THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 03.08.2016

\+ **FAO(OS) 145/2016**

M/S RSPL LIMITED ... Appellant

versus

MUKESH SHARMA & ANR ... Respondents

Advocates who appeared in this case:

For the Appellant : Mr Akhil Sibal with Mr S.K. Bansal, Mr Ajay Amitabh Suman, Mr Pankaj Kumar, Mr Amit Chanchal Jha and Mr Vinay Shukla

For the Respondents : Mr Kirti Uppal, Sr. Advocate with Mr N.K. Kantawala, Mr P. Sharma and Ms Sahiba

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

BADAR DURREZ AHMED, J

1. This appeal is directed against the judgment dated 05.04.2016, whereby a learned Single Judge of this Court has allowed the application of the respondents/defendants under Order 7 Rule 10 of the Code of Civil Procedure, 1908 (hereinafter referred to 'as CPC'). By virtue of the impugned judgment, the learned Single Judge has held that the plaint filed by the appellant/plaintiff was liable to be returned under Order 7 Rule 10 CPC as, according to him, this Court did not have territorial jurisdiction to

entertain the suit [CS(OS) 124/2015] which was filed by the appellant/plaintiff.

2. The suit was filed by the appellant/plaintiff under Sections 134 and 135 of the Trade Marks Act, 1999 as also the Copyright Act, 1957 seeking permanent injunction restraining infringement of its trade mark and copyright. The suit was also one for injuncting the respondents/defendants, based upon a passing off action. Rendition of account etc. was also prayed for. It was claimed by the plaintiff/appellant that its trade mark GHARI/ GHADI label is registered in Class 30 and also in other classes in India under various registrations which are still valid and subsisting under the provisions of the Trade Marks Act, 1999. It is also stated in the plaint that the appellant/plaintiff had filed various other applications for registration of the trade mark GHARI/GHADI label in Classes 1 to 42 under the Trade Marks Act 1999 in India. It is also alleged in the plaint that the plaintiff's artistic works in the said trade mark/label are also registered under the provisions of The Copyright Act, 1957. It is alleged that the appellant/plaintiff is the owner and proprietor of the said trade mark/ label in relation to the goods and business and, in view of the plaintiff's proprietary rights, it has an exclusive right to the use thereof. It is further

stated in the plaint that the defendant No.1/respondent No.1 (Mr Mukesh Sharma) is a lawyer and proprietor of a law firm – GHARI TRADEMARK COMPANY – which is situated at 64, Kailashpuri, Bulandshahar, Uttar Pradesh and is engaged in legal and advisory services in relation to intellectual property rights' matters and that the word 'GHARI' is the most prominent part of the said firm's name.

3. It is averred that by the adoption and use of the impugned trade mark – GHARI TRADEMARK COMPANY– in relation to the said services, the defendants are guilty of infringing the registered trade mark/label of the plaintiff/appellant. With regard to the date of knowledge, cause of action and territorial jurisdiction, the plaintiff made the following averments:-

> "35. That in the month of 3rd Week of November 2014 the Plaintiff received the caveat petitions filed by the defendants in different District Courts, Delhi, whereby the defendant alleged to be engaged under the impugned trade name GHARI TRADE MARK COMPANY under the impugned services. The plaintiff's further inquiry revealed that the defendants have very recently started the impugned activity under the impugned trade name. The defendants' user thereof (if any) utmost would be clandestine, surreptitious, sporadic restricted, minimal and very recent and all making it very difficult to detect and verify the precise nature of the Defendants' activities. The defendant's impugned user, if any, is void-ab-initio.
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> 36. That the cause of action for filing the present Suit has been detailed in the preceding Paras of the Plaint. The cause of

action for filing the present Suit has arisen in favour of the plaintiff and against the defendant in the 3 rd Week of November 2014 the Plaintiff received the caveat petitions filed by the defendants in different District. Court, New Delhi, whereby the defendants alleged to be engaged under the impugned trade name GHARI TRADE MARK COMPANY under the impugned services. The defendants' are indulging in the impugned activity under the impugned tradename on a daily and continuous basis and as such the cause of action is a continuous one and shall continue to so accrue' on daily basis till such time the defendants cease with its impugned activities under the impugned trade name in relation to impugned services.

37. That this Hon'ble Court has the territorial jurisdiction to try and adjudicate the present suit. The defendants are committing the impugned acts within the jurisdiction of this Hon'ble Court by conducting, soliciting, rendering the impugned services within the impugned trade name within the territorial jurisdiction of this Hon'ble Court. The plaintiff is having its corporate office at 3rd Floor, C-1, 2, and 3, Netaji Subhash Place, Wazirpur District Center, Pitampura, New Delhi - 110034 which is nerve center of the plaintiff s said business and from where the plaintiff has been carrying on with , its' important aspects of its business including marketing, distribution and finance and is carrying on its said goods and business under the said trademark/label within the territorial jurisdiction of this Hon'ble Court. The plaintiff is also carrying Out is business activity under the said trademark/label through its dealers/distributor , within the territorial jurisdiction of this Hon'ble COiirt (viz. Mauj Pur, Shastri Park, Usmanpur, Karawal Nagar, Khazoori Khas, Bhajanpura, Sonia Vihar, Gokulpuri etc.). The name of plaintiff's dealer/distributor within the territorial jurisdiction of this Hon'ble Court are (i) M/s Garg Enterprises, A-31/7E, Main Road, Maujpur, Delhi (ii) M/s Paras Enterprises, A-25, Gali No.2, A-Block, Kaithwara, Delhi (iii). M/s Shri Balaji Enterprises, B-4, Vardhman Cbmplex, C-Block, Yamuna Vihar, Delhi. The plaintiff has tremendous goodwill and reputation in its said trade mark/label in Delhi area which is being tarnished by defendants impugned activities of the defendant in North East Delhi area,

> besides other parts of country. The plaintiff's said proprietary rights are being prejudicially affected in Delhi area due to the defendants' impugned activities. This Hon'ble Court, as such, has the jurisdiction to try and adjudicate the present suit by virtue of Section 134 (2) of the Trade Marks Act 1999."

4. From paragraph 37 of the plaint, which has been set out above, it is evident that the plaintiff / appellant has alleged that the defendants are committing the alleged acts of infringement etc. within the jurisdiction of this Court by conducting, soliciting, rendering the impugned services under the impugned trade name within the territorial jurisdiction of this Court. In addition to this averment, it has also been averred that the plaintiff/appellant has its corporate office at Netaji Subhash Place, Wazirpur District Center, Pitampura, New Delhi – 110034. It has also been averred that the plaintiff also carries on its business under the said trade mark/label through its dealers/distributors which are situated within the territorial jurisdiction of this Court. It is also averred that the plaintiff/appellant has tremendous goodwill and reputation in its said trade mark/label in the Delhi area which is being tarnished by the defendants' impugned activities specifically in North-East Delhi apart from other parts of the country. It is again averred that the plaintiff/appellant's said proprietary rights are being prejudicially affected in the Delhi area due to

the defendants' impugned activities. Consequently, it is averred that this Court has jurisdiction to try and adjudicate the present suit by virtue of the provisions of Section 134(2) of the Trade Marks Act, 1999.

5. However, the learned Single Judge accepted the plea taken by the defendants/respondents in their Order 7 Rule 10 CPC application (IA 11034/2015) that this Court does not have territorial jurisdiction to entertain the present suit and, therefore, directed that the plaint be returned.

6. The learned Single Judge came to the said conclusion on the basis of his view that no part of the cause of action arose within the territorial jurisdiction of Delhi. The learned Single Judge was also of the view that the averments contained in paragraph 37 of the plaint were vague and bereft of any particulars and did not amount to a statement of material facts as contemplated under Order 6 Rule 2 CPC. The learned Single Judge observed that – "No doubt, the act of soliciting business would give rise to cause of action, but the plaintiff has not made any specific averment as to how the defendant is carrying on its business and, *inter alia*, soliciting work within the jurisdiction of this court". The learned Single Judge was of the view that merely by making vague and non-specific averments, which were devoid of particulars, the plaintiff/ appellant could not call upon this Court

to act upon the said averment on the premise that the plaintiff is not obliged to lead evidence in his pleadings and that the plea of territorial jurisdiction should not be decided at this stage and that the same should be left to be decided only after the parties have led their evidence at trial. The learned Single Judge was also concerned about the overflowing dockets and workload of the Courts and, therefore, observed that the Courts are not obliged to turn a blind eye to frivolous pleas and to swallow unfounded averments. This led the learned Single Judge to observe that the Court is not helpless to deal with shallow pleas at the threshold and nip such causes in the bud. The learned Single Judge also observed that the plaintiff has not pleaded the particulars of the cause of action which are claimed to have arisen within the jurisdiction of the Court. According to the learned Single Judge, it is one thing to say that a party may not be aware of definite particulars of the facts pleaded on the date of filing of his pleadings, although he had definite knowledge of the facts pleaded, and quite another thing to say that he has no definite knowledge of the pleaded fact. According to the learned Single Judge, the plaintiff/appellant had no definite knowledge with regard to the facts of the cause of action having arisen within the jurisdiction of this Court. The learned Single Judge noted that the plaintiff had not filed any document in relation to the alleged

"conducting, soliciting and rendering of the impugned services" under the impugned trade name within the jurisdiction of this court. The learned Single Judge further observed that there is no reason to subject the defendants/respondents, who are admittedly located outside the jurisdiction of this Court to continue to face the present proceedings in this Court when the acts of the defendants, complained of by the plaintiff, have not been undertaken within the jurisdiction of this Court and the defendants are also not situated or working for gain within the jurisdiction of this Court.

7. We may also point out that the learned Single Judge referred to the decision of the Supreme Court in the case of ***Indian Performing Rights Society Limited v. Sanjay Dalia: (2015) 10 SCC 161*** and gave his interpretation of the said decision in the context of Section 134(2) of the Trade Marks Act, 1999 in the following manner:-

> "21. From the aforesaid decision in *Indian Performing Rights Society Limited* (supra), and the decision cited by the Supreme Court therein, in my opinion, the position that emerges is as follows:
>
> (a) By resort to Section 134 of the Trade Marks Act and 62 of the Copyright Act, the plaintiff may institute the suit where the plaintiff voluntarily resides or carries on business or personally works for gain. In the context of corporation, which includes a company incorporated under the Indian Companies Act, 1956,

such a place would be the place where the registered office of the company is situated. Thus, a company can maintain a suit under Section 134 of the Trade Marks Act, or Section 62 of the Copyright Act, at the place where its registered office is situated, irrespective of the fact, whether or not, cause of action has arisen within the jurisdiction of the Court, within whose jurisdiction the registered office of the company is situated.

(b) Section 134 of the Trade Marks Act and Section 62 of the Copyright Act do not take away right of the plaintiff to institute the suit by resort to Section 20 of the CPC, as Section 134 of the Trade Marks Act and Section 62 of the Copyright Act provide an additional forum to the plaintiff alleging infringement of the registered trademark or copyright, as the case may be. This is clear from the inclusive definition of the expression, *'District Court having jurisdiction'* contained in Section 134 (2) of the Trade Marks Act and Section 62(2) of the Copyright Act. Thus, the plaintiff may file a suit for infringement of trademark/copyright either at the place where the plaintiff voluntarily resides or carries on business or personally works for gain by resort to Section 62 of the Copyright Act and Section 134 of the Trade Marks Act, or at the place where, *'the defendant, or each of the defendants where there are more than one, at the time of commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain'*. [Section 20 (a)]; or *where 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 [section 20(b)]; or *the cause of action wholly or in part, arises* [section 20(c)].

(c) The plaintiff cannot file a suit alleging infringement of trademark/copyright at a place where it has a subordinate office, by resort to Sections 134 of the Trade Marks Act or Section 62 of the Copyright Act, unless one of the conditions of Section 20 CPC are satisfied."

At this point itself, we may record that the observations of the learned Single Judge in sub-paragraphs (a) and (b) are contrary to the interpretation placed by a Division Bench of this Court in ***Ultra Home Construction Private Limited v. Purushottam Kumar Chaubey and Others: FAO(OS) 494/2015*** decided on 20.01.2016. Instead of following the said decision and accepting the same, the learned Single Judge has from paragraphs 49 to 67 of the impugned judgment criticized the same and differed with the said decision. This, the learned Single Judge, could not have done and was required to follow the said Division Bench's decision in ***Ultra Home*** *(supra)* without demur. We shall elaborate on this aspect of the matter later.

8. For now, it is sufficient to record that admittedly the appellant/ plaintiff's registered office is at Kanpur. The defendants also have their office at Bulandshahar, U. P. It is also averred in the plaint that the plaintiff has a corporate office in Delhi. The plaint also avers that since the respondents were conducting, soliciting, rendering services under the impugned trade name – GHARI TRADEMARK COMPANY – within the jurisdiction of this Court, this Court would have the jurisdiction to entertain the suit.

9. The learned Single Judge, in our view, correctly focused on the issue of the location of the cause of action. But, in our view, the learned Single Judge erred in concluding that no part of the cause of action had arisen in Delhi.

10. 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 and Another v. Eupharma Laboratories Limited and Another: (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.

11. The learned Single Judge has, while taking the view that the averments contained in paragraph 37 of the plaint with regard to territorial jurisdiction are vague and bereft of particulars, tried to bring in the distinction between 'material facts' and 'particulars' and in doing so considered the decisions of the Supreme Court in ***Udhav Singh v. Madhav Rao Scindia: AIR 1976 SC 744; Mahendra Pal v. Ram Dass Malanger & Ors.: (2000) 1 SCC 261***; and ***Mahadeorao Sukaji Shivankar v. Ramaratan Bapu and Ors.: (2004) 7 SCC 181***. All these decisions were under the Representation of the People Act, 1951 in the context of election petitions. These decisions clearly indicate that Section 83(1)(a) corresponds to and is

similar to the provisions of Order 6 Rule 2. It is also clear from the said decisions that the provisions of Section 83(1)(b) of the Representation of the People Act, 1951 corresponds to Order 6 Rules 4 and 6 CPC.

12. Section 83 of the Representation of the People Act, 1951 and the provisions of Order 6 Rules 2, 4 and 6 are set out herein below:-

> "**83. Contents of petition**.—(1) An election petition—
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> (a) shall contain a concise statement of the material facts on which the petitioner relies;
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> (b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and
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> (c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings:
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> Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.
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> (2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition."

> "**ORDER VI - PLEADINGS GENERALLY**

xxxx xxxx xxxx xxxx

2. **Pleading to state material facts and not evidence**.— (1) Every pleading shall contain, and contain only a statement in a concise form of the material facts on which the party pleading relies for his claim or defence as the case may be, but not the evidence by which they are to be proved.

(2) Every pleading shall, when necessary, be divided into paragraphs, numbered consecutively, each allegation being, so far as is convenient, contained in a separate paragraph.

(3) Dates, sums and numbers shall be expressed in a pleading in figures as well as in words."

xxxx xxxx xxxx xxxx

"**4. Particulars to be given where necessary**— In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading."

xxxx xxxx xxxx xxxx

"**6. Condition precedent**— Any condition precedent, the performance or occurrence of which is intended to be contested, shall be distinctly specified in his pleading by the plaintiff or defendant, as the case may be; and, subject thereto, an averment of the performance or occurrence of all conditions precedent necessary for the case of the plaintiff or defendant shall be implied in his pleading.

xxxx xxxx xxxx xxxx"

13. From the above provisions, it will be immediately seen that Order 6 Rule 2 is similar but not identical to the provisions of Section 83 (1)(a) of the Representation of the People Act, 1951. The difference being the expressions – "and contain only" and "but not the evidence by which they are to be proved" – which occur in Order 6 Rule 2 CPC, but not in Section 83(1)(a).

14. There can be no quarrel with the observations of the Supreme Court in the above mentioned three cases pertaining to the Representation of the People Act, 1951 in the context of what are 'material facts' as distinct from 'material particulars'.

15. In ***Virendra Kashinath Ravat v. Vinayak N. Joshi: (1999) 1 SCC 47***, the Supreme Court made the following observations with regard to the provisions of Order 6 Rule 2:-

> "16. That apart, the averment extracted above cannot, by any standards be dubbed as bereft of sufficiency in pleading. Under Order 6 Rule 2(1) of the Code the requirement is the following:
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> > "2. (1) Every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved."

> 17. The object of the Rule is twofold. First is to afford the other side intimation regarding the particular facts of the case so that they may be met by the other side. Second is to enable the court to determine what is really the issue between the parties. The words in the sub-rule "a statement in a concise form" are definitely suggestive that brevity should be adhered to while drafting pleadings. Of course brevity should not be at the cost of setting out necessary facts, but it does not mean niggling in the pleadings. If care is taken in the syntactic process, pleadings can be saved from tautology. Elaboration of facts in pleadings is not the ideal measure and that is why the sub-rule embodied the words "and contain only" just before the succeeding words "a statement in a concise form of the material facts".
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> 18. This Court has indicated the position in *Manphul Singh* v. *Surinder Singh* [(1973) 2 SCC 599 : AIR 1973 SC 2158]. On a subsequent occasion this Court has again reiterated the principle in *Ganesh Trading Co.* v. *Moji Ram* [(1978) 2 SCC 91: AIR 1978 SC 484]. Following observations made in the said decision are useful in this context: (SCC p. 93, para 2)
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> > "2. Procedural law is intended to facilitate and not to obstruct the course of substantive justice. Provisions relating to pleadings in civil cases are meant to give to each side intimation of the case of the other so that it may be met, to enable courts to determine what is really at issue between parties, and to prevent deviations from the course which litigation on particular causes of action must take."
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> > (underlining added)

16. It is evident from the above decision that the object of the Rule is two-fold. First of all, it affords an opportunity to the other side to meet the

facts pleaded. Secondly, it enables the court to determine as to what is the real issue between the parties. The observation of the Supreme Court that elaboration of facts in pleadings is not the ideal measure and that is why the words "and contain only" just before the succeeding words "a statement in a concise form of the material facts" have been used, has to be kept in mind. Thus, it is only the 'material facts' and not the details thereof which are required to be pleaded in order to comply with the mandate of Order 6 Rule 2.

17. The Supreme Court in ***Hari Shanker Jain v. Sonia Gandhi: (2001) 8 SCC 233*** observed, once again in the context of Section 83(1)(a) of the Representation of People Act, 1951, as under:-

> "23. Section 83(1)(*a*) of RPA, 1951 mandates that an election petition *shall* contain a concise statement of the *material facts* on which the petitioner relies. By a series of decisions of this Court, it is well settled that the material facts required to be stated are those facts which can be considered as materials supporting the allegations made. In other words, they must be such facts as would afford *a basis* for the allegations made in the petition and would constitute the cause of action as understood in the Code of Civil Procedure, 1908. The expression "cause of action" has been compendiously defined to mean every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of court. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes

> bad. The function of the party is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet. (See *Samant N. Balkrishna* v. *George Fernandez* [(1969) 3 SCC 238 : (1969) 3 SCR 603] , *Jitendra Bahadur Singh* v. *Krishna Behari* [(1969) 2 SCC 433] .) Merely quoting the words of the section like chanting of a mantra does not amount to stating material facts. Material facts would include positive statement of facts as also positive averment of a negative fact, if necessary. In *V.S. Achuthanandan* v. *P.J. Francis* [(1999) 3 SCC 737] this Court has held, on a conspectus of a series of decisions of this Court, that material facts are such preliminary facts which must be proved at the trial by a party to establish existence of a cause of action. Failure to plead "material facts" is fatal to the election petition and no amendment of the pleadings is permissible to introduce such material facts after the time-limit prescribed for filing the election petition."
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> (underlining added)

It is important to note that merely quoting the words of a provision like the chanting of a mantra does not amount to stating material facts. As observed by the Supreme Court, material facts would include a positive statement of facts as also a positive averment of a negative fact, if necessary. It has further been elaborated that material facts are such 'preliminary' facts which must be proved at the trial by a party to establish the existence of a cause of action. It, therefore, follows that if a plaintiff were merely to state that a court has territorial jurisdiction

to try and adjudicate a suit, that would not be sufficient. The plaintiff would have to plead as a fact as to how that court would have territorial jurisdiction. But, at the same time, the plaintiff would not have to give details of that material fact or the evidence by which the material fact is to be proved.

18. In ***M. Chinnasamy v. K. C. Palanisamy: (2004) 6 SCC 341***, the Supreme Court, while, once again, noting that the provisions of Order 6 Rule 2 were more or less the same as the provisions of Section 83(1)(a) of the Representation of the People Act, 1951, examined the distinction between 'material facts' and 'particulars' in the following manner:-

> "15. It is not in dispute that in relation to an election petition, the provisions of the Code of Civil Procedure apply. In terms of Order 6 Rule 2 of the Code of Civil Procedure which is in pari materia with clause (*a*) of sub-section (1) of Section 83 an election petition must contain concise statement of material facts. It is true as contended by Mr Mani that full particulars are required to be set forth in terms of clause (*b*) of sub-section (1) of Section 83 of the Act which relates to corrupt practice. The question as to what would constitute material facts would, however, depend upon the facts and circumstances of each case. It is trite that an order of re-counting of votes can be passed when the following ingredients are satisfied: (*1*) if there is a prima facie case; (*2*) material facts therefor are pleaded; (*3*) the court shall not direct re-counting by way of roving or fishing inquiry; and (*4*) such an objection had been taken recourse to.
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> 38. In *Mohan Rawale* v. *Damodar Tatyaba* [(1994) 2 SCC 392] this Court observed: (SCC pp. 398-99, paras 12-18)

"*12*. Further, the distinction between 'material facts' and 'full particulars' is one of degree. The lines of distinction are not sharp. 'Material facts' are those which a party relies upon and which, if he does not prove, he fails at the time.

13. In *Bruce* v. *Odhams Press Ltd.* [(1936) 1 KB 697: (1936) 1 All ER 287 (CA)] Scott, L.J. said:

> 'The word "material" means necessary for the purpose of formulating a complete cause of action; and if any one "material" statement is omitted, the statement of claim is bad.'

The purpose of 'material particulars' is in the context of the need to give the opponent sufficient details of the charge set up against him and to give him a reasonable opportunity.

14. Halsbury refers to the function of particulars thus:

> 'The function of particulars is to carry into operation the overriding principle that the litigation between the parties, and particularly the trial, should be conducted fairly, openly and without surprises, and incidentally to reduce costs. This function has been variously stated, namely, either to limit the generality of the allegations in the pleadings, or to define the issues which have to be tried and for which discovery is required.'
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> (See: *Pleadings,* Vol. 36, para 38)

15. In Bullen and Leake and Jacob's '*Precedents of Pleadings*', 1975 Edn. at p. 112 it is stated:

> 'The function of particulars is to carry into operation the overriding principle that the litigation between the parties, and particularly the trial, should be conducted fairly, openly and without surprises and

incidentally to save costs. The object of particulars is to "open up" the case of the opposite party and to compel him to reveal as much as possible what is going to be proved at the trial, whereas, as Cotton, L.J. has said, "the old system of pleading at common law was to conceal as much as possible what was going to be proved at the trial".'

16. The distinction between 'material facts' and 'particulars' which together constitute the facts to be proved — or the *facta probanda* — on the one hand and the evidence by which those facts are to be proved —*facta probantia* — on the other must be kept clearly distinguished. In *Phillipps* v. *Phillipps* [(1878) 4 QBD 127 : 48 LJQB 135 : 39 LT 556 (CA)] Brett, L.J. (QBD at p. 133) said:

'I will not say that it is easy to express in words what are the facts which must be stated and what matters need not be stated. … The distinction is taken in the very rule itself, between the facts on which the party relies and the evidence to prove those facts. Erle, C.J. expressed it in this way. He said that there were facts that might be called the allegata probanda, the facts which ought to be proved, and they were different from the evidence which was adduced to prove those facts. And it was upon the expression of opinion of Erle, C.J. that Rule 4 [now Rule 7(1)] was drawn. The facts which ought to be stated are the material facts on which the party pleading relies.'

17. Lord Denman, C.J. in *Williams* v. *Wilcox* [(1838) 8 Ad & El 314 : 112 ER 857] said:

'It is an elementary rule in pleading that, when a state of facts is relied it is enough to allege it simply, without setting out the subordinate facts which are

> the means of proving it, or the evidence sustaining the allegations.'
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> *18*. An election petition can be rejected under Order 7 Rule 11(*a*) CPC if it does not disclose a cause of action. Pleadings could also be struck out under Order 6 Rule 16, inter alia, if they are scandalous, frivolous or vexatious. The latter two expressions meant cases where the pleadings are obviously frivolous and vexatious or obviously unsustainable."
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> (underlining added)

19. The Supreme Court reiterated its observations in ***Mohan Rawale* v. *Damodar Tatyaba*** : ***(1994) 2 SCC 392*** to the effect that the distinction between 'material facts' and 'particulars', which together constitute the facts to be proved — or the *facta probanda* — on the one hand and the evidence by which those facts are to be proved —*facta probantia* — on the other must be kept clearly distinguished. The principle cannot, in our view, be put in better language than that used by ***Lord Denman, C.J. in Williams v. Wilcox*** *(supra)*. It was quoted with approval by the Supreme Court and which is to the effect that when a state of facts is relied, it is enough to allege it simply without setting out the subordinate facts which are the means of proving it, or the evidence sustaining the allegations.

20. The distinction between 'material facts' and 'particulars' was, once again, drawn by the Supreme Court in ***Harkirat Singh v. Amrinder Singh: (2005) 13 SCC 511*** in the following manner:-

> "48. 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 its 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."
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> "51. 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.
>
> 52. 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."
>
> (underlining added)

21. It is important to note the observations of the Supreme Court to the effect that what 'particulars' could be regarded to be 'material facts' would depend upon the facts of each case and no rule of universal application can be laid down. It was, however, pointed out that it is 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.

22. As regards the meaning of the expression 'cause of action', the Supreme Court in ***Om Prakash Srivastava v. Union of India: (2006) 6 SCC 207*** observed 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* [(1994) 6 SCC 322])."

xxxx xxxx xxxx xxxx

"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*[(2001) 2 SCC 294])."

(underlining added)

The Supreme Court in the said decision clearly held that every fact, which is necessary to be proved, as distinguished from every piece of evidence, which is necessary to prove each fact, is comprised in the 'cause of action'.

23. Upon a consideration of the law as explained by the Supreme Court, it is evident that Order 6 Rule 2 requires every pleading, which includes a plaint, to contain, "and contain only", a statement in concise form of the

material facts on which the party pleading relies for his claim, but not the evidence by which they are to be proved.

24. Coming back to the facts of the present case, the plaintiff/ appellant in paragraph 36 set out the nature of the cause of action, namely, the defendants/respondents were engaged in providing services under the impugned trade name 'GHARI TRADEMARK COMPANY'. In paragraph 37 of the plaint, it has been averred, first of all, that this Court has the territorial jurisdiction to try and adjudicate the present suit. But, this by itself, would not be sufficient because merely quoting the words of a section or the ingredients of a provision like the chanting of a mantra would not amount to stating material facts as noted by the Supreme Court in *Hari Shanker Jain (supra)*. The material facts would, *inter alia*, have to include positive statement of facts. In the present case, paragraph 37 of the plaint contains the positive statement of fact that the defendants are committing the impugned acts within the jurisdiction of this Court by 'conducting, soliciting, rendering the impugned services under the impugned trade name'. Further statements are made in the very same paragraph that the plaintiff has its corporate office in Delhi and carries out its business activity in Delhi under its trade mark/label through its dealers/ distributors located

in Delhi. A specific averment has also been made that the plaintiff's goodwill and reputation is being tarnished by the alleged activities of the defendants, particularly in North-East Delhi as also in other parts of the country and that the plaintiff/appellant's proprietary rights are being prejudicially affected in the Delhi area due to the said activities. While considering an application under Order 7 Rule 10 CPC, these statements would have to be taken as correct. This would mean that this Court would have jurisdiction to try and adjudicate the present suit by virtue of Section 134(2) of the Trade Marks Act, 1999 read with Section 20 CPC. The material fact that has been pleaded by the plaintiff is that the defendants/ respondents are conducting, soliciting, rendering the impugned services under the trade name – GHARI TRADEMARK COMPANY – within the jurisdiction of this Court. In case the defendants/ respondents deny this averment (as they have done in their written statement but, which cannot be looked into at the stage of Order 7 Rule 10 CPC), the issue would arise as to whether the respondents/defendants are conducting, soliciting, rendering the impugned services under the trade name–GHARI TRADEMARK COMPANY–within the jurisdiction of this Court? Obviously, the onus of proof would lie on the appellant/ plaintiff and at the stage of trial, evidence would have to be placed to substantiate this plea. But, at this stage, in our

view, it is not necessary as Lord Denman, C.J. in *Williams v. Wilcox (supra)*, to set out the subordinate facts which are the means of proving the material fact or the evidence to sustain the allegation contained in the material fact. We, therefore, do not agree with the view taken by the learned Single Judge that the plaint is bereft of any particulars with regard to territorial jurisdiction. We may observe that the learned Single Judge has also looked at the written statement and even at the replication in the course of arriving at his decision. This, in the context of an Order 7 Rule 10 CPC application, cannot be done as already pointed out by us above. Taking the objection of territorial jurisdiction raised in the Order 7 Rule 10 CPC application, by way of a demurrer, as it must, the facts pleaded by the appellant/plaintiff must be taken to be true. Therefore, if we take the statement of the appellant/plaintiff in paragraph 37 to the effect that the defendants/respondents are committing the impugned acts within the jurisdiction of this Court by conducting, soliciting, rendering the impugned services under the impugned trade name to be correct, then, it follows that this Court would have to proceed with the trial of the suit and cannot return the plaint under Order 7 Rule 10 CPC.

25. Once we hold that on the basis of the averments contained in the plaint, a part of cause of action has arisen in the territory over which this Court exercises jurisdiction, the condition prescribed in Section 20(c) CPC stands satisfied. In addition, the condition stipulated in Section 134(2) of the Trade Marks Act, 1999 is also satisfied because the plaintiff has averred that it has a corporate office in Delhi and part of the cause of action has allegedly also arisen in Delhi. Therefore, either way, this Court, in our view, would have jurisdiction to entertain the present suit. The observations and the findings of the learned Single Judge to the contrary, are wrong and are set aside.

26. We now come to the issue pertaining to the learned Single Judge differing with the view taken by a Division Bench of this Court in ***Ultra Home*** *(supra)*. Before we proceed further, it may be pertinent to note that a Special Leave Petition being SLP (Civil) No. 7551/2016 had been preferred against the said decision of the Division Bench in ***Ultra Home*** *(supra).* The said Special Leave Petition was called on for hearing on 08.04.2016, when, upon hearing the counsel for the parties, the Supreme Court did not find any merit in the petition and dismissed the same.

27. Judicial discipline and propriety requires that a Single Bench should follow the decision of a Division Bench without demur as the Single Bench is bound by it. It is all the more so when the Division Bench decision is of an appellate court and the Single Bench happens to be the trial court. It is a matter of judicial propriety that the hierarchical system is followed. A decision of an appellate court may in the view of the trial court be right or wrong, but the trial court has no option but to follow it. In fact, a Single Judge cannot even refer a matter for decision by a Bench comprising of more than two judges. Furthermore, the Single Judge can only refer a matter to be placed before a Division Bench of two judges if the Single Judge finds that there is a conflict of decisions of Single Benches. If there are conflicting decisions of Division Benches of co-equal strength, it is, of course, open to the Single Judge to follow the later decision. But, in such a situation, the learned Single Judge cannot seek a reference to a Full Bench of three or more Judges. That would fall within the domain of a Division Bench. The Supreme Court in ***Pradip Chandra Parija v. Pramod Chandra Patnaik:*** **(2002) 1 SCC 1** observed as under:-

> "5**.** The learned Attorney-General submitted that a Constitution Bench judgment of this Court was binding on smaller Benches and a judgment of three learned Judges was binding on Benches of two learned Judges — a proposition that learned counsel for the appellants did not dispute. The learned

Attorney-General drew our attention to the judgment of a Constitution Bench in *Sub-Committee of Judicial Accountability* v. *Union of India* [(1992) 4 SCC 97] where it has been said that "no coordinate Bench of this Court can even comment upon, let alone sit in judgment over, the discretion exercised or judgment rendered in a cause or matter before another coordinate Bench" (SCC p. 98, para 5). The learned Attorney-General submitted that the appropriate course for the Bench of two learned Judges to have adopted, if it felt so strongly that the judgment in *Nityananda Kar* [1991 Supp (2) SCC 516 : 1992 SCC (L&S) 177 : (1992) 19 ATC 236 : 1990 Supp (2) SCR 644] was incorrect, was to make a reference to a Bench of three learned Judges. That Bench of three learned Judges, if it also took the same view of *Nityananda Kar* [1991 Supp (2) SCC 516: 1992 SCC (L&S) 177 : (1992) 19 ATC 236: 1990 Supp (2) SCR 644] , could have referred the case to a Bench of five learned Judges.

6. In the present case the Bench of two learned Judges has, in terms, doubted the correctness of a decision of a Bench of three learned Judges. They have, therefore, referred the matter directly to a Bench of five Judges. In our view, judicial discipline and propriety demands that a Bench of two learned Judges should follow a decision of a Bench of three learned Judges. But if a Bench of two learned Judges concludes that an earlier judgment of three learned Judges is so very incorrect that in no circumstances can it be followed, the proper course for it to adopt is to refer the matter before it to a Bench of three learned Judges setting out, as has been done here, the reasons why it could not agree with the earlier judgment. If, then, the Bench of three learned Judges also comes to the conclusion that the earlier judgment of a Bench of three learned Judges is incorrect, reference to a Bench of five learned Judges is justified."

(underlining added)

28. In ***Sundeep Kumar Bafna v. State of Maharashtra:*** ***(2014) 16 SCC 623 : 2014 SCC 257***, the Supreme Court held as under:-

> "21. Recently, in *Dinesh Kumar* [*State of Haryana* v. *Dinesh Kumar*, (2008) 3 SCC 222 : (2008) 1 SCC (Cri) 722], this conundrum came to be considered again. This Court adhered to the *Niranjan Singh* [*Niranjan Singh* v. *Prabhakar Rajaram Kharote*, (1980) 2 SCC 559 : 1980 SCC (Cri) 508] dicta (as it was bound to do) viz. that a person can be stated to be in judicial custody when he surrendered before the court and submits to its directions. We further regretfully observe that the impugned judgment [*Sundeep Kumar Bafna* v. *State of Maharashtra*, Criminal Bail Application No. 206 of 2014, order dated 6-2-2014 (Bom)] is repugnant to the analysis carried out by two coordinate Benches of the High Court of Bombay itself, which were duly cited on behalf of the appellant. The first one is reported as *Balkrishna Dhondu Rani* v. *Manik Motiram Jagtap* [*Balkrishna Dhondu Rani* v.*Manik Motiram Jagtap*, (2005) 3 Mah LJ 226 : 2005 Supp Bom CR (Cri) 270] which applied *Niranjan Singh* [*Niranjan Singh* v. *Prabhakar Rajaram Kharote*, (1980) 2 SCC 559 : 1980 SCC (Cri) 508] ; the second is by a different Single Bench, which correctly applied the first. In the common law system, the purpose of precedents is to impart predictability to law, regrettably the judicial indiscipline displayed in the impugned judgment [*Sundeep Kumar Bafna* v. *State of Maharashtra*, Criminal Bail Application No. 206 of 2014, order dated 6-2-2014 (Bom)], defeats it. If the learned Single Judge who had authored the impugned judgment [*Sundeep Kumar Bafna* v.*State of Maharashtra*, Criminal Bail Application No. 206 of 2014, order dated 6-2-2014 (Bom)] irrepressibly held divergent opinion and found it unpalatable, all that he could have done was to draft a reference to the Hon'ble the Chief Justice for the purpose of constituting a larger Bench; whether or not to accede to this request remains within the discretion of the Chief Justice. However, in the case in hand, this avenue could also not have been traversed since *Niranjan Singh* [*Niranjan Singh* v. *Prabhakar Rajaram Kharote*, (1980) 2 SCC 559 : 1980 SCC (Cri) 508] binds not only co-equal

Benches of the Supreme Court but certainly every Bench of any High Court of India. Far from being *per incuriam*, *Niranjan Singh* [*Niranjan Singh* v.*Prabhakar Rajaram Kharote*, (1980) 2 SCC 559 : 1980 SCC (Cri) 508] has metamorphosed into the structure of *stare decisis*, owing to it having endured over two score years of consideration, leading to the position that even larger Benches of this Court should hesitate to remodel its ratio."

(underlining added)

29. In ***Union of India v. Godfrey Philips India Ltd:, (1985) 4 SCC 369,*** the Supreme Court observed as under:-

"12. There can therefore be no doubt that the doctrine of promissory estoppel is applicable against the Government in the exercise of its governmental, public or executive functions and the doctrine of executive necessity or freedom of future executive action cannot be invoked to defeat the applicability of the doctrine of promissory estoppel. We must concede that the subsequent decision of this Court in *Jit Ram* v. *State of Haryana* [(1981) 1 SCC 11 : AIR 1980 SC 1285 : (1980) 3 SCR 689] takes a slightly different view and holds that the doctrine of promissory estoppel is not available against the exercise of executive functions of the State and the State cannot be prevented from exercising its functions under the law. This decision also expresses its disagreement with the observations made in *Motilal Sugar Mills case* [(1979) 2 SCC 409 : 1979 SCC (Tax) 144 : (1979) 2 SCR 641] that the doctrine of promissory estoppel cannot be defeated by invoking the defence of executive necessity, suggesting by necessary implication that the doctrine of executive necessity is available to the Government to escape its obligation under the doctrine of promissory estoppel. We find it difficult to understand how a Bench of two Judges in *Jit Ram case* [(1981) 1 SCC 11: AIR 1980 SC 1285: (1980) 3 SCR 689] could possibly overturn or disagree with what was said by another Bench of two Judges in *Motilal Sugar Mills case* [(1979) 2 SCC 409: 1979 SCC (Tax) 144: (1979) 2 SCR 641]. If the Bench of two Judges in *Jit Ram case* [(1981) 1 SCC 11: AIR

1980 SC 1285: (1980) 3 SCR 689] found themselves unable to agree with the law laid down in *Motilal Sugar Mills case* [(1979) 2 SCC 409: 1979 SCC (Tax) 144 : (1979) 2 SCR 641] , they could have referred *Jit Ram case* [(1981) 1 SCC 11: AIR 1980 SC 1285: (1980) 3 SCR 689] to a larger Bench, but we do not think it was right on their part to express their disagreement with the enunciation of the law by a coordinate Bench of the same Court in *Motilal Sugar Mills* [(1979) 2 SCC 409: 1979 SCC (Tax) 144 : (1979) 2 SCR 641]. We have carefully considered both the decisions in *Motilal Sugar Mills case* [(1979) 2 SCC 409: 1979 SCC (Tax) 144: (1979) 2 SCR 641] and *Jit Ram case* [(1981) 1 SCC 11: AIR 1980 SC 1285: (1980) 3 SCR 689] and we are clearly of the view that what has been laid down in*Motilal Sugar Mills case* [(1979) 2 SCC 409: 1979 SCC (Tax) 144: (1979) 2 SCR 641] represents the correct law in regard to the doctrine of promissory estoppel and we express our disagreement with the observations in *Jit Ram case* [(1981) 1 SCC 11: AIR 1980 SC 1285: (1980) 3 SCR 689] to the extent that they conflict with the statement of the law in *Motilal Sugar Mills case* [(1979) 2 SCC 409: 1979 SCC (Tax) 144: (1979) 2 SCR 641] and introduce reservations cutting down the full width and amplitude of the propositions of law laid down in that case."

(underlining added)

30. In ***Union of India v. Raghubir Singh*:*(1989) 2 SCC 754***, the Supreme Court observed as under:-

"27. What then should be the position in regard to the effect of the law pronounced by a Division Bench in relation to a case raising the same point subsequently before a Division Bench of a smaller number of Judges? There is no constitutional or statutory prescription in the matter, and the point is governed entirely by the practice in India of the courts sanctified by repeated affirmation over a century of time. It cannot be doubted that in order to promote consistency and certainty in the law laid down by a superior Court, the ideal condition would be that the entire Court should sit in all cases to decide

questions of law, and for that reason the Supreme Court of the United States does so. But having regard to the volume of work demanding the attention of the Court, it has been found necessary in India as a general rule of practice and convenience that the Court should sit in Divisions, each Division being constituted of Judges whose number may be determined by the exigencies of judicial need, by the nature of the case including any statutory mandate relative thereto, and by such other considerations which the Chief Justice, in whom such authority devolves by convention, may find most appropriate. It is in order to guard against the possibility of inconsistent decisions on points of law by different Division Benches that the Rule has been evolved, in order to promote consistency and certainty in the development of the law and its contemporary status, that the statement of the law by a Division Bench is considered binding on a Division Bench of the same or lesser number of Judges. This principle has been followed in India by several generations of Judges. We may refer to a few of the recent cases on the point. In *John Martin* v. *State of West Bengal* [(1975) 3 SCC 836 : 1975 SCC (Cri) 255 : (1975) 3 SCR 211] , a Division Bench of three-Judges found it right to follow the law declared in *Haradhan Saha* v.*State of West Bengal* [(1975) 3 SCC 198 : 1974 SCC (Cri) 816 : (1975) 1 SCR 778] , decided by a Division Bench of five Judges, in preference to *Bhut Nath Mate* v. *State of West Bengal* [(1974) 1 SCC 645 : 1974 SCC (Cri) 300 : AIR 1974 SC 806] decided by a Division Bench of two Judges. Again in *Indira Nehru Gandhi* v. *Raj Narain* [1975 Supp SCC 1 : (1976) 2 SCR 347] , Beg, J. held that the Constitution Bench of five Judges was bound by the Constitution Bench of thirteen Judges in *Kesavananda Bharati* v. *State of Kerala* [(1973) 4 SCC 225 : 1973 Supp SCR 1]. In *Ganapati Sitaram Balvalkar* v. *Waman Shripad Mage* [(1981) 4 SCC 143] , this Court expressly stated that the view taken on a point of law by a Division Bench of four Judges of this Court was binding on a Division Bench of three-Judges of the Court. And in *Mattulal* v. *Radhe Lal* [(1974) 2 SCC 365: (1975) 1 SCR 127], this Court specifically observed that where the view expressed by two different Division Benches of this Court could not be reconciled, the

pronouncement of a Division Bench of a larger number of Judges had to be preferred over the decision of a Division Bench of a smaller number of Judges. This Court also laid down in*Acharya Maharajshri Narandraprasadji Anandprasadji Maharaj* v. *State of Gujarat*[(1975) 1 SCC 11: (1975) 2 SCR 317] that even where the strength of two differing Division Benches consisted of the same number of Judges, it was not open to one Division Bench to decide the correctness or otherwise of the views of the other. The principle was reaffirmed in *Union of India* v. *Godfrey Philips India Ltd.* [(1985) 4 SCC 369: 1986 SCC (Tax) 11] which noted that a Division Bench of two Judges of this Court in *Jit Ram Shiv Kumar* v. *State of Haryana* [(1981) 1 SCC 11: (1980) 3 SCR 689] had differed from the view taken by an earlier Division Bench of two Judges in *Motilal Padampat Sugar Mills* v. *State of U.P.* [(1979) 2 SCC 409: 1979 SCC (Tax) 144: (1979) 2 SCR 641] on the point whether the doctrine of promissory estoppel could be defeated by invoking the defence of executive necessity, and holding that to do so was wholly unacceptable reference was made to the well accepted and desirable practice of the later Bench referring the case to a larger Bench when the learned Judges found that the situation called for such reference.

28. We are of opinion that a pronouncement of law by a Division Bench of this Court is binding on a Division Bench of the same or a smaller number of Judges, and in order that such decision be binding, it is not necessary that it should be a decision rendered by the Full Court or a Constitution Bench of the Court. We would, however, like to think that for the purpose of imparting certainty and endowing due authority decisions of this Court in the future should be rendered by Division Benches of at least three-Judges unless, for compelling reasons, that is not conveniently possible."

(underlining added)

31. In this backdrop, it is indeed unfortunate that the learned Single Judge has embarked upon an adventure to disagree with the decision of a

Division Bench in ***Ultra Home*** *(supra)*, albeit, 'as a student of law'. It is not open to a Single Judge (and more particularly a trial court) to differ from or critically appraise a decision of a Division Bench (and more particularly of an appellate court). Once it is recognized that the decision of the Division Bench is binding on the Single Judge, there is no need to express any difference of opinion or disagreement or purport to give reasons for the said difference of opinion or to even suggest that the decision of the Division Bench may need re-consideration. That is only in the domain of another Bench of co-equal strength. In any event, the findings and observations of the learned Single Judge with respect to its interpretation of the Supreme Court decision in ***Sanjay Dalia*** *(supra)*, to the extent they are contrary to the decision of the Division Bench in ***Ultra Home*** *(supra)*, are set aside.

32. Lastly, and with some anguish, we may observe that we find it difficult to comprehend as to why the learned Single Judge went to such lengths so as to devote 18 paragraphs spanning from page 29 to page 43 of the impugned judgment to record his difference of opinion with the decision in ***Ultra Home*** *(supra)* when, according to the learned Single Judge himself, the so-called difference of opinion did not come in his way

in deciding the present case as it had 'no relevance', according to him, to the present case. Such an unnecessary pursuit and adventure has been undertaken by the learned Single Judge while at the same time the learned Single Judge rued over the fact of overflowing dockets and heavy workloads of courts. Why was such a fruitless and futile 'academic' exercise undertaken by the learned Single Judge? This would remain a mystery?

33. In sum, for the reasons discussed, the impugned judgment of the learned Single Judge cannot be sustained. The same is set aside. The suit shall now be listed before the concerned Bench as per Roster on 17.08.2016, in the first instance, for further proceedings.

BADAR DURREZ AHMED, J

SANJEEV SACHDEVA, J

AUGUST 03, 2016
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