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

+ **FAO (COMM) 188/2022 & CM APPL. 53098/2022 (stay)**

**RUKHMANI KESHWANI TRADING AS VISWAS**

**AGARBATTI STORE** ..... Appellant

Through: Mr. Sachin Gupta, Mr. Anil  
Kumar Sahu and Ms. Yashi  
Agrawal, Advs.

versus

**RAJU AGARBATTI WORKS & ANR.** ..... Respondents

Through: Mr. Sabyasachi Mishra, Adv.  
Mr. Vivek Gupta, Mr. Arvind  
Gaur and Mr. Mohd Ubais  
Ansari, Advs.

**CORAM:**

**HON'BLE MR. JUSTICE YASHWANT VARMA**

**HON'BLE MR. JUSTICE DHARMESH SHARMA**

**ORDER**

**24.05.2023**

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1. This appeal is directed against the order dated 28 October 2022 in terms of which the Trial Judge invoking the powers conferred by Order VII Rule 11 of the Code of Civil Procedure, 1908 has proceeded to reject the plaint while making the following observations: -

“19. The plea of the plaintiff could have been understood had his request for application under Order 26 Rule 9 CPC of Search and Seizure through the LC was made for any of the colonies in District Shahdara at Vivek Vihar, Anand Vihar, Jagatpuri, Farsh Bazar, GTB Enclave, Seemapuri. Surprisingly, despite the plaintiff’s claim on affidavit that the infringing goods are being sold in these colonies which are around Karkardooma Court within one or two kilometers no request for LC was made for any of these colonies but the LC was taken for an address which is located in Ajmer, Raj asthan.

20. In this backdrop the bald plea of Ld. Counsel for plaintiff that he will prove plea of the sale of goods violating the passing off rights during trial is of no avail in so far as while the issue of jurisdiction is raised in an application under Order 7 Rule 11 CPC, the decision has to be arrived at on the basis of material available on record that too. On the basis of what was filed along with the

plaint. It is very basic for a civil trial that a plaintiff cannot go beyond his pleaded case as per Law discussed supra. When there is nothing on record to show that the defendants are selling their merchandise in Delhi, the after thought plea that this aspect will be proved during trial is legally not tenable.

21. As such in the absence of any iota of material on record to show that Court in Delhi has territorial jurisdiction to try this case, the plain submission of Ld. Counsel for plaintiff that it is a matter of trial cannot be accepted. The concerns of plaintiff, who hails from Ajmer, Rajasthan that his trademark registered in Rajasthan is being violated by defendants who too are based in Ajmer, can be duly addressed by Commercial Courts established in Ajmer, Rajasthan. The plaintiff cannot be allowed to burden Commercial Courts in Delhi on whims, fancies and concoction.”

2. Learned counsel for the appellants contends that the Trial Judge has clearly committed a manifest illegality since it has failed to bear in mind that while dealing with an application under Order VII Rule 11 of the Code, it is the averments made in the plaint alone which are liable to be viewed and taken into consideration. It was also his submission that in those proceedings, the allegations of whether the plaint discloses a cause of action or has been filed before the appropriate court must proceed on a demurrer and with the Court obliged to proceed on a presumption of truthfulness thereof.

3. As would be evident from the findings recorded in the order which forms subject matter of challenge, the Trial Judge has proceeded principally on the ground that the plaintiff had failed to produce any evidence to establish that the infringing articles were being distributed or were available within the territorial jurisdiction of the Court.

4. Dealing with an identical issue, the Division Bench of the Court in **Chandra Kishore Chaurasia v. R A Perfumery Works Private Ltd.**, [2022 SCC OnLine Del 3529], had made the following pertinent observations: -

“8. It is trite law that an objection regarding territorial jurisdiction of a court, raised by way of an application under Order VII Rule 10 of the CPC, is to be decided on a demurrer, that is, by accepting all

statements made in the plaint to be true. Thus, the examination for the purpose of an application under Order VII Rule 10 of the CPC is limited to the averments made in the plaint and the documents filed by the plaintiff.

**9.** In *D. Ramachandran v. R.V. Janakiraman*, (1999) 3 SCC 267, the Supreme Court observed as under:

“...It is well settled that in all cases of preliminary objection, the test is to see whether any of the reliefs prayed for could be granted to the appellant if the averments made in the petition are proved to be true. For the purpose of considering a preliminary objection, the averments in the petition should be assumed to be true and the court has to find out whether those averments disclose a cause of action or a triable issue as such. The court cannot probe into the facts on the basis of the controversy raised in the counter.”

**10.** In a later decision in *Liverpool & London S.P. & I Association Ltd. v. M.V. Sea Success I*, (2004) 9 SCC 512, the Supreme Court observed as under:

“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 its entirety, a decree would be passed.”

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**12.** The aforesaid view has been constantly followed by this Court as well. In *RSPL Limited v. Mukesh Sharma*, 2016 SCC OnLine Del 4285, a Coordinate Bench of this Court held as under:

“11. It must be stated that it is a settled proposition of law that the objection to territorial jurisdiction in an application under Order 7 Rule 10 CPC is by way of a demurrer. This means that the objection to territorial jurisdiction has to be construed after taking all the averments in the plaint to be correct. In *Exphar SA v. Eupharma Laboratories Limited*, (2004) 3 SCC 688, the Supreme Court observed that when an objection to jurisdiction is raised by way of demurrer and not at the trial, the objection must proceed on the basis that the facts, as pleaded by the initiator of the impugned procedure, are true. The Supreme Court further observed that the objection as to jurisdiction in order to succeed must demonstrate that granted those facts, the Court does not have jurisdiction as a matter of law. It is also a settled proposition of law that while considering a plaint from the standpoint of Order 7 Rule 10 CPC, it is only the plaint and the documents filed along with it, that need to be seen. The written statement is not to be looked into at all.”

**13.** In *Allied Blenders and Distillers Pvt. Ltd. v. Prag Distillery*

*Pvt. Ltd.*, 2017 SCC OnLine Del 6422, a Single Judge of this Court had allowed the application under Order VII Rule 10 of the CPC. This was because on a *prima facie* evaluation of the plaint, the Court was of the view that the plaint did not disclose that any cause of action had arisen within the territorial jurisdiction of this Court. Although the plaintiff pleaded that it apprehended the defendant launching its products under the infringing trade mark within the territorial jurisdiction of this Court, this Court found that there was no material to substantiate any such apprehension. The plaint also disclosed that the defendant was selling its products in the State of Andhra Pradesh and the plaintiff was essentially aggrieved by the same. However, the said decision was set aside by the Division Bench of this Court in *Allied Blenders and Distillers Pvt. Ltd. v. Prag Distillery Pvt. Ltd.*, 2017 SCC OnLine Del 7225 on the principal that the averments made in the plaint were required to be accepted as correct for the purpose of deciding an application under Order VII Rule 10 of the CPC. The plaintiff had averred that it apprehended the respondent launching its products in Delhi and that it had filed the suit as a *quiatimet* action. If the said averments were accepted as correct - which the court was required to do for the purposes of deciding an application under Order VII Rule 10 CPC - this Court would have jurisdiction to entertain the suit.

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20. At the stage of considering an application under Order VII Rule 10 of the CPC, the court is not required to examine the merits of the averments made and to evaluate whether the plaintiff would be able to prove or establish the same. As noted above, for the purpose of an application under Order VII Rule 10 of the CPC, the averments made in the plaint are required to be considered as correct.”

5. The decision in *Chandra Kishore Chaurasia* and the principles laid down therein were again reiterated and reaffirmed in a recent decision rendered by another Division Bench in **Sonal Kanodia v. Ram Gupta and Another**, [2023 SCC OnLine Del 1132]. The relevant extracts of that decision are reproduced hereinbelow: -

“6. Having heard learned counsel for the Appellant, this Court is of the view that it is settled law that an application under Order VII Rule(s) 10 and 11 CPC is to be decided on a demurrer accepting all statements made in the plaint to be true (See : *Chandra Kishore Chaurasia v. RA Perfumery Works Pvt. Ltd.*, 2022 SCC OnLine Del 3529). At the stage of considering an application under Order VII Rule(s) 10 and 11 CPC, the Court is not required to examine the merits of the averments made and to evaluate whether the Plaintiff would be able to prove or establish the same. For the purpose of an application under Order VII Rule(s) 10 and 11 CPC, the averments made in the plaint are required to be considered as correct.

7. Consequently, this Court is of the view that if the statements made in the plaint are accepted to be correct, then the Court would have the jurisdiction to entertain the present suit. Accordingly, the present appeal being bereft of merit is dismissed.”

6. Accordingly and for the aforesaid reasons, the Court finds itself unable to sustain the order impugned.

7. The appeal shall consequently stand allowed. The order dated 28 October 2022 shall stand set aside. The suit shall consequently stand restored on the board of the appropriate court.

**YASHWANT VARMA, J.**

**DHARMESH SHARMA, J.**

**MAY 24, 2023**

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