plaintiff within the forum state; (vi) to show that injurious effect has been felt by the plaintiffs, it would have to be shown that viewers in the forum state were specifically targeted. In Impresario Entertainment & Hospitality Pvt. Ltd. v. S&D Hospitality, 2018 SCC OnLine Del



6392, it was held in the context of the business of restaurant, that though the defendant through Zomato and Dine Out will be able to invite the customer and reserve a table at the restaurant of the defendant at Hyderabad but the commercial transaction would take place only on the customer availing the service of the defendant at Hyderabad.”

20. It was submitted by the learned Counsel for the Petitioners that this Court in ***Karans Gurukul Classes & Ors.*** (supra) has held that mere interactivity cannot justify the invocation of the jurisdiction of the learned Commercial Court and it would additionally have to be shown that the Petitioners were targeting customers within the jurisdiction of the learned Commercial Court through their website as it would amount to purposeful invocation of the jurisdiction of the learned Commercial Court. The Respondent has failed to show that any commercial transaction has taken place through the website of the Petitioners within the territorial jurisdiction of the learned Commercial Court in the absence of any evidence placed on record by the Respondent, the **Plaint** is bad for want of territorial jurisdiction.

21. It was submitted by the learned Counsel for the Petitioners that Section 134(2) of the Trade Marks Act, 1999 (“**Act**”) does not confer jurisdiction to the learned Commercial Court. The learned Counsel for the Petitioners relied upon the decision of the Supreme Court in ***Indian Performing Rights Society Ltd. v. Sanjay Dalia & Anr.*** (2015) 10 SCC 161, which held that:

“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.

23. The provisions of Section 62(2) of the Copyright Act and Section 134 of the Trade Marks Act are in pari materia. Section 134(2) of the Trade Marks Act is applicable to clauses (a) and (b) of Section 134(1) of the Trade Marks Act. Thus, a procedure to institute suit with respect to Section 134(1)(c) in respect of “passing off” continues to be governed by Section 20 CPC.”

22. The learned Counsel for the Petitioners submitted that the intent behind Section 134 (2) of the Act is to provide an additional forum where the cause of action arises wholly or in part at the place where the Plaintiffs reside or carries on business and not to enable forum shopping or cause



undue hardship to the Defendant by instituting proceedings at distant locations where no part of cause of action has arisen. The benefit conferred under Section 134(2) of the Act must be read in consonance with Section 20 CPC and cannot be invoked where the plaintiff has multiple places of business but chooses a forum unconnected to the dispute solely to inconvenience the Defendant. As there are only vague averments made by the Respondent in the Plaint which are not supported even by a single document or material on record to demonstrate that any part of cause of action has arisen within the territorial jurisdiction of the learned Commercial Court, the invocation of Section 134(2) of the Act is untenable and the Plaint is liable to be returned under Order VII Rule 10 of CPC for presentation before the appropriate Court having jurisdiction.

23. It was also submitted that the convenience of the Parties must be considered while determining the appropriate forum for instituting a suit. The right under Section 134(2) of the Act to sue at a place where the plaintiff resides or carries on business is not absolute and cannot be invoked to disregard a forum where the plaintiff is already carrying on business and where the cause of action has also arisen. The legislative intent behind Section 134(2) of the Act is to prevent the hardship to the plaintiff and not to confer any unrestrained choice of jurisdiction or to cause inconvenience to the defendant. Reliance was placed on judgment of this Court in ***Ultra Home Construction Pvt. Ltd. v. Purushottam Kumar Chaubey & Ors.*** 2016 SCC OnLine Del 376, which held that:

“13. 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.”

xxxx xxxx xxxx xxxx xxxx

“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.”*

xxxx xxxx xxxx xxxx xxxx

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.***

24. It was further submitted that if the Respondent's interpretation of Section 134 of the Act is accepted, it would open the floodgates and invite the gross abuse of the legal process empowering every plaintiff with an online presence to whimsically cherry-pick the most convenient or strategically chosen forums across the country. Accordingly, the Suit instituted by the Respondent before the learned Commercial Court, despite the fact that neither the Petitioners reside nor do they carry on any business within the jurisdiction of the learned Commercial Court, has inappropriately invoked the jurisdiction of the learned Commercial Court.

25. In view of the above, the learned Counsel for the Petitioners submitted that the Impugned Order deserves to be quashed and set aside by allowing the present Petition.

SUBMISSIONS BY THE RESPONDENT:

26. The learned counsel for the Respondent submitted that the present Petition is not maintainable as the jurisdiction under Article 227 of the Constitution of India, 1950 is to be exercised 'very sparingly' and even more sparingly with respect to orders passed in the suit governed by the Commercial Courts Act, 2015 ("CC Act"). The learned Counsel for the Respondent relied upon the decision of this Court in ***Black Diamond***



Trackparts Pvt. Ltd. & Ors. v. Black Diamond Motors Pvt. Ltd. (2021) 87 PTC 480 (DB), which held that:

*“31. We are of the view that once the Commercial Courts Act has expressly barred the remedy of a revision application under Section 115 of the CPC, with respect to the suits within its ambit, the purpose thereof cannot be permitted to be defeated by opening up the gates of Article 227 of the Constitution of India. The scope and ambit of a petition under Article 227 is much wider than the scope and ambit of a revision application under Section 115 of the CPC; whatever can be done in exercise of powers under Section 115 of the CPC, can also be done in exercise of powers under Article 227 of the Constitution. Allowing petitions under Article 227 to be preferred even against orders against which a revision application under Section 115 CPC would have been maintainable but for the bar of Section 8 of the Commercial Courts Act, would nullify the legislative mandate of the Commercial Courts Act. Recently, in *Deep Industries Limited v. Oil and Natural Gas Corporation Limited* (2020) 15 SCC 706, in the context of petitions under Article 227 of the Constitution of India with respect to orders in an appeal against an order of the Arbitral Tribunal under Section 17 of the Arbitration & Conciliation Act, 1996, it was held that if petitions under Article 226/227 of the Constitution against orders passed in appeals under the Arbitration Act were entertained, the entire arbitral process would be derailed and would not come to fruition for many years. It was observed that though Article 227 is a constitutional provision which remains untouched by a non-obstante Clause 5 of the Arbitration Act but what is important to note is that though petitions can be filed under Article 227 against judgments allowing or dismissing First Appeals under the Arbitration Act, yet the High Court would be extremely circumspect in interfering with the same taking into account the statutory policy, so that interference is restricted to orders which are patently lacking in inherent jurisdiction. Thus, though we are of the view that gates of Article 227 ought not to be opened with respect to orders in commercial suits at the level of the District Judge against which a revision application under CPC was maintainable but which*



remedy has been taken away by the Commercial Courts Act, but abiding by the judgments aforesaid, hold that it cannot be said to be the law that jurisdiction under Article 227 is completely barred. However the said jurisdiction is to be exercised very sparingly and more sparingly with respect to orders in such suits which under the CPC were revisable and which remedy has been taken away by a subsequent legislation i.e. the Commercial Courts Act, and ensuring that such exercise of jurisdiction by the High Court does not negate the legislative intent and purpose behind the Commercial Courts Act and does not come in the way of expeditious disposal of commercial suits.”

27. The learned Counsel for the Respondent also relied upon the decision of **Ashok Kumar Puri & Anr. v. S. Suncon Realtors Pvt. Ltd. & Anr.** (2021) 4 HCC (Del) 201, wherein it has been held that Jurisdiction under Article 227 of the Constitution of India is extremely narrow and limited only in respect of orders that are patently lacking inherent jurisdiction.

28. It was submitted that the Petitioners have failed to plead any patent illegality in the Impugned Order. The Application under Order VII Rule 10 and 11 of CPC was filed to forestall the adjudication of the Respondent’s Application under Order XXXIX Rules 1 and 2 of CPC. The Petitioners have not made out any exceptional circumstances evidencing patent lack of inherent jurisdiction of the learned Commercial Court necessitating interference by this Court under Article 227 of the Constitution of India.

29. It was submitted that, for the purpose of jurisdiction, Section 134 of the Act permits a suit for infringement to be instituted within the territorial jurisdiction of any Court within which the plaintiff carries on business. Section 134 of the Act is an enabling provision, which operates in addition to Section 20 of CPC.



30. It was also submitted that the learned Commercial Court has the jurisdiction to try the Suit under Section 134 of the Act, as noted in Paragraph No. 12 of the Impugned Order. Further, the Respondent is selling its goods with Impugned Trade Marks through its interactive website, namely www.polo.com, and through other online market places like www.amazon.in, www.flipkart.com, www.myntra.com, www.ajio.com etc., which are accessible to the consumers residing within the jurisdiction of the learned Commercial Court. It was also submitted that the orders can be placed through these websites and goods can be delivered PAN India. Hence, the learned Commercial Court has the necessary jurisdiction to try the Suit.

31. The learned Counsel for the Respondent relied upon the decision of this Court in ***Ultra Home Construction Pvt. Ltd. v. Purushottam Kumar Chaubey & Ors.*** 2023:DHC:9093, which held that:

“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)

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:

S. No.	Place of Plaintiff's Principal Office (Sole office in s. no. 1)	Place of Plaintiff's Subordinate/Branch Office	Place where cause of action arose	Place where Plaintiff can additionally sue under section 134(2) and section 62(2)
1	A	--	C	A
2	A	B	A	A
3	A	B	B	B
4	A	B	C	A"

32. In view of the above, it was submitted that the Respondent can institute a suit under the provisions of Section 134 of the Act in addition to the cases where the suits could be filed under Section 20 of the CPC. The learned Counsel for the Respondent also relied upon the decision of this Court in ***World Wrestling Entertainment, Inc. v. Reshma Collection & Ors.*** (2014) 60 PTC 452 (Del), which held that:

“7. Before the learned Single Judge, it had been contended on behalf of the appellant/plaintiff that the decisions of the Supreme Court in Dhodha House (supra) and this Court in Archie Comic (supra) were not applicable inasmuch as they did not take into account the “new media” of web-based business models where transactions are conducted over the internet. The learned counsel for the appellant/plaintiff had placed reliance on Yahoo Inc. v. Akash Arora : 1999 (19) PTC 201; Banyan Tree Holding (P) Limited v. A. Murali Krishna Reddy : 2010 (42) PTC 361 (Del); and Wipro



Limited v. Oushadha Chandrika Ayurvedic India (P) Limited : 2008 (37) PTC 269 (MAD) (DB). It was also contended on behalf of the appellant/plaintiff before the learned Single Judge that the question of territorial jurisdiction was a mixed question of law and fact and, therefore, the same ought to be adjudicated at the final stage of the suit and not at the preliminary stage of admission. All these pleas were rejected by the learned Single Judge by placing reliance on the decision in the case of Dhodha House (supra) which had interpreted the expression “carries on business” appearing in both, Section 134(2) of the Trademarks Act, 1999 and Section 62(2) of the Copyright Act, 1957. The learned Single Judge observed that the sum and substance of the criteria laid down in Dhodha House (supra) was that an essential part of the plaintiff's business, coupled with an element of control exercised by the plaintiff, must exist in such a place where the plaintiff claims to be carrying on business either on its own or through an exclusive agent. The learned Single Judge also observed that merely because of the e-commerce models, which have become prevalent, and because of the use of the internet as a medium for doing business, the tests, which apply for determination of issues, such as, when and where the contract is made or whether the vendor carries on business at the place where the merchandise may be sold, or service may be offered, would not change and would be the same as applicable to communications over the telephone and fax. For this, the learned Single Judge made a reference to the Supreme Court decision in Bhagwan Goverdhandas Kedia v. Girdharilal Parshottamdas & Co. : AIR 1966 SC 543.

19. Considering the fact that in Dhodha House (supra), the third condition stipulated that to constitute ‘carrying on business’ at a certain place, the essential part of the business must take place there, it would be necessary to examine this aspect in the backdrop of business over the internet. When a transaction takes place over the internet, where is the contract concluded? This is the question which needs to be answered. In other words, at which place does the essential part of the business transaction take place? The example of the Bombay firm having a branch office at Amritsar, where orders were received, subject to confirmation by the head office at Bombay and where money was paid and disbursed, needs to be examined in the context of internet transactions. In that example, it was noted that the Bombay firm could be said to be carrying on business at Amritsar and was liable to be sued at Amritsar. In the present case, the



plaintiff/appellant is incorporated in USA. It has a website. We do not know as to where that website is hosted. The server would, in all likelihood, be in USA. It has not been pleaded that the website of the appellant/plaintiff is hosted on a server in Delhi. Therefore, it can be safely presumed that the web server is not located in Delhi. However, if a customer in Delhi wishes to purchase an article, which is available on the website of the appellant/plaintiff, the purchaser in Delhi accesses the said website on his or her computer in Delhi. The said purchaser places the order for the said article from his computer in Delhi. The payment is made either through a credit/debit card or through a cash card from Delhi and ultimately the goods are delivered to the customer in Delhi. In the nature of such transactions, the question arises as to which is the place where the essential part of the business occurs?

23. Let us now apply these principles to the type of transaction over the internet, which we have explained above. The website of the appellant/plaintiff refers to various goods and services. It is not an offer but an invitation to an offer, just as a menu in a restaurant. The invitation, if accepted by a customer in Delhi, becomes an offer made by the customer in Delhi for purchasing the goods “advertised” on the website of the appellant/plaintiff. When, through the mode of the software and the browser, the transaction is confirmed and payment is made to the appellant/plaintiff through its website, the appellant/plaintiff accepts the offer of the customer at Delhi. Since the transaction between the two takes place instantaneously, the acceptance by the appellant/plaintiff is instantaneously communicated to its customer through the internet at Delhi. Therefore, in such a case, part of the cause of action would arise in Delhi.

*24. But, we are not concerned with the question of cause of action between the appellant/plaintiff and its customers in Delhi because the defendants are not such customers and they are, in any event, all residents of Mumbai. What we are examining is whether the third condition specified in *Dhodha House* (supra) is satisfied or not. In other words, if the contracts and/or transactions entered into between the appellant/plaintiff on the one hand and its customers are being concluded in Delhi, can it not be said that the essential part of the business of the appellant/plaintiff, insofar as its transactions with customers in Delhi are concerned, takes place in Delhi? The offers are made by customers at Delhi. The offers are subject to*



confirmation/acceptance of the appellant/plaintiff through its website. The money would emanate or be paid from Delhi. Can it not then be considered that the appellant/plaintiff is, to a certain extent, carrying on business at Delhi? In our view, it would be so. Because of the advancements in technology and the rapid growth of new models of conducting business over the internet, it is possible for an entity to have a virtual presence in a place which is located at a distance from the place where it has a physical presence. The availability of transactions through the website at a particular place is virtually the same thing as a seller having shops in that place in the physical world. Let us assume for the sake of argument that the appellant/plaintiff had a shop in Delhi from where it sold its various goods and services. In that case, it could not be denied that the plaintiff carried on business in Delhi. This is apart from the fact that the appellant/plaintiff may also have been regarded as having voluntarily resided in Delhi. When the shop in the 'physical sense' is replaced by the 'virtual' shop because of the advancement of technology, in our view, it cannot be said that the appellant/plaintiff would not carry on business in Delhi."

33. The learned Counsel for the Respondent also relied upon the decisions of this Court in ***Corona Remedies Pvt. Ltd. v. UMAC Pharmaceuticals & Ors.***:2023:DHC:5718 and in ***Diamond Modular Pvt. Ltd. v. Vikash Kumar & Anr.***: 2025:DHC:3619-DB.

34. The learned Counsel for the Respondent submitted that the availability of transactions through the website at a particular place is the same as a seller having shops in that place in the physical world. Accordingly, the Suit was properly filed before the learned Commercial Court.

35. The learned Counsel for the Respondent submitted that a part of cause of action has arisen within the jurisdiction of the learned Trial Court as the Petitioners have a website www.dapolo.in where the Petitioners solicit, advertise and offer for sale the goods with the Impugned Trade Mark within



the jurisdiction of the learned Trial Court. The Petitioners also carry on their business through www.indiamart.com, which is interactive in nature, as held by this Court in *Marrico Ltd.v. Mr. Mukesh Kumar & Ors.* (2018) 253 DLT 8. The Respondent has produced screenshots of the Petitioners' website along with the Plaint. The Respondent has also specifically averred in Paragraph No. 40 of the Plaint that the Petitioners are committing the acts of infringement and passing off by selling, soliciting, networking and / or intending to supply their goods bearing the Impugned Trade Mark through their website www.dapolo.in within the jurisdiction of the learned Trial Court.

36. The learned Counsel for the Respondent also relied upon the decision of the Division Bench of this Court in *Shree Girirajji & Co. v. Gagan Pagrani Proprietor of Plastica Industries*: 2024:DHC:2230-DB, wherein it has been held that:

*“14. Undisputedly, if a person carries on his business through an interactive site and, sells and markets its goods through such sites, the courts exercising jurisdiction in respect of places where the goods are made available would have the jurisdiction to entertain a suit for infringement of the trademarks. Indisputably, customers in Delhi can place orders and purchase goods online through the interactive website. Thus, the courts in Delhi would have the jurisdiction to entertain the suit for infringement of trademarks and passing off (Reference: *World Wrestling Entertainment, Inc. v. M/s. Reshma Collection & Ors.*: 2014 SCC OnLine Del 2031).”*

37. In view of the above, it was submitted that the learned Commercial Court has rightly exercised the jurisdiction by dismissing the Application. It was further submitted that it is well settled law that for the purpose of an Application under Order VII Rules 10 and 11 of the CPC, the averments made in the Plaint are required to be considered as correct. The learned



Counsel for the Respondent in support of this submission relies upon the decisions in *Exphar SA & Anr. v. Eupharma Laboratories Ltd. & Anr.* (2004) 3 SCC 688, *RSPL Ltd. v. Mukesh Sharma & Ors.* 2016 (68) PTC 178 (Del), *Chandra Kishore Chaurasia v. R.A. Perfumery Works Pvt. Ltd.:* 2022/DHC/004454 and the order dated 24.05.2023 in RFA (COMM) No.6/2023 captioned *Rukhmani Keshwani Trading as Vishwas Agarbatti Store v. Naresh Jeswani.*

38. It was also submitted that the Petitioners have admitted before the Trade Mark Registry that the Petitioners have a Pan India recognition as a result of the wide network of business operations across India coupled with extensive consumer exposure via internet through its website www.bapolo.in and other internet platforms giving easy access to the customers, purchasers, traders and people at large at the time of applying for a trade mark registration for the impugned Trade Mark vide Application No. 6363855 which has been applied for Pan India basis without any disclaimer restricting the availability of the Petitioners' goods to any particular area.

39. It was further submitted that the Plaintiffs in Paragraph No. 40 expressly pleads that "*the Plaintiff has a strong and credible apprehensions that the Defendant will expand their operations under the impugned trademark in South Delhi and the threat that the Defendant will further use the impugned trade mark / label within the jurisdiction of this Hon'ble Court is credible and imminent*". This pleading is sufficient to establish jurisdiction as held by this Hon'ble Court in *M/s Allied Blenders & Distillers Pvt. Ltd. v. R.K. Distillers Pvt. Ltd.* (2017) 69 PTC 493 *as under:*



“12. These observations are clearly in line with the observations of the Division Bench in *Teva Pharmaceutical Industries Limited (supra)*. What is important is that the treat of selling the goods under the impugned trade mark in Delhi would by itself confer jurisdiction on the courts in Delhi. It is another matter that the threat perception would have to be justified, *prima facie*, when the application filed by the plaintiff under Order XXXIX Rules 1 & 2, CPC would be considered or later, on merits, when the suit itself is taken up for disposal. However, in a consideration under Order VII Rule 10 CPC, the court must proceed on the assumption that whatever is stated in the plaint is correct and, therefore, it would also have to assume that the treat perception or the apprehension on the part of the plaintiff as stated in the plaint is also correct. That in itself would amount to a part of the cause of action.”

40. In view of the above, the learned Counsel for the Respondent submitted that the present Petition deserves to be dismissed as no case is made out for interference by this Court and there is no infirmity in the Impugned Order which has been legally passed after considering the averments made in the Plaint, submissions made by the Parties and the case laws relied upon by them.

ANALYSIS AND FINDINGS:

Maintainability of the present Petition

41. The Respondent has challenged the maintainability of the present Petition on the ground that the CC Act expressly bars the remedy of revision application under Section 115 of CPC with respect to the suits that fall within the ambit of the CC Act. Accordingly, Article 227 of the Constitution of India cannot be used to assail the orders passed in commercial suits as the jurisdiction vested in the High Court under Article 227 of the Constitution of India has to be exercised very sparingly.



42. There is no cavil that the jurisdiction under Article 227 of the Constitution of India has to be exercised in an extremely narrow and limited scope where the orders challenged patently lack inherent jurisdiction. It is also settled that a petition under Article 227 of the Constitution of India against orders passed in a commercial suit could only be entertained in exceptional and exigent circumstances. The Respondent has relied upon the decision of the Division Bench of this Court in ***Black Diamond Trackparts Pvt. Ltd. (supra)*** wherein it has been held that the gates of Article 227 of the Constitution of India ought not to be opened with respect to orders in commercial suits against which a revision application under CPC was maintainable, but which remedy has been taken away by the CC Act. However, it cannot be said that the jurisdiction under Article 227 is completely barred. Accordingly, the Division Bench of this Court in ***Black Diamond Trackparts Pvt. Ltd. (supra)*** has held that the petition under Article 227 of the Constitution of India would be maintainable however the discretion, whether in the facts and circumstances such petition is to be entertained or not, is left to the Court exercising such discretion.

43. In view of the above, the present Petition is maintainable. However, whether the same is required to be entertained or not will have to be decided on the facts and circumstances of the present case.

Cause of action within the territorial jurisdiction

44. It is argued by the Petitioners that no cause of action has arisen within the territorial jurisdiction of the learned Commercial Court as there is no documentary evidence showing actual sale or commercial transaction of any goods within the jurisdiction of the learned Commercial Court. It was also



argued that the Petitioners do not have principal place of business within the jurisdiction of learned Commercial Court and the Suit has been filed with a *mala fide* intention to harass the Petitioners.

45. However, a bare perusal of the Plaint would show that the Respondent has sufficiently pleaded that the cause of action has arisen within the jurisdiction of the learned Commercial Court by relying upon the screenshots showing the use of the Impugned Trade Mark by the Petitioners which is deceptively similar to the Respondent's Trade Mark. The evidence relied upon by the Respondent in the Plaint is sufficient to *prima facie* establish that the Petitioners are indulging in buying and selling of the products bearing the Impugned Trade Marks, which are deceptively similar to the Respondent's Trade Marks, and are available to the customers within the jurisdiction of the learned Commercial Court. Hence, there is clear cause of action that has arisen within the jurisdiction of the learned Commercial Court.

Accessibility of Petitioners' website for conferring the jurisdiction

46. The Petitioners have submitted that mere accessibility of the Petitioners' non-interactive website is insufficient to confer jurisdiction on the learned Commercial Court. It was argued that in order to establish jurisdiction, the Respondent was required to show that the Petitioners were specifically targeting the audience within the jurisdiction of the learned Commercial Court and intended to conclude a commercial transaction with the website user. In addition, it is required to show that the Petitioners 'purposefully availed' themselves of the jurisdiction of the learned Commercial Court by targeting the viewers of the website, which resulted in



an injury or harm to the Respondent within the jurisdiction of the learned Commercial Court.

47. The Respondent on the other hand has shown that the Petitioners are selling the goods with the Impugned Trade Mark through its interactive website as well as other online market places.

48. The decisions in *Banyan Tree Holding Limited (supra)*, *Impresario Entertainment & Hospitality Pvt. Ltd. (supra)* and *Karans Gurukul Classes & Ors. (supra)* relied upon by the Petitioners, hold that mere accessibility and interactivity of the website is not sufficient and it would additionally have to be shown that the Petitioners were targeting the customers within the jurisdiction of the learned Commercial Court as the same would amount to a purposeful invocation of the jurisdiction of the learned Trial Court by the Petitioners. It is also held that the Respondent has to show that commercial transactions have taken place across the website within the territorial jurisdiction of the learned Commercial Court.

49. The Respondent has relied upon the decisions in *Ultra Home Construction Pvt. Ltd. (supra)* and *World Wrestling Entertainment, Inc. (supra)* which are being followed in *Corona Remedies Pvt. Ltd. (supra)*, *Diamond Modular Pvt. Ltd. (supra)* and *Shree Girirajji & Co. (supra)* which hold that the availability of transactions through the website at a particular place is virtually the same as having shopped in that place in the physical world. It is held that because of the advancement in technology and rapid growth of new model of conducting business over the internet it is possible to have a virtual presence, whereby the customers can place orders and purchase goods online through interactive website.



50. As the Plaintiff has sufficiently shown that the Petitioners are having an interactive website and presence on third party e-commerce and social media platforms, where the customers located within the jurisdiction of the learned Commercial Court can buy and sell the products with the Impugned Trade Marks, the same would satisfy the test of having ‘purposefully availed’ of the jurisdiction of the learned Commercial Court by making the goods available and targeting the customers within the jurisdiction of the learned Commercial Court. Accordingly, the Impugned Order has rightly held that the learned Commercial Court has the territorial jurisdiction in view of the accessibility of the Petitioners website, which is interactive in nature and because the Petitioners have purposefully availed themselves of the jurisdiction of the learned Commercial Court.

Section 134 of the Act

51. It is submitted by the Petitioners that Section 134 of the Act only provides an additional forum where the cause of action arises wholly or in part where the Plaintiff resides or carries on the business and not to enable forum shopping. The Respondent has submitted that Section 134 of the Act permits the suit to be instituted before the learned Commercial Court as the Respondent is carrying on the business within the jurisdiction of the learned Commercial Court through its interactive website, namely www.polo.com, and other online market places. The Plaintiff in Paragraph Nos. 11 and 40 clearly mentions that South Delhi has been one of the largest markets for sale and distribution of Respondent’s goods through its own website and online market places, which are interactive and freely accessible within the jurisdiction of the learned Commercial Court.



52. The decision in *Indian Performing Rights Society Ltd.* (*supra*) relied upon by the Petitioners holds as under:

“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.”

53. Accordingly, it is held that where the cause of action has arisen at a place where the plaintiff is carrying on business would oust the jurisdiction of other place where the cause of action has not arisen though the plaintiff might be carrying on business at those places. Thus, it is necessary that a part of cause of action should arise at the place where the plaintiff is carrying on business to confer the jurisdiction on a Court under Section 134 of the Act. As the Respondent is carrying on business through its interactive website and other e-commerce platforms within the jurisdiction of the learned Commercial Court and that the cause of action has arisen as the Petitioners are also offering to sell the products with Impugned Trade Marks within the jurisdiction of the learned Commercial Court, the objection with regard to the territorial jurisdiction as raised by the Petitioners is not maintainable. Accordingly, there is no infirmity with the Impugned Order.

54. Although, the Petitioners have raised the objection with regard to under-valuation and lack of pecuniary jurisdiction, the Impugned Order clearly states that the said objection was not pressed before the learned Commercial Court. The Petitioners have not challenged the said finding of



the Impugned Order. In view of the same, there is no necessity to examine the said objection.

55. It is trite law that while deciding the Application under Order VII Rules 10 and 11 of CPC, the averments made in the Plaint are presumed to be correct and the Application is decided on *demurrer*. Considering the overall averments made in the Plaint and the *prima facie* perusal of the documents filed along with the Plaint show that the Respondent has made out a case for maintaining the Suit before the learned Commercial Court. Therefore, the Impugned Order does not suffer from any infirmity warranting interference by this Court while exercising supervisory jurisdiction under Article 227 of the Constitution of India, 1950. The findings by the learned Commercial Court in the Impugned Order are reasoned and well within the jurisdiction of the powers conferred under Order VII Rules 10 and 11 of the CPC.

56. Accordingly, the present Petition is without any merits and is hereby dismissed. Pending Applications, if any, stand disposed of.

TEJAS KARIA, J

AUGUST 22, 2025

‘gsr’