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MANU/RH/1094/2011

Equivalent/Neutral Citation: 2012(51)PTC345(Raj)

IN THE HIGH COURT OF RAJASTHAN

S.B. Civil First Appeal No. 483/2011

Decided On: 12.10.2011

Indo Brine Industries Limited **Vs.** Neeraj Agarwal and Ors.

Hon'ble Judges/Coram:
M.C. Sharma, J.

Counsels:
For Appellant/Petitioner/Plaintiff: Mr. R.K. Agarwal, Senior Advocate with Mr. Sandeep Pathak

For Respondents/Defendant: Mr. S.K. Bansal for the Respondents 2, 3 and 4, Mr. Kapil Gupta and Mr. Ramavtar Sharma for the Respondent No. 5 and Mr. D.K. Gupta for the Respondent No. 1

JUDGMENT

M.C. Sharma, J.

1. This first appeal has been filed by INDO BRINE INDUSTRIES LIMITED (in short th plaintiff-appellant) against the decree and judgment dated 23.7.2011 passed by Addl. District Judge (Fast Track) No. 7 Jaipur Metropolitan, (in short "the trial court") in civil suit No. 107/2010 whereby the trial court allowed the application under Order 7 Rule 11 CPC filed by (Dandi Salt Private Limited, Ram Niwas Hukam Chand Gupta, and Neeraj Kumar Agarwal (in short the defendants 2 to 4) and thereby dismissed the civil suit against all the defendants (defendants 2 to 4 and Neeraj Agarwal S/o. Ashok Agarwal, and M/s. Pacs Chemical (defendants 1 and 5 (in short" the defendants") filed by the plaintiff-appellant. The brief facts giving rise to this first appeal are that the plaintiff-appellant filed a civil suit before the trial court for perpetual and mandatory injunction on infringement of trade mark and infringement of copyright and for the damages and rendition of accounts, it was stated in the plaint that the plaintiff-appellant is a company incorporated under the Companies Act, 1956 and engaged in the business of manufacturing, selling and exporting 'iodized Salt' amongst others, under the trade mark and label containing and consisting of the name DANDI NAMAK in Hindi as also DANDI SALT in English. The trade marks (logo) containing and consisting of the name DANDI NAMAK in Hindi in respect of 'iodized Salt for human consumption and for preserving food stuff included in class-30 have been granted registration in favour of the plaintiff-appellant under Nos. 1641653 and 1641655 in class-30 by the office of the Registrar of Trade Marks and that too after the objections filed by the defendant No. 3 for the defendant No. 2 as also by other opponents were considered in accordance with the provisions of the Trade Marks Act, 1999. it was also mentioned in the plaint that inspite of the registration of the trade mark DANDI NAMAK in the name of the plaintiff-appellant and plaintiff-appellant being the prior user since the month of June, 1998, all the defendants in collusion with each other and at the instance of each other continued the acts of infringement of the trade mark of the plaintiff-appellant. The defendants continued to use and infringe the trade mark, infringement of copyright and passing off

their goods as and for the plaintiff and in this process also the defendants filed collusive suits amongst each other as also against the plaintiff-appellant in the territorial jurisdiction of District Court at Jaipur. The plaintiff-appellant has drawn attention of this court towards para 27 of the plaint, which reads as under:

> Para 27. That the cause of action of this suit arose against the defendants within the jurisdiction of this Hon'ble Court firstly when the defendant No. 3 filed a suit for alleged passing off in the name of the defendant No. 2 against the present plaintiff and thereafter, the defendant No. 3 and 4 filed several false and frivolous criminal complaints as also filed contempt case against the Registrar of Trade Marks and thereby attempted to derail the registration proceedings of the trade mark DANDI NAMAK of the plaintiff followed by frivolous notice of oppositions against the registration of the trade mark (logo) DANDI NAMAK of the present plaintiff with the office of the Registrar of Trade Marks at Ahmedabad. The defendants No. 3 and 4 also filed a frivolous suit for the alleged passing off in the name of the defendant No. 2 company against the present plaintiff in the Hon'ble District Court at New Delhi and thereafter a civil Suit No. 17 of 2010 on 23.7.2010 in the Hon'ble District Court, Jaipur City and defendant No. 5 filed a frivolous and collusive suit for the alleged passing off before Hon'ble the District Court at Jaipur City and thereby continued illegal acts of infringement of trade mark infringement of copyright, falsification of trade mark and passing off in clear violation of the vested property rights including the statutory rights of registration of the present plaintiff. The defendants, in active association with each other doing illegal acts of infringement of trade mark, infringement of copyright, falsification of trade mark and passing off by selling their goods i.e. salt under the identical and/or deceptively similar mark DANDI NAMAK/DANDI SALT in Jaipur City, Rajasthan and elsewhere throughout country without mentioning the brand name in the invoices and/or without issuing sale bills for such sale and/or in the clandestine manner in Jaipur City, Rajasthan and elsewhere throughout Country and as such, the cause of action for such illegal acts is continuous to arise 'de die in dem' within the jurisdiction of this Hon'ble Court. The plaintiff state that the cause of action in respect of the infringement of trade mark and copyright and also for the illegal acts of passing off committed by the defendants is continuous and recurring one and is arising day to day until the defendants are restrained by the injunction order of this Hon'ble Court from committing such illegal acts any further. This suit is filed within limitation for the cause of action, which is continuous in nature mentioned herein.

2. in the civil suit plaintiff-appellant prayed as under:

> A. The defendants by themselves, their proprietors/partners/directors, their servants, agents, dealers, distributors and all other persons connected with them in any manner, may please be restrained by a perpetual order and injunction of this Hon'ble Court from in any manner manufacturing, marketing, selling and/or using in relation to their Salt and/or any other like goods, the impugned mark/label containing and consisting of the name DANDI NAMAK or DANDI SALT and/or any other mark/label which may be identical and/or deceptively similar to the plaintiff's prior used trade mark and label Of DANDI NAMAK/DANDI SALT and also from doing business of salt' or any other like goods under the trade name of DANDI SALT PRIVATE LIMITED or any other name containing and consisting of the name DANDI NAMAK/DANDI SALT so as to infringe upon the trade mark rights of the plaintiff and also from passing off

their such goods and business or enable others to pass off their such goods as and for the true goods and business of the plaintiff;

B. The defendants by themselves, their proprietors/partners/directors, their servants, agents, dealers, distributors and all other persons connected with them in any manner, may please be restrained by a perpetual order and injunction of this Hon'ble Court from in any manner limitating and/or reproducing the plaintiffs artistic work titled DANDI NAMAK in their impugned label on pouch packings of 'salt' in any manner and/or any other art work which may be identical and/or deceptively similar or substantial reproduction of the artistic work titled DANDI NAMAK of the plaintiff so as to infringe upon the plaintiffs copyright under the provisions of the Copyrights Act. 1957:

C. The defendants may be directed or ordered to render the true and accurate account of profits earned by them from the manufacture and sale of their 'salt' and any other like goods under the identical and/or deceptively similar mark and the artistic work containing and consisting of the name DANDI NAMAK or DANDI SALT and/or limited art work on the pouch packings of their 'salt' and/or under the trade name of DANDI SALT PRIVATE LIMITED and to grant the decree of the amount so ascertained in favour of the plaintiff of all such profits as damages for the illegal acts of infringement of statutory rights of registration including the infringement of copyright and trade mark as also for the illegal acts of the passing off committed by them as complained off;

D. The Hon'ble Court may be pleased to pass a decree of mandatory injunction directing the defendants to deliver to the plaintiff all the trade literatures, packing materials, brochures, stock of offending goods, advertising materials and all other goods bearing the identical and/or deceptively similar mark and artistic work containing and consisting of the name DANDI NAMAK or DANDI SALT for the destruction or erasure:

E. That, pending the hearing and final disposal of the suit, the Hon'ble Court may be pleased to restrain the defendants from disposing off or dealing with their assets in a manner which may adversely affect the plaintiff's ability to recover damages/accounts of profits and also for the costs which may be finally awarded to the plaintiff by this Hon'ble Court;

F. The defendants may also be restrained by way of perpetual injunction order against causing obstruction or impediment in manufacturing, marketing and distribution of DANDI NAMAK and DANDI SALT by the plaintiff:

G. The cost of the present suit may kindly be awarded to the plaintiff from the defendants;

H. Any other and further relief or reliefs may please be granted to the plaintiff after looking to the facts and circumstances of the present case, in the interest of justice.

3. The defendants No. 2 to 4 and 5 filed written statements, during the pendency of the application under Order 39 Rules 1 and 2 CPC. The defendant No. 1 chose to file an application under order 39 Rule 4 CPC and later on the same was considered as reply of the defendant No. 1. The trial court granted ad-interim injunction against each of the defendants vide order dated 21.8.2010 and thereafter upon hearing the arguments and on consideration of the documents placed on record by the parties in the matter of

temporary injunction application under Order 39 Rules 1 and 2 CPC, the trial court allowed the same and granted temporary injunction till the disposal of the suit in favour of the plaintiff vide order dated 28.10.2010. The defendants 2 to 4 as also the defendant No. 5 separately filed S. B. civil Misc. Appeals Nos. 3222/10 and 3476/10 against the plaintiff-appellant. This court has not passed any interim order against the order of the trial court dated 28.10.2010 inspite of several hearings. The defendant No. 5 sought permission to withdraw its appeal to pursue the remedy under Order 39 Rule 4 CPC. The appeal filed by the defendant No. 5 was dismissed by this court as having been withdrawn with liberty to argue the matter upon the application under order 39 Rule 4 CPC before the trial court. After lapse of almost 8 months, the defendants 2 to 4 filed application under Order 7 Rule 11 CPC seeking dismissal of the suit. The plaintiff-appellant filed detailed reply to the application. After hearing the plaintiff-appellant and the defendants 2 to 4 on 16.7.2011, the matter was posted on orders upon the application under Order 7 Rule 11 CPC on 23.7.2011. The trial court allowed the application under Order 7 Rule 11 CPC with a detailed order. On 23.7.2011 the plaintiff filed an application under Order 41 Rule 5(2) read with section 151 CPC stating that the plaintiff-appellant wants to file appeal before the High court and for long time injunction was operating in favour of the plaintiff-appellant and against all the defendants and the same was allowed to continue for a period of 30 days by the order dated 23.7.2011. The appellant filed the present appeal before this court on 12.8.2011 and this court in the presence of both the parties continued the order dated 23.7.2011 of the trial court vide order of this court dated 24.8.2011 and it is being continued further by the orders dated 30.8.2011, 8.9.2011, 14.9.2011 and 16.9.2011. The arguments of the plaintiff-appellant and the defendants were heard on 23.9.2011 in this appeal.

4. Mr. R.K. Agarwal, Sr. Advocate, assisted by Mr. sandeep Pathak, Advocate, learned counsel for the plaintiff-appellant has contended that the order passed by the trial court is absolutely unjust, improper, without jurisdiction and arbitrary perverse and contrary to the provisions of the Trade Marks Act, 1999 as well as the Copyright Act, 1957. He has further contended that the trial court has not considered the basic ingredients of the provisions of Order 7 Rule 11 CPC. He has further contended that it is apparently clear that specific statements have been made in the plaint about the conduct of business by all the defendants within the territorial jurisdiction of Jaipur. He has further contended that all the defendants have acted in a collusive manner with each other and are misusing the registered trade mark of the plaintiff-appellant. He has further contended that the defendants 2 to 4 and defendant No. 5 were contesting a collusive suit in civil court at Jaipur regarding the use of the trade mark 'Dandi Namak' itself. The admission made by the defendants 2 to 4 makes it apparently clear that they were not only conducted business within the territorial jurisdiction of Jaipur, but have also contesting their rights as against defendant No. 5. ignoring this aspect the trial court has held that no averment has been made regarding the working of defendants 2 to 4 at Jaipur. The trial court has also recorded a finding that the plaintiff-appellant has not claimed any relief against defendants 1 and 5 and merely to gather the jurisdiction, the civil suit was filed by arraying them as party defendants along with the defendants 2 to 4. it has also been contended that the trial court has failed to appreciate that in the application under Order 7 Rule 11 CPC defendants 2 to 4 have themselves admitted that they have been doing business throughout the country, which includes the territorial jurisdiction of Jaipur as well, it has also been contended that the trial court has failed to appreciate the provisions of Order 7 Rule 11 as well as the law settled by the Apex Court wherein only the averments made in the plaint are germane and no other document including the written statement or defence of the defendants can be considered by the trial court while deciding the application under order 7 Rule 11 CPC. The trial court has failed to

appreciate that the application under order 7 Rule 11 CPC was filed with great delay and after filing of the written statement by all the defendants. The trial court ought to have considered this aspect of the matter that the written statements filed by the defendants and the application under Order 39 Rules 1 and 2 CPC were also argued and decided by the trial court and the appeals against the order granting temporary injunction were filed before the High Court, the application came to be filed.

The trial court has failed to appreciate that appellant is a registered owner of the registered trade mark 'Dandi Namak' and upon following the complete procedure as laid down under trade marks Act and the Rules made thereunder, the registration certificates were granted to the appellant. Even the opposition/objections submitted by the defendants were rejected and in these circumstances it was only the plaintiff-appellant, who had the right to use the trade mark 'Dandi Namak' exclusively and as such having clear rights to sue against the violation of such statutory rights of registration as well as the vested property rights by each of the defendants who with impunity violated in collusion with each other within the territorial jurisdiction of the trial court. On the basis of the averments made in the plaint, the civil suit regarding injunction under the Trade Marks Act, 1999 as also under the Copyright Act, 1957 was maintainable before the trial court and hence the suit of the plaintiff-appellant could not have been thrown out under an application under Order 7 Rule 11 CPC in such a cursory and casual manner and that too against the settled principles of law laid down by the Apex court in the catena of judgments. Reliance has been placed on Laxman Prasad v. Prodigy Electronics Ltd. and another MANU/SC/4571/2007 : (2008) 1 SCC 618 : 2008 (37) PTC 209 [SC], Om Prakash Srivastava v. Union of India and another MANU/SC/3240/2006 : (2006) 6 SCC 207, Virendra Nath Gautam v. Satpal Singh and others MANU/SC/5401/2006 : (2007) 3 SCC 617, Liverpool and London S.P. & I Asson. Ltd. v. M.V. sea Success Ltd MANU/SC/0951/2003 : (2004) 9 SCC 512, D. Ramachandran v. R.V. Jankiraman and others MANU/SC/0154/1999 : (1999) 3 SCC 267, Sajjan Sikaria v. Shankuntala Devi Mishra (2005) 13 SCC 687, Mayar H.K. Ltd. v. Owners and parties, Vessel M.V. Fortune Express and others MANU/SC/8083/2006 : (2006) 3 SCC 100, Pfizer Enterprises Sari v. Cipla Ltd. with P.M. Diesels Ltd. v. Patel Field Marshal industries MANU/DE/1523/2008 : (2009 (39) PTC 358 (Del.) DB) and Shakti Pottery works v. Virjibhai Becharbhai (1979 (2) GLR 182 (DB).

5. On the other hand, Mr. S.K. Bansal, learned counsel for the respondents 2 to 4 has contended that a suit for injunction claiming same relief is pending in the District Court at Surat, hence the suit for same relief is not maintainable here at Jaipur between the parties, who are not residents of Jaipur, it has been contended that the defendant No. 1 is only the resident of Jaipur and in order to claim relief in the territorial jurisdiction of Jaipur, he has been impleaded as party to the civil suit and no relief is claimed against him in the civil suit, it has also been stated that during the year 2004 the plaintiff-appellant filed a complaint under section 138 of the Negotiable instrument Act against Kunwar Ajay industries before the Judicial Magistrate First Class Gandhi Dham Gujarat describing himself to be as the distributor/job worker of Dandi Namak. it has been submitted in these circumstances that how a person who is distributor/job worker cannot become 'trade mark' and copyright of 'Dandi Namak'. in these circumstances the defendants 2 to 4 by way of filing application under order 7 Rule 11 CPC for dismissing the civil suit on account of territorial jurisdiction of Gujarat and Maharashtra, before the trial court. The respondent No. 5 against whom relief is claimed is resident of Maharashtra and the defendants 2 to 4 against whom relief has been sought are the residents of Surat. The plaintiff-appellant is also resident of Surat. The territorial jurisdiction can arise only in Gujarat. The learned counsel has stated that the order dated 23.7.2011 passed by the trial court is just and proper and does not call for any

interference by this court in this first appeal. Mr. Bansal placed reliance on the cases of Dhodha House & Patel Field Marshal industries v. S.K. Maingi and P.M. Diesel Ltd. (MANU/SC/2524/2005 : 2006 (32) PTC 1 (SC) Archie Comic Publications Inc. v. Purple Creations Pvt. Ltd. and others (MANU/DE/2321/2010 : 2010 (44) PTC 520 (Del.) (DB) Pfizer Enterprises and another v. Dr. H.R. Manchanda and another (MANU/DE/1999/2008 : 2009 (39) PTC 114 (Del.), Haryana Milk Foods Ltd. v. Chambel Dairy Products (MANU/DE/0680/2002 : 2002 (25) PTC 156 (Del.), ST. Ives Laboratories Inc. v. Arif Perfumers and another (MANU/DE/0151/2009 : 2009 (4) PTC 104 (Del.), Certified copy of decision dated 1910.2010, in Civil Suit No. 760/2010 Additional District Judge South II saket New Delhi.

6 . Mr. Kapil Gupta, learned counsel appearing for the respondent No. 5 has also contended that the relief against the respondent No. 5 can only be claimed in Maharashtra. The respondent No. 5, a unit of Pinkcity Advertisement Company having its office at Mumbai and only a branch of it is working at Jaipur. The order dated 23.7.2011 is a speaking and well reasoned order wherein the trial court specifically stated that defendant No. 5 is the resident of Mumbai and he is no where concern to Jaipur and plaintiff filed a frivolous suit, it has also been observed that only defendant No. 1 is the resident of Jaipur, but defendant No. 1 is a formal party and no relief has been sought against him, it is further mentioned in the order that defendant No. 1 has been impleaded as a party respondent only to bring the suit under Jaipur jurisdiction. The learned counsel has stated that the appellant did not come with the clean hands and having some ulterior motive. He has placed reliance on MANU/SC/3371/2008 : (2008)12 SCC 481 : (1983) 3 SCC 333 : (2010) 4 SCC 728. Lastly it was prayed that the appeal filed by the appellant deserves to be dismissed, written arguments have also been filed by the parties.

7. I have heard the learned counsel for the parties and also gone through the relevant provisions of law and the judgments of the Apex Court and other High Courts.

8 . Before proceeding further it would be necessary to have a look at the relevant provisions of Act and Rules and the provisions of the civil Procedure Code on which reliance has been placed.

Order 7 Rule 11 CPC, which is relevant for the present purpose reads as under:

11. Rejection of plaint-The plaint shall "be rejected in the following cases:-

(a) where it does not disclose a cause of action:

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

1 [(e) where it is not filed in duplicate];

2 [(f) where the plaintiff fails to comply with the provisions of Rule 9];

3 [Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.]

From Order 7 Rule 11, it is clear that the plaint shall be rejected in the following cases where it does not disclose a cause of action.

Section 20 CPC is also relevant and same reads as under:

20. Other suits to be instituted where defendants reside or cause of action arises.-Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction-

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain: or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises, [* * *]

Explanation 2[* * *].-A corporation shall be deemed to carry on business at its sole or principal office in India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

It is clear from the provisions of section 20 of CPC that other suits to be instituted where defendants reside or cause of action arises.-Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction-(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or (b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or (c) the cause of action, wholly or in part, arises. Explanation 2 provides that "a corporation shall be deemed to carry on business at its sole or principal office in India or. in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

Section 134 of the Trade Marks Act, 1999 reads as under:

134. Suit for infringement, etc. to be instituted before District Court.-

(1) No suit-

(a) for the infringement of a registered trade mark; or

(b) relating to any right in a registered trade mark; or

(c) for passing off arising out of the use by the defendant of any trade mark which is identical with or deceptively similar to the plaintiff's trade mark, whether registered or unregistered, shall be instituted in any court inferior to a District Court having jurisdiction to try the suit.

(2) For the purpose of clauses (a) and (b) of sub-section (1), a "District Court having jurisdiction" shall, notwithstanding anything contained in the Code of Civil Procedure. 1908 (5 of 1908") or any other law for the time being in force, include a District Court within the local limits of whose jurisdiction, at the time of the institution of the suit or other proceeding, the person instituting the suit or proceeding, or. where there are more than one such persons any of them, actually and voluntarily resides or carries on business or personally works for gain.

Explanation.-For the purposes of sub-section (2), "person" includes the registered proprietor and the registered user.

It is clear from section 134 of the Trade Marks Act that (a) for the infringement of a registered trade mark; or (/?) relating to any right in a registered trade mark; or (c) for passing off arising out of the use by the defendant of any trade mark which is identical with or deceptively similar to the plaintiffs trade mark, whether registered or unregistered, shall be instituted in any court inferior to a District Court having jurisdiction to try the suit, it is further provided that for the purpose of clauses (a) and (b) of sub-section (1), a "District Court having jurisdiction" shall, notwithstanding anything contained in the Code of Civil Procedure. 1908 ("5 of 1908') or any other law for the time being in force, include a District Court within the local limits of whose jurisdiction, at the time of the institution of the suit or other proceeding, the person instituting the suit or proceeding, or. where there are more than one such persons any of them, actually and voluntarily resides or carries on business or personally works for gain.

9. Now I may consider the important cases on which reliance has been made by the learned counsel for the parties.

In Laxman Prasad v. Prodigy Electronics Limited, MANU/SC/4571/2007 : (2008) 1 SCC 618 : 2008 (37) PTC 209 [SC], the Apex Court held as under:

30. we find considerable force in the submission of the learned counsel for the respondent Company, in our view, "cause of action" and "applicability of law" are two distinct, different and independent things and one cannot be confused with the other. The expression "cause of action" has not been defined in the Code, it is. however, settled law that every suit presupposes the existence of a

cause of action, if there is no cause of action, the plaint has to be rejected [Rule 11(a) of order 7]. Stated simply, "cause of action" means a right to sue. it consists of material facts which are imperative for the plaintiff to allege and prove to succeed in the suit. The classic definition of the expression ("cause of action") is found in the observations of Lord Brett in cooke v. Gill. His Lordship stated: "Cause of action means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court."

31. In **A.B.C. Laminart (P) Ltd. v. A.P. Agencies MANU/SC/0001/1989 : (1989) 2 SCC 163** this Court said: (SCC p. 170, para 12) "12. A cause of action means every fact, which if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court, in other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant, it must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue, it is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded, it does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment must be part of the cause of action. But it has no relation whatever to the defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff.

(emphasis supplied)

32. Now, Sections 16 to 20 of the Code deal with territorial jurisdiction of a court (place of suing), whereas Sections 16 to 18 relate to immovable property, suits for compensation for wrongs to persons or movables have been dealt with under section 19. Section 20 of the Code is a residuary provision and covers all cases not falling under sections 16 to 19.

33. The relevant part of Section 20 reads thus:

> **20.** Other suits to be instituted where defendants reside or cause of action arises.--Subject to the limitations aforesaid, every suit shall be instituted in a court within the local limits of whose jurisdiction-
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> (a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or
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> (b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or
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> (c) the cause of action, wholly or in part, arises.

34. Bare reading of Clause (c) leaves no room for doubt that a suit would lie in a court within the local limits of whose jurisdiction the cause of action has arisen, wholly or partly.

35. Section 20 has been designed to secure that justice might be brought as near as possible to every man's hearthstone and that the defendant should not be put to the trouble and expense of travelling long distances in order to defend himself.

36. According to the plaintiff Company, a suit instituted on the Original Side of the High Court of Delhi is maintainable since a part of cause of action had accrued within the territorial jurisdiction of the Delhi court (breach of agreement by the defendant).

In the above case the defendant joined Prodigy Electronics in India as a representative for marketing PCB products of the Company in India. An employment contract was entered into on 2-10-2003 between the defendant employee and the plaintiff Company, under the said contract, the defendant was given full-time employment in the Company at Hong Kong in the capacity of "international Business Development Manager". He was given job profile of conducting all business of the Company in India. He was relocated to India and a new employment agreement dated 13-9-2004 was signed by the parties, it was agreed that the job location of the appellant would be India. The defendant's tenure in India started from 1-10-2004. The Company was to bear all expenditure, including travel expenses of the defendant. After relocation to India in October 2004, the defendant tendered his resignation by e-mail and sent another e-mail on 20-12-2004 giving assurance to the Company that though he would continue to be involved in marketing of PCB products, he would be associating himself with manufacturers other than the customers and suppliers of the Company, it is the allegation of the Company that the defendant contacted potential customers of the Company and informed them that he was representing "Prodigy". He also submitted quotes for PCB products, it was also the case of the Company that the defendant participated in the trade fair in Delhi (Componex/Electronic India, 2005) which was held between 1-2-2005 to 4-2-2005 at Pragati Maidan, New Delhi, in the said trade fair, the defendant used the goodwill and passed on the trade name of the plaintiff Company. The Company was thus convinced that the defendant had not resigned on account of personal reasons or family problems but he wanted to misuse confidential information which he had received from the Company and he wanted to take undue advantage in spite of the agreement entered into with the Company.

The Company also discovered that the defendant had incorporated a company under the name and style of "Canton Treasure Corporation Ltd." on 16-7-2004 when he was stationed in Hong Kong and was still serving with the Company. Thus, obvious breach of employment contract was committed by the appellant. The High Court, considered the application of the defendant and by the impugned order, dismissed it holding that the agreement did not take away jurisdiction of the court as contended by the defendant and the application had been filed only with a view to delay the progress of the suit which was liable to be dismissed and it was accordingly dismissed with costs of Rs. 4000. The apex court rejected the appeal filed by the defendant appellant holding that the contract agreement did not take away the jurisdiction of the court. This is not the position in the instant case, in the instant case the plaintiff appellant has already filed a civil suit in the same matter at Surat(Gujarat)and since the company is having registered office at Surat and the defendants 2 to 4 are residents of Surat.

In Om Prakash Srivastava v. union of India, MANU/SC/3240/2006 : (2006) 6 SCC 207, the Apex Court held as under:

> **9.** By "cause of action" it is meant every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court, in other words, a bundle of facts, which it is necessary for the plaintiff to prove in order to succeed in the suit. (See Bloom Dekor Ltd. v. Subhash Himatlal Desai MANU/SC/0858/1994 : (1994) 6 SCC 322)
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> **10.** In a generic and wide sense (as in Section 20 of the Civil Procedure Code, 1908) "cause of action " means every fact, which it is necessary to establish to support an ant to obtain a judgment, (see Sadanandan Bhadran v. Madhavan Sunil Kumar MANU/SC/0552/1998 : (1998) 6 SCC 514)
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> **11.** It is settled law that "cause of action" consists of a bundle of facts, which give cause to enforce the legal inquiry for redress in a court of law, in other words, it is a bundle of facts, which taken with the law applicable to them, gives the plaintiff a right to claim relief against the defendant, it must include some act done by the defendant since in the absence of such an act no cause of action would possibly accrue or would arise. [See South East Asia Shipping Co. Ltd. v. Nav Bharat Enterprises (P) Ltd. MANU/SC/1124/1996 : (1996) 3 SCC 443.
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> **12.** The expression "cause of action" has acquired a judicially settled meaning. In the restricted sense "cause of action" means the circumstances forming the infraction of the right or the immediate occasion for the reaction, in the wider sense, it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but also the infraction coupled with the right itself. Compendiously, as noted above, the expression means every fact, which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court. Every fact, which is necessary to be proved, as distinguished from every piece of evidence, which is necessary to prove each fact, comprises in "cause of action", (see Rajasthan High court Advocates' Assn. v. union of India MANU/SC/0827/2000 : (2001) 2 SCC 294)
>
> **13.** The expression "cause of action" has sometimes been employed to convey the restricted idea of facts or circumstances which constitute either the infringement or the basis of a right and no more, in a wider and more comprehensive sense, it has been used to denote the whole bundle of material facts, which a plaintiff must prove in order to succeed. These are all those essential facts without the proof of which the plaintiff must fail in his suit. (See Gurdit Singh v. Munsha Singh MANU/SC/0324/1976 : (1997) 1 SCC 791)
>
> **14.** The expression "cause of action" is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a court or a tribunal: a group of operative facts giving rise to one or more bases of suing; a factual situation that entitles one person to obtain a remedy in court from another person (see Black's Law Dictionary), in Stroud's Judicial Dictionary a "cause of action" is stated to be the entire set of facts that gives rise to an enforceable claim: the phrase comprises every fact, which if traversed, the plaintiff must prove in order to obtain judgment, in words and Phrases (4th Edn.) the meaning attributed to the phrase "cause of action" in common legal

parlance is existence of those facts, which give a party a right to judicial interference on his behalf. (See Navinchandra N. Majithia v. State of Maharashtra MANU/SC/0549/2000 : (2000) 7 SCC 640)

15. In Halsbury's Laws of England (4th Edn.) it has been stated as follows:

> 'Cause of action' has been defined as meaning simply a factual situation, the existence of which entitles one person to obtain from the court a remedy against another person. The phrase has been held from earliest time to include every fact which is material to be proved to entitle the plaintiff to succeed, and every fact which a defendant would have a right to traverse. 'Cause of action' has also been taken to mean that a particular act on the part of the defendant which gives the plaintiff his cause of complaint, or the subject-matter of grievance founding the action, not merely the technical cause of action.

16. As observed by the Privy Council in Pay an a Reena Saminathan v. Pan a Lana palaniappa (1913-14) 41 IA 142) the rule is directed to securing the exhaustion of the relief in respect of a cause of action and not to the inclusion in one and the same action or different causes of action, even though they arise from the same transaction, one great criterion when the question arises as to whether the cause of action in the subsequent suit is identical with that in the first suit, is whether the same evidence will maintain both actions. (See Mohd. Khalid Khan v. Mahbub Ali Mian MANU/PR/0153/1948 : (1947-48) 75 IA 121 : AIR 1949 PC 78.)

17. It would be appropriate to quote para 61 of the said judgment, which reads as follows: (Mond. Khalid Khan case (supra)

> **61.** (1) The correct test in cases falling under Order 2 Rule 2, is 'whether the claim in the new suit is in fact founded upon a cause of action distinct from that which was the foundation for the former suit'. (Moonshee Buzloor Ruheem v. Shumsoonnissa Begum MANU/PR/0018/1867 : (1867) 11 MIA 551 (PC)
>
> (2) The cause of action means every fact which will be necessary for the plaintiff to prove if traversed in order to support his right to the judgment. (Read v. Brown (1888) 22 QBD 128 : 58 LJQB 120 : 60 LT 250 (CA)
>
> (3) If the evidence to support the two claims is different, then the causes of action are also different. (Brunsden v. Humphrey (1884) 14 QBD 141 : (1881-85) All ER Rep 357 : 53 LJQB 476 : 51 LT 529 (CA).)
>
> (4) The causes of action in the two suits may be considered to be the same if in substance they are identical. (Brunsden v. Humphrey) ('supra')
>
> (5) The cause of action has no relation whatever to the defence that may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff, it refers to the media upon which the plaintiff asks the court to arrive at a conclusion in his favour. (Chand Kour v. Partab Singh MANU/PR/0037/1888 : (1887-88) 15 IA 156 : ILR 16 Cal 98 (PC) This observation was made by Lord watson in

a case under section 43 of the Act of 1882 (corresponding to Order 2 Rule 2) where plaintiff made various claims in the same suit." (IA pp. 139-40)

18. In the instant case the High Court has not dealt with the question as to whether it had jurisdiction to deal with the writ petition, it only observed that the Delhi High court may have jurisdiction, but the issues relating to conditions of prisoners in the State of U.P. can be more effectively dealt with by the Allahabad High court, As noted supra, there were two grievances by the appellant. But only one of them i.e. the alleged lack of medical facilities has been referred to by the High court, it was open to the Delhi High Court to say that no part of the cause of action arose within the territorial jurisdiction of the Delhi High Court. The High Court in the impugned order does not say so. On the contrary, it says that jurisdiction may be there, but the Allahabad High court can deal with the matter more effectively. That is certainly not a correct way to deal with the writ petition. Accordingly, we set aside the impugned order of the High Court and remit the matter to it for fresh hearing on merits. A prayer has been made for release of the appellant on parole for the reasons indicated in the application, we are not inclined to pass any order on the said application. The same is rejected.

In the above matter the appellant had filed a writ petition before the Delhi High court taking the stand that he was being tried in several cases contrary to the extradition treaty. The appellant came to India by way of extradition from Singapore. Presently, the appellant was facing trial in eight cases which is in complete violation of the provisions of Section 21 of the Extradition Act, 1962. He had also pleaded that he was being kept in solitary confinement without proper medical aid in central Jail in the State of U.P. it is to be noted that the appellant had filed writ Petition (Crl.) No. 54 of 2005 before the Allahabad High court which was withdrawn by him in order to enable him to move the appropriate High Court for redressal of his grievances, if any. The appellant had filed a writ petition in the Delhi High Court which came to be disposed by the order impugned, in this matter the High court has not dealt with the question as to whether it had jurisdiction to deal with the writ petition, it only observed that the Delhi High Court may have jurisdiction, but the issues relating to conditions of prisoners in the State of U.P. can be more effectively dealt with by the Allahabad High Court. There were two grievances by the appellant. But only one of them i.e. the alleged lack of medical facilities has been referred to by the High court, it was open to the Delhi High court to say that no part of the cause of action arose within the territorial jurisdiction of the Delhi High Court. The High Court in the impugned order does not say so. On the contrary, it says that jurisdiction may be there, but the Allahabad High Court can deal with the matter more effectively. That is certainly not a correct way to deal with the writ petition. Accordingly, the Apex court set aside the impugned order of the High court and remit the matter to it for fresh hearing on merits. This case is not applicable to the facts of the present case.

In Virender Nath Gautam v. Satpal Singh, MANU/SC/5401/2006 : (2007) 3 SCC 617, the Apex Court held as under:

31. The expression "material facts" has neither been defined in the Act nor in the Code. According to the dictionary meaning, "material" means "fundamental", "vital, "basic", "cardinal", "central", "crucial", "decisive", "essential", "pivotal", "indispensable", "elementary" or "primary". [Burton's Legal Thesaurus (3rd Edn.), p. 349]. The phrase "material facts", therefore,

may be said to be those facts upon which a party relies for his claim or defence, in other words, "material facts" are facts upon which the plaintiff's cause of action or the defendant's defence depends, what particulars could be said to be "material facts" would depend upon the facts of each case and no rule of universal application can be laid down, it is, however, absolutely essential that all basic and primary facts which must be proved at the trial by the party to establish the existence of a cause of action or defence are material facts and must be stated in the pleading by the party.

34. A distinction between "material facts" and "particulars", however, must not be overlooked. "Material facts" are primary or basic facts which must be pleaded by the plaintiff or by the defendant in support of the case set up by him either to prove his cause of action or defence. "Particulars", on the other hand, are details in support of material facts pleaded by the party. They amplify, refine and embellish material facts by giving distinctive touch to the basic contours of a picture already drawn so as to make it full, more clear and more informative. "Particulars" thus ensure conduct of fair trial and would not take the opposite party by surprise.

35. All "material facts" must be pleaded by the party in support of the case set up by him, since the object and purpose is to enable the opposite party to know the case he has to meet with, in the absence of pleading, a party cannot be allowed to lead evidence. Failure to state even a single material fact, hence, will entail dismissal of the suit or petition. Particulars, on the other hand, are the details of the case which is in the nature of evidence a party would be leading at the time of trial.

50. There is distinction between facta probanda ("the facts required to be proved i.e. material facts') and facta probanda ("the facts by means of which they are proved i.e. particulars or evidence"). It is settled law that pleadings must contain only facta probanda and not facta probanda the party relies for his claim are called facta probanda and they must be stated in the pleadings. But the facts or facts by means of which are in the nature of facta probantia (particulars or evidence) need not be set out in the pleadings. They are not facts in issue, but only relevants facts required to be proved at the trial in order to establish the fact in issue.

51. in our considered opinion, material facts which are required to be pleaded in the election petition as required by Section 83(1) of the Act read with Order 7 Rule 11(a) of the Code have been pleaded by the election petitioner, cause of action has been disclosed in the election petition and, hence, the petition could not have been dismissed by the High court. The impugned order of the High Court suffers from infirmity and cannot be sustained.

Virender Nath Gautam v. Sat Pal Singh, (supra) related to Election matter. The Apex Court in Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I, MANU/SC/0951/2003 : (2004) 9 SCC 512, held as under:

Rejection of plaint

139. whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the

averments made in the plaint are taken to be correct in their entirety, a decree would be passed.

Cause of action

140. A cause of action is a bundle of facts which are required to be pleaded and proved for the purpose of obtaining relief claimed in the suit. For the aforementioned purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleading relies on any misrepresentation, fraud, breach of trust, willful default, or undue influence.

141. Order 7 Rule 14 of the Code of Civil Procedure provides as follows:

> **14.** Production of document on which plaintiff sues or relies.-(1) where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint.
>
> (2) where any such document is not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is.
>
> (3) where a document or a copy thereof is not filed with the plaint under this rule, it shall not be allowed to be received in evidence on behalf of the plaintiff at the hearing of the suit.
>
> (4) Nothing in this rule shall apply to document produced for the cross-examination of the plaintiff's witnesses, or, handed over to a witness merely to refresh his memory.

146. it may be true that Order 7 Rule 11 (a) although authorises the court to reject a plaint on failure on the part of the plaintiff to disclose a cause of action but the same would not mean that the averments made therein or a document on which reliance has been placed though discloses a cause of action, the plaint would be rejected on the ground that such averments are not sufficient to prove the facts stated therein for the purpose of obtaining reliefs claimed in the suit. The approach adopted by the High court, in this behalf, in our opinion, is not correct.

150. in the aforementioned backdrop, the question as to whether the Club had been able to show that Respondent 1 is a sister ship of Sea Glory and Sea Ranger admittedly belonging to the first respondent is a matter which is required to be gone into in the suit.

151. in ascertaining whether the plaint shows a cause of action, the court is not required to make an elaborate enquiry into doubtful or complicated questions of law or fact. By the statute the jurisdiction of the court is restricted to ascertaining whether on the allegations a cause of action is shown, in Vijai Pratap Singh v. Dukh Haran Nath Singh this Court held: (AIR pp. 943-44, para 9)

> By the express terms of Rule 5 clause id), the court is concerned to

ascertain whether the allegations made in the petition show a cause of action. The court has not to see whether the claim made by the petitioner is likely to succeed: it has merely to satisfy itself that the allegations made in the petition, if accepted as true, would entitle the petitioner to the relief he claims, if accepting those allegations as true no case is made out for granting relief no cause of action would be shown and the petition must be rejected. But in ascertaining whether the petition shows a cause of action the court does not enter upon a trial of the issues affecting the merits of the claim made by the petitioner, it cannot take into consideration the defences which the defendant may raise upon the merits; nor is the court competent to make an elaborate enquiry into doubtful or complicated questions of law or fact, if the allegations in the petition, prima facie, show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact, or whether the petitioner will succeed in the claims made by him.

152. So long as the claim discloses some cause of action or raises some questions fit to be decided by a judge, the mere fact that the case is weak and not likely to succeed is no ground for striking it out. The purported failure of the pleadings to disclose a cause of action is distinct from the absence of full particulars. (See Mohan Rawale)

154. The approach of the High Court, in our considered opinion, is not correct. For the purpose of rejecting a plaint it is not necessary to consider whether the averments made in the plaint prove the factum that Defendant 1 Sea Success I is a sister ship of Sea Glory and Sea Ranger or the said two ships are beneficially owned by Defendant 2. The reasons which have been assigned in support of the said aforementioned finding that the ship is a valuable commercial chattel and her arrest undeservingly prejudices third parties as well as affects the interest of the owner and others is a question which must be gone into when passing a final order as regard interim arrest of the ship or otherwise. For the aforementioned purpose the vessel herein could file an application for vacation of stay, while considering such an application, the Court was entitled to consider not only a prima facie case but also the elements of balance of convenience and irreparable injury involved in the matter, in such a situation and particularly when both the parties disclose their documents which are in their possession, the Court would be in a position to ascertain even prima facie as to whether the Club has been able to make out that Sea Glory and Sea Ranger are sister vessels of the "vessel".

155. The reason for the aforementioned conclusion is that if a legal question is raised by the defendant in the written statement, it does not mean that the same has to be decided only by way of an application under Order 7 Rule 11 of the Code of Civil Procedure which may amount to prejudging the matter.

Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I, (supra), the Defendant 1 Sea Success I is a sister ship of Sea Glory and Sea Ranger or the said two ships were beneficially owned by Defendant 2. it was considered that the ship is a valuable commercial chattel and her arrest undeservingly prejudices third parties as well as affects the interest of the owner and others is a question which must be gone into when passing a final order as regard interim arrest of the ship or otherwise. For the aforementioned purpose the vessel filed an application for vacation of stay, while

considering such an application, the Court was entitled to consider not only a prima facie case but also the elements of balance of convenience and irreparable injury involved in the matter. Such is not the instant matter, in the instant matter the defendants 2 to 4 and the plaintiff-appellant are residents of Surat and at Surat they have already filed the suit. Hence the principles enunciated in the instant matter are not applicable.

In Sajjan Sikaria v. Shakuntala Devi Mishra, (2005) 13 SCC 687, the Apex Court held as under:

> 3. we find that the directions for considering the question relating to Order 7 Rule 11 CPC as preliminary issue is not correct as that would necessitate filing of a written statement, it is a settled position in law that while dealing with an application under Order 7 Rule 11 CPC. consideration of written statement is not a condition precedent and only averments in the plaint have to be considered. Therefore, that part of the order is set aside, it will be in the interest of the parties if the whole suit is taken up for disposal as early as practicable, considering the fact that the suit was filed in 1996, learned counsel for the parties submit that they shall cooperate in disposal of the suit, and if a request is made to the trial court for disposal of the suit within six months, that would suffice.

Sajjan Sikaria v. Shakuntala Devi Mishra (supra) it was held that it is a settled position in law that while dealing with an application under order 7 Rule 11 CPC. consideration of written statement is not a condition precedent and only averments in the plaint have to be considered. Therefore, that part of the order was set aside, in that case the Apex court held that 'it will be in the interest of the parties if the whole suit is taken up for disposal as early as practicable', considering the fact that the suit was filed in 1996, learned counsel for the parties submit that they shall cooperate in disposal of the suit, and if a request is made to the trial court for disposal of the suit within six months, that would suffice. Such is not the case here.

The Apex Court in Mayar (H.K.) Ltd. v. Owners & Parties, Vessel M.V. Fortune Express, MANU/SC/8083/2006 : (2006) 3 SCC 100, held as under:

> 12. From the aforesaid, it is apparent that the plaint cannot be rejected on the basis of the allegations made by the defendant in his written statement or in an application for rejection of the plaint. The court has to read the entire plaint as a whole to find out whether it discloses a cause of action and if it does, then the plaint cannot be rejected by the court exercising the powers under Order 7 Rule 11 of the Code. Essentially, whether the plaint discloses a cause of action, is a question of fact which has to be gathered on the basis of the averments made in the plaint in its entirety taking those averments to be correct. A cause of action is a bundle of facts which are required to be proved for obtaining relief and for the said purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleadings relied on are in regard to misrepresentation, fraud, willful default, undue influence or of the same nature. So long as the plaint discloses some cause of action which requires determination by the court, the mere fact that in the opinion of the Judge the plaintiff may not succeed cannot Be a ground for rejection of the plaint, in the present case, the averments made in the plaint, as has been noticed by us, do disclose the cause of action and; therefore, the High Court has rightly said that the powers under Order 7 Rule 11 of the Code cannot be

exercised for rejection of the suit filed by the plaintiff-appellants.

In Dhoda House and Patel Field Marshal industries v. S.K. Maini and P.M. Diesel Ltd. Trade Marks Cases MANU/SC/2524/2005 : 2006 (32) PTC 1 : (2006) 9 SCC 41, the Apex Court in paras 46 and 51 it has been held as under:

> **46.** The expression "carries on business" and the expression "personally works for gain" connote two different meanings. For the purpose of carrying on business only presence of a man at a place is not necessary. Such business may be carried on at a place through an agent or a manager or through a servant. The owner may not even visit that place. The phrase "carries on business" at a certain place would, therefore, mean having an interest in a business at that place, a voice in what is done, a share in the gain or loss and some control there over. The expression is much wider than what the expression in normal parlance connotes, because of the ambit of a civil action within the meaning of Section 9 of the Code. But it is necessary that the following three conditions should be satisfied, namely,
>
> (1) The agent must be a special agent who attends exclusively to the business of the principal and carries it on in the name of the principal and not a general agent who does business for anyone that pays him. Thus, a trader in the mofussil who habitually sends grain to Madras for sale by a firm of commission agents who have an independent business of selling goods for others on commission, cannot be said to 'carry on business' in Madras. So a firm in England, carrying on business in the name of A.B. & Co.. which employs upon the usual terms a Bombay firm carrying on business in the name of CD. & Co.. to act as the English firm's commission agents in Bombay, does not 'carry on business' in Bombay so as to render itself liable to be sued in Bombay.
>
> (2) The person acting as agent must be an agent in the strict sense of the term. The manager of a joint Hindu family is not an 'agent' within the meaning of this conditioner.
>
> (3) To constitute 'carrying on business' at a certain place, the essential part of the business must take place in that place. Therefore, a retail dealer who sells goods in the mofussil cannot be said to 'carry on business' in Bombay merely because he has an agent in Bombay to import and purchase his stock for him. He cannot be said to carry on business in Bombay unless his agent made sales there on his behalf. A Calcutta firm that employs an agent at Amritsar who has no power to receive money or to enter into contracts, but only collects orders which are forwarded to and dealt with in Calcutta, cannot be said to do business in Amritsar. But a Bombay firm that has a branch office at Amritsar. where orders are received subject to confirmation by the head office at Bombay, and where money is paid and disbursed, is carrying on business at Amritsar and is liable to be sued at Amritsar. Similarly a life assurance company which carries on business in Bombay and employs an agent at Madras who acts merely as a post office forwarding proposals and sending moneys cannot be said to do business in Madras, where a contract of insurance was made at place 'A' and the insurance amount was also payable there, a suit filed at place 'B' where the insurance company had a branch office was held

not maintainable, where the plaintiff' instituted a suit at Kozhikode alleging that its account with the defendant Bank at its Calcutta branch had been wrongly debited and it Was claimed that court had jurisdiction as the defendant had a branch there, it was held that the existence of a branch was not part of the cause of action and that the Kozhikode Court therefore had no jurisdiction. But when a company though incorporated outside India gets itself registered in India and does business in a place in India through its agent authorised to accept insurance proposals, and to pay claims, and to do other business incidental to the work of the agency, the company carries on business at the place of business in India." [See Mull a on the Code of civil Procedure, 15th Edn., vol. I, pp. 246-47.1

51. The plaintiff was not a resident of Delhi, it has not been able to establish that it carries on any business at Delhi. For our purpose, the question as to whether the defendant had been selling its produce in Delhi or not is wholly irrelevant (sic), it is possible that the goods manufactured by the plaintiff are available in the market of Delhi or they are sold in Delhi but that by itself would not mean that the plaintiff carries on any business in Delhi.

52. it is not in dispute before us that the application for registration of the trade mark was to be filed either at Bombay or at Ahmedabad. The objections thereto by the plaintiff were also required to be filed at the said places. The jurisdiction of the Delhi court could not have been invoked only on the ground that the advertisement in respect thereof was published in the Trade Marks Journal. Section 62 of the 1957 Act, therefore, will have no application. The plaintiff has no branch office at Delhi, its manufacturing facilities are not available at Delhi. Both its trade mark and copyright are also not registered at Delhi.

53. Our attention has been drawn to the provisions of Section 45 of the Trade Marks Act; Section 2(B) whereof shows that the marks includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packaging or combination of colours or any combination thereof, it may be so that in a given case if such label is registered, a violation thereof may give rise to cause of action under the said Act; but only because in a given case, the activities on the part of the defendant may give rise to a cause of action both under the 1958 Act as also under the 1957 Act, the same would not mean, irrespective of the nature of violation, the plaintiff would be entitled to invoke the jurisdiction of the court in terms of sub-section (2) of Section 62 of the 1957 Act.

54. For the purpose of invoking the jurisdiction of a court only because two causes of action joined in terms of the provisions of the Code of Civil Procedure, the same would not mean that thereby the jurisdiction can be conferred upon a court which had jurisdiction to try only the suit in respect of one cause of action and not the other. Recourse to the additional forum, however, in a given case, may be taken if both the causes of action arise within the jurisdiction of the court which otherwise had the necessary jurisdiction to decide all the issues.

55. in this case we have not examined the question as to whether if a cause of action arises under the 1957 Act and the violation of the provisions of the Trade

Marks Act is only incidental, a composite suit will lie or not, as such a question does not arise in this case.

56. In Patel Field Marshal (supra) however, we may notice that a subsequent development has taken place, namely, after the remand, a learned Single Judge of the Delhi High court is said to have granted an order of injunction in favour of the plaintiff-respondent and the matter is pending before the Division Bench. AS we have not expressed our views on the merit of the matter, it is needless to mention that the Division Bench shall proceed to determine the questions raised before it on their own merits.

57. For the reasons aforementioned, Civil Appeal No. 6248 of 1997 filed by M/s. Dhodha House is dismissed and Civil Appeal No. 16 of 1999 preferred by M/s. Patel Field Marshal is allowed. The parties shall pay and bear their own costs.

The appellant Dhoda House filed a suit against the respondent S.K. Mangi to protect his copyright, trade marks and common law rights as regards his artwork/label/trade mark and wrapper According to the appellant, the said artwork/label/trade mark/wrapper infringes the appellant's trade mark registration "Dhodha House" under Registration No. 277714-B in Class 30 under the 1958 Act, as also the copyright registered under the 1957 Act being Registrations Nos. A-5117 and A-5330 of 1970. The appellant also claims to be a prior user of the said trade mark and name and enjoys goodwill as well as reputation in respect thereof since 1960. The appellant carries on business of sweetmeats in the district of Ghaziabad whereas the respondent carries on the similar business in the name and style of M/s. V.R.K. Todha Sweet House at Kotkapura in the district of Faridkot. The appellant filed a suit before the District Judge, Ghaziabad wherein it also prayed for an order of injunction. The 1st Additional District Judge, Ghaziabad by an order dated 17-1-1992 passed an order of injunction against the respondent. The respondent preferred an appeal there against before the High Court of Judicature at Allahabad which was marked as first appeal from Order No. 401 of 1992. By an order dated 5-5-1997, the High Court inter alia held that the civil court had no territorial jurisdiction to try the suit. The High Court was further of the opinion that "Dodha" is a name of a variety of sweet and it is not a special product which is manufactured by the plaintiff alone.

The plaintiff P.M. Diesel Ltd. and the appellants Patel Field Marshal industries and others carry on business in diesel engines at Rajkot in the State of Gujarat. A suit on the original side of the Delhi High Court was filed for perpetual injunction restraining infringement of trade mark, copyright, trading style, passing off and for rendition of accounts. The plaintiff has registered a trade mark "Field Marshal", its label "Field Marshal" is said to be registered also under the Copyright Act, 1957 and it had been printing/publishing the said purported artistic work titled "Field Marshal" in all its trade literatures, pamphlets, stickers, calendars, diaries, etc. as also on the goods manufactured. According to the plaintiff, the defendant has been registered under the Companies Act and it proposed to start a business in the trading style of "Field Marshal" for the business of the goods of same kind and description where for caution notice had been issued by it. it also sent a letter to the Registrar of Companies objecting to the incorporation of the said company containing the word "Field Marshal" or identical or deceptively similar thereto. The goods manufactured by the appellants with the plaintiff's trade marks were being sold in Delhi. An application for injunction was filed by the respondent and by an order dated 28-9-1995, the said application was rejected inter alia on the ground that the plaintiff had failed to prima facie show that the Delhi

High Court had the territorial as also the pecuniary jurisdiction in relation thereto. The plaintiff-Respondent 1 preferred an intra-court appeal before the Division Bench of the Delhi High Court. The said appeal was allowed.

Before the Division Bench of the High Court, three contentions as regards the jurisdiction of the Delhi High court, were raised; firstly, under Section 62 of the Copyright Act, 1957, secondly, in view of the fact that the defendants had sought for registration of trade mark at Delhi, and thirdly, the defendants are selling goods under the impugned trade mark at Delhi and, thus, the plaintiffs right there over had been violated at Delhi. The Division Bench negatived the contention raised on behalf of the appellants that as both the parties are residents of and working for gain at Rajkot and no sale having been effected by them within the territorial jurisdiction of the Court, the Delhi High Court had no territorial jurisdiction to entertain the suit. The Apex court held that "the plaintiff was not a resident of Delhi, it has not been able to establish that it carries on any business at Delhi. For our purpose, the question as to whether the defendant had been selling its produce in Delhi or not is wholly irrelevant (sic)", it is possible that the goods manufactured by the plaintiff are available in the market of Delhi or they are sold in Delhi but that by itself would not mean that the plaintiff carries on any business in Delhi, it was not disputed before the Apex court that the application for registration of the trade mark was to be filed either at Bombay or at Ahmedabad. The objections thereto by the plaintiff were also required to be filed at the said places. The jurisdiction of the Delhi Court could not have been invoked only on the around that the advertisement in respect thereof was published in the Trade Marks Journal. Section 62 of the 1957 Act, therefore, will have no application. The plaintiff has no branch office at Delhi, its manufacturing facilities are not available at Delhi.

Both its trade mark and copyright were also not registered at Delhi. The Apex court's attention was drawn to the provisions of Section 45 of the Trade Marks Act; Section 2(m) whereof shows that the marks includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packaging or combination of colours or any combination thereof. The Apex court held that "it may be so that in a given case if such label is registered, a violation thereof may give rise to cause of action under the said Act; but only because in a given case, the activities on the part of the defendant may give rise to a cause of action both under the 1958 Act as also under the 1957 Act, the same would not mean, irrespective of the nature of violation, the plaintiff would be entitled to invoke the jurisdiction of the court in terms of sub-section (2) of Section 62 of the 1957 Act. For the purpose of invoking the jurisdiction of a court only because two causes of action joined in terms of the provisions of the Code of civil Procedure, the same would not mean that thereby the jurisdiction can be conferred upon a court which had jurisdiction to try only the suit in respect of one cause of action and not the other. Recourse to the additional forum, however, may be taken if both the causes of action arise within the jurisdiction of the court which otherwise had the necessary jurisdiction to decide all the issues.

The principles enunciated in the Dhoda House and Patel Field Marshal industries v. S.K. Maingi and P.M. Diesel Ltd. are fully applicable to the facts of the present case.

In Pfizer Enterprises and Anr. v. Dr. H.R. Manchanda and another (MANU/DE/1999/2008 : 2009 (39) PTC 114 (Del.), in paras 7 and 13 it was held as under:

> **7.** Mr. Ajay Sahni. learned counsel for the defendants contended that the suit is not maintainable in this Court, since both the plaintiffs and the defendants carry on business outside the jurisdiction of this Court. He submits that this position

is admitted by the plaintiffs in para 10 of the plaint. He submits that no documentary evidence has been filed on record to even prima facie establish that the product of the defendants, on the date of filing the suit was available within the jurisdiction of this Court. He also drew the attention of this Court to the fact that the plaintiffs have not averred or produced any document as to how the defendants' product including the packaging has been procured in Delhi. He submitted that the suit ought to be filed either in the place where the defendants resides and carries on business or the place at which the cause of action arises. Placing reliance on Dabur India v. KR Industries MANU/SC/2244/2008 : 2008 (37) PTC 332 (SC), which affirmed this Court's finding, on jurisdiction it was argued that unless the cause of action arises within territorial limits of this Court, that is, and unless the defendants' allegedly infringing products are sold in Delhi, this Court cannot exercise jurisdiction. He also argued that when both parties are from the same place, the suit should be filed there and the tendency of the plaintiffs to file the case elsewhere should strongly deprecated, in this regard he relied on Asst. Collector Central Excise, Chandan Nagar v. Dun lop India Ltd., MANU/SC/0169/1984 : (1985) 1 SCC 260. Further, placing reliance on Kensoft Infotech v. Krishnswami, MANU/DE/9843/2007 : 2007 (35) PTC 627, he submitted that since the proceedings are filed in a forum non conveniens in relation to the defendants, the Court may in its discretion return the plaint. He urged that Court must reject the plaint, since the plaint does not disclose a cause of action.

13. it is well settled that the court has to see only the contents of the plaint to decide whether the suit discloses a triable cause of action, and whether this court has jurisdiction. The Supreme Court in Liverpool & London SP & IAS son. Ltd. v. MV Sea Success, MANU/SC/0951/2003 : (2004) 9 SCC 512, held that for the purposes of Order 7 Rule 11 the Court should not only look at the averments in the plaint but also examine into documents filed along with, in view of Order 7 Rule 14. in Sopan Sukhdeo v. Assistant Charity Commr., MANU/SC/0071/2004 : (2004) 3 SCC 137, the Supreme Court emphasized that a meaningful, and not formal reading of the plaint has to be adopted so as to nip in the bud any clever drafting of the plaint. Therefore, in order to decide the issue of jurisdiction and to assess whether the plaint discloses a cause of action, only the contents of the plaint along with the documents filed are relevant.

The principles in Pfizer Enterprises and Anr, v. Dr. H.R. Manchanda (MANU/DE/1999/2008 : 2009 (39) PTC 114 (Del.) are also applicable to the facts of the present case.

In Archie Comic Publications inc. v. Purple Creations Pvt. Ltd. and others (MANU/DE/2321/2010 : 2010 (44) PTC 520 (Del.), it has been held as under:

12. we have already mentioned the landmark and oft-quoted judgment of the Supreme Court in Patel Roadways and Oil and Natural Gas commission, we must also refer to a more comparatively recent decision in Kusum ingots and Alloys Limited v. union of India, MANU/SC/0430/2004 : (2004) 6 SCC 254 where it has been enunciated that if only a small part of the cause of action has arisen within the territorial jurisdiction of a particular High court, it is not bound to entertain the petition, it would be sufficiently empowered to refer the petition to the court where substantially the cause of action has arisen as it

would be more convenient to adjudicate the matter in that court. Although it was Section 20 of the CPC which was in focus in all those cases, it is the legal rationale behind it that had compelled the court to render a purposive interpretation thereto. This approach is exactly what is called for even where the Court is to interpret other statutes such as the Copyright Act and the Trade Marks Act." 11. Thus, the facts of the present case are required to be tested in light of the settled law that the Plaintiff can file a suit in terms of Section 134 of the Trademarks Act. 1999 at the place where he "carries on business or personally works for gain". The Appellant in this case does not have any registered office in India much less in Delhi. The sole averment for carrying on business in Delhi is that one bookshop, that is, variety Book stores has been importing books, comics etc. from the Appellant and retailing at their store in Delhi and in this regard one invoice of the year 1979 is filed. Even by way of application for amendment under Order 6 Rule 17 CPC what is sought to be introduced is, "The Plaintiff is also carrying on its business at least since 1979 and the Plaintiff has its sole distributor i.e. variety Book Depot, Connaught Circus, New Delhi who is exclusively selling Archie Comics on behalf of the Plaintiff within the territory of this Hon'ble Court and who has also been importing books from the Plaintiff in a substantial way." it is contended that this Hon'ble Court has the jurisdiction to entertain, try and decide the suit under Section 134(2) of the Trademarks Act, 1999 as the Plaintiff is carrying on its business in Delhi at least since 1979. The Hon'ble Supreme Court in Dhodha House v. S.K. Maingi, MANU/SC/2524/2005 : 2006 (9) SCC 41 held:-

> **40.** The expression 'carries on business' and the expression 'personally works for gain' connotes two different meanings. For the purpose of carrying on business only presence of a man at a place is not necessary. Such business may be carried at a place through an agent or a manager or through a servant. The owner may not even visit that place. The phrase 'carries on business" at a certain place would, therefore, mean having an interest in a business at that place, a voice in what is done, a share in the gain or loss and some control there over. The expression is much wider than what the expression in normal parlance connotes, because of the ambit of a civil action within the meaning of section 9 of the Code. But it is necessary that the following three conditions should be satisfied, namely:
>
> > (1) The agent must be a special agent who attends exclusively to the business of the principal and carries it on in the name of the principal and not a general agent who does business for any one that pays him. Thus, a trader in the mufassil who habitually sends grain to Madras for sale by a firm of commission agents who have an independent business of selling goods for others on commission, cannot be said to "carry on business" in Madras. So a firm in England, carrying on business in the name of A.B. & Co.. which employs upon the usual terms a Bombay firm carrying on business in the name of CD. & Co.. to act as the English firm's commission agents in Bombay, does not "carry on business" in Bombay so as to render itself liable to be sued in Bombay.
> >
> > (2) The person acting as agent must be an agent in the strict sense of the term. The manager of a joint Hindu family is not

an agent" within the meaning of this condition.

(3) To constitute "carrying on business" at a certain place, the essential part of the business must take place in that place. Therefore, a retail dealer who sells goods in the mufassil cannot be said to "carry on business" in Bombay merely because he has an agent in Bombay to import and purchase his stock for him. He cannot be said to carry on business in Bombay unless his agent made sales there on his behalf. A Calcutta firm that employs an agent at Amritsar who has no power to receive money or to enter into contracts, but only collects orders which are forwarded to and dealt with in Calcutta, cannot be said to do business in Amritsar. But a Bombay firm that has a branch office at Amritsar. where orders are received subject to confirmation by the head office at Bombay, and where money is paid and disbursed, is carrying on business at Amritsar and is liable to be sued at Amritsar. similarly a Life Assurance Company which carries on business in Bombay and employs an agent at Madras who acts merely as a Post Office forwarding proposals and sending moneys cannot be said to do business in Madras, where a contract of insurance was made at place A and the insurance amount was also payable there, a suit filed at lace B where the insurance Co. had a ranch office was held not maintainable, where the plaintiff instituted a suit at Kozhikode alleging that its account with the defendant Bank at its Calcutta branch had been wrongly debited and it was claimed that court had jurisdiction as the defendant had a branch there, it was held that the existence of a branch was not part of the cause of action and that the Kozhikode Court therefore had no jurisdiction. But when a company through incorporated outside India gets itself registered in India and does "business in a place in India through its agent authorized to accept insurance proposals, and to pay claims, and to do other business incidental to the work of agency, the company carries on business at the place of business in India. [See Mulla on the Code of civil Procedure (Act V of 1908)-Fifteenth Edition-volume I, Pages 246-247.]

41. A corporation in view of Explanation appended to Section 20 of the Code would be deemed to be carrying on business inter alia at a place where it has a subordinate office. Only because, its goods are being sold at a place would thus evidently not mean that it carries a business at that place. 45. The plaintiff was not a resident of Delhi, it has not been able to establish that it carries on any business at Delhi. For our purpose, the question as to whether the defendant had been selling its produce in Delhi or not is wholly irrelevant, it is possible that the goods manufactured by the plaintiff are available in the market of Delhi or they are sold in Delhi but that by itself would not mean that the plaintiff carries on any business in Delhi." AS is evident, variety Book store is not the special agent of the Appellant.

The Appellant has no control over the working of variety Book Store. Thus, in view of the legal position, enunciated above, it cannot be said

that the Plaintiff carries on business or was personally working at Delhi thus, vesting a jurisdiction in this Court to entertain the plaint.

The principles enunciated in this case are also applicable to the facts of the instant case.

10. In the civil Suit filed in the Court of District Judge (South) New Delhi by Dandi Salt Pvt. Ltd. against indo Brine industries, it was held in paras 6 and 7 as under:

6. Apart from the locus, the question of jurisdiction has been raised. It is stated that no cause of action has arisen against the defendant within the territorial jurisdiction of this court. The consignment alleged to have been seized by the EOW, crime Branch of the Delhi Police was not theirs and even otherwise, the alleged place of seizure was the railway yard at Adarsh Nagar which definitely does not fall within the territorial jurisdiction of south District. The plaintiff and defendants are both based in Gujarat and therefore it was in comprehensive as to why the plaintiff should seek to file the present suit in this court, if at all there was any grievance, the jurisdiction of the Courts in Gujarat should have been invoked.

7. it is further pointed out that as on the date of the filing of the present suit, the defendant's opposition to the grant of registration of Trade Mark had been heard and disposed off. The plaintiffs registration of the Trade Mark has been cancelled which was duly communicated to them by the office of the Trade Mark Registry Ahmedabad vide speed post, but despite such acknowledge, misrepresentation had been made in the plaint filed on 25.5.2010, wherein it has been stated that the registrations were subsisting and valid, it is pointed out that the plaintiffs application was dismissed as "Abandoned" which was well within the knowledge of the plaintiff. Further it is stated that even the Copyright of the plaintiff stood cancelled by the Copyright Board vide their order dated 19.5.2010. it is also stated that the plaintiff had deliberately suppressed material facts such as that their own alleged proprietary rights have been challenged by a third party viz., M/s. Pacs Chemicals who acquired the right from M/s. Kunvar Ajay Group of industries. M/s. Pacs Chemical had filed a suit for injunction before the District Courts Jaipur and have obtained interim injunction against the plaintiff for using the same trademark. A suit for injunction between the parties before this court was also pending in the District Court Surat claiming the same relief, under such circumstances the present petition could not be entertained.

11. In the light of the Apex court judgments and of High Courts and the provisions of Order 7 Rule 11 CPC and section 134 of the Trade Marks Act, now I may consider the findings arrived at by the trial court. The trial court in the order dated 23.8.2011 held as under:

"प्रस्तुत तर्को पर मनन किया, पत्रावली का अवलोकन किया। मामले में वादी

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अपने आपको दाण्डी नमक का ट्रेडमार्क होल्डर होना बताता है तथा वैध ट्रेडमार्क उसके हक में जारी होने का कथन किया है तथा उसका नमक पूरे भारत वर्ष में सभी जगह बेचा जाता है, उसमें जयपुर में भी बेचा जाता है। इसलिये जयपुर न्यायालय को इस वाद को सुनने की अधिकारिता वादी ने होना बताया है। उसके ट्रेडमार्क का उल्लघंन व दावा में चाहा गया अनुतोष बाबत उसे क्षति होने पर उसने जयपुर में वाद हेतुक उत्पन्न हुआ होना बताकर यह वादपत्र जयपुर में प्रस्तुत किया है। धारा 20 जाब्ता दीवानी के प्रावधानो को देखा जावे तो दावा वहां किया जा सकता है जहां प्रतिवादी रहता है या उन्हें वाद हेतुक उत्पन्न हुआ है, स्वयं वादी का नमक का बड़ा कारोबार है और उसका नमक पूर्ण भारत में विक्रय हेतु भेजा जाता है जिसमें जयपुर भी एक शहर है। वादी स्वयं चौपाडवा तालुका भाजाऊ, जिला कच्छ गुजरात का निवासी है। अत: ट्रेडमार्क एवं कापीराइट एक्ट के विशिष्ट प्रावधानो के तहत जहां वादी रहता है या कारोबार करता है दावा किया जा सकता है वह चोपाडवा तालुका भाजाऊ, जिला कच्छ गुजरात में है। प्रतिवादीगण संख्या 2 लगायत ५ सूरत गुजरात व अंधेरी पश्चिम मुम्बई महाराष्ट्र के है। इस प्रकार प्रतिवादीगण संख्या 2 लगायत 5 भी जयपुर के नही है प्रतिवादी संख्या 1 जयपुर का है, लेकिन समग्र अभिवचन का अवलोकन करने से यह तथ्य स्पष्ट आता है कि नीरज अग्रवाल जो इस दावा प्रतिवादीक्रम १ हे, के विरुद्ध प्रत्यक्ष तोर पर कोई अनुतोष नही चाहा गया, जो अनुतोष चाहा गया है वह प्रतिवादीगण संख्या 2 लगायत 5 के विरुद्ध चाहा गया है। प्रतिवादी संख्या 1 के बारे में अभिवचन के अवलोकन से यह प्रतीत होता है कि यह औपचारिक पक्षकार है और वादी द्वारा वादपत्र की सुनवाई की अधिकारिता का क्षेत्र जयपुर को बनाने के लिये इसे प्रतिवादउ0ी के रुप में संयोजित किया गया है वादी स्वयं उसके कथनानुसार नमक का एक बड़ा व्यवसायी है और उसका व्यापार पूरे भारत वर्ष में होता है। उस व्यापार के सामान्य अनुक्रम में हो सकता है वादी या प्रतिवादीगण का कोई अभिकर्ता वितरक जयपुर महानगर में भी हो, किन्तु वह वितरक है, इस कारण कापीराईट एक्ट या ट्रेडमार्क एक्ट के तहत वादी को प्रदत्त विशेष प्रावधानो के तहत यह दावा जयपुर में नहीं हो सकता है तथा प्रतिवादी संख्या 1 भी ओ0पचारिक पक्षकार है। इसलिये वादी को कोई हेतुक भी जयपुर में उत्पन्न नही हुआ हो ऐसा वादपत्र के अवलोकन से प्रकट नही होता। धारा 20 जाब्ता दीवानी के तहत ये दावा सूरत में होसकाता है या अंधेरी वेस्ट मुम्बई के क्षेत्राधिकारिता के न्यायालय में हो सकाता है, जयपुर में प्रतिवादीगण संख्या 2 लगायत 5 नही रह रहे है। प्रतिवादी क्रम 1 का पता जयपुर का है जो औपचारिक पक्षकार है जिसके विरुद्ध प्रत्यक्षत: कोई अनुोष नहीं है तथा प्रत्यक्षत: अनुतोष पतिवादीगण संख्या 2 लगायत 5 के विरुद्ध है, इस कारण वादी को कोई वाद हेतुक भी जयपुर में उत्पन्न नही होता। यह व्यावहारिक तौर पर संभव ही नही है कि किसी व्यापारी का कारोबार संपूर्ण भारत वर्ष में हो और उसके खुदरा विक्रय विपणन या एजेन्ट के आधार पर वह पूरे भारत वर्ष में दावा करे या उसके विरुद्ध किये गये दावो में प्रतिवाद करे, विधि का ऐसा आशय नहीं है जो वादी निकालना चाह रहा है। वादी स्वयं गांधी धाम कच्छ गुजरात का रहने वाला

है अत: कॉपीराईट एक्ट के तहत भी वह कच्छ गुजरात में ही कार्यवाही कर सकता है वादी की ओर से विधिक विनिश्चय प्रस्तुत हुए है उनका ससम्मानपूर्वक अवलोकन किया गया, किन्तु प्रस्तुत विधिक विनिश्चय वर्तमान वाद के तथ्यों के समान कोई विनिश्चय नहीं पाया गया कि पक्षकार कच्छ गुजरात सूरत, गुजरात, मुम्बई महाराष्ट्र के रहने वाले हो औैर जयपुर को क्षेत्राधिकार बनाने के लिये एक औपचारिक पक्षकार प्रतिवादी के रुप में जयपुर का संयोजित कर वाद प्रस्तुत किया जावे। ऐसे वाद पत्र को विचारार्थ ग्रहण कर इस पर विचार किया जावे। उपरोक्त समग्र विवेचन से प्रतिवादीगण संख्या २ लगायत ४ द्वारा प्रस्तुत आवेदन अंतर्गत आदेश 7 नियम 11 जाब्ता दीवानी का स्वीकार योग्य है।

12. As per the findings of the trial court the plaintiff has shown that he is having Trade Marks of Dandi Namak and it is being sold throughout India including Jaipur, in this manner it was observed by the trial court only on account of the fact that the Dandi Salt is being sold in Jaipur he is having the territorial jurisdiction. The plaintiff stated in his plaint that infringement of Trade Marks has been committed at Jaipur and hence he is entitled to file the suit at Jaipur, AS per section 20 of the CPC the suit can only be filed at a place where cause of action has arisen, AS per the assertion of the plaintiff-appellant that he is dealing in Dandi Namak all over India and Jaipur is one of them. The plaintiff himself is resident of Chopadva, District Kuchh Gujarat and as per the provisions of the Trade Marks Act and Copyright Act, where the plaintiff is residing and doing his business he has a right to file the suit. He is resident of Gujarat and the defendants 2 to 5 are also resident of Surat and Andheri Mumbai (Maharashtra) and hence the defendants 2 to 5 are not the residents of Jaipur. The findings of the trial court that overall looking to the pleadings it is crystal clear that the defendant No. 1 who is resident of Jaipur no relief has been claimed against him by the plaintiff appellant in the civil suit. He was made party to the suit only in order to get the suit filed to show the territorial jurisdiction of the trial court. The trial court further observed in the order that the plaintiff himself has stated in the pleadings that he is dealing in the business throughout India and if any distributor is residing at Jaipur, the plaintiff in his capacity as Trademarks holder cannot file a civil suit at Jaipur claiming infringement of Trade marks and Copyright Act here at Jaipur, simply against a distributor. The findings of the trial court in this manner cannot be said to be perverse. I am in agreement with the findings arrived at by the trial court in the order dated 23.7.2011 in view of the provisions of the CPC and the Trade Marks Act and Copyright Act and the judgments of the Apex Court and High court mentioned above. The facts of this case are different from the cases on which reliance has been placed by the learned counsel for the appellant. The submissions made by the plaintiff-appellant before this court and in the written submissions being devoid of merit, stand rejected, in the light of the judgments of the Apex court and High Courts discussed herein above.

13. I am also in agreement with the findings given by the Court of District Judge (South) New Delhi filed by Dandi Salt Pvt. Ltd. against Indo Brine industries, present plaintiff-appellant quoted above. A suit for injunction between the parties before this court was also pending in the District Court Surat claiming the same relief, in these circumstances the Delhi District Court rejected the defendants application under order 39 Rules 1 and 2 CPC against the present plaintiff-appellant. The present plaintiff appellant's application under Order 39 Rule 4 CPC was accordingly allowed by the District Court Delhi. For the reasons mentioned above, I do not find any illegality or perversity in the order dated 23.7.2011 passed by the trial court on the application under Order 7 Rule 11 CPC filed by the defendants 2 to 4. The findings arrived at by the

trial court stands confirmed. The application under Order 7 Rule 11 CPC was rightly allowed and in view of this the suit filed by the plaintiff-respondent was rightly rejected. The parties are directed to bear their own costs. The appeal stands dismissed.

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