IN THE HIGH COURT OF DELHI AT NEW DELHI

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

 # CNR No. DLHC010427772026

\+ **CS(COMM) 987/2026 and I.A. 24805/2026 and I.A. 24806/2026, I.A. 24807/2026**

Between:

ABD MAESTRO PRIVATE LIMITED
394-C, LAMINGTON CHAMBERS,
LAMINGTON ROAD,
MUMBAI - 400 004

ALSO, AT
ASHFORD CENTRE, 7TH FLOOR,
SHANKARRAO NARAM MARG,
LOWER PAREL (WEST),
MUMBAI - 400013

.....PLAINTIFF

(Through: Mr. Rajiv Nayyar, Sr. Advocate, Mr. Akhil Sibal, Sr. Advocate along with Mr. Shrawan Chopra and Mr. Achyut Tewari, MS. Krishna, Ms. Kairavi, Ms. Sugandh, Mr. Pratham, Mr. Mridul and Ms. Shreya, Advocates..)

Versus

GREAT GALLEON VENTURES LTD.
160, KANCHAN BAGH,
INDORE, MADHYA PRADESH

ALSO, AT
308-309, PRINCE'S BUSINESS SKYPARK,
SCHEME NO. 54, A.B. ROAD,
INDORE, MADHYA PRADESH – 452010

Signature Not Verified
Signed By:PRIYA
Signing Date:03.11.2026 20:27:11

Signature Not Verified
Signed By:PURUSHAINDRA KUMAR KAURAV

PRINCIPAL PLACE OF BUSINESS:
A-33, GROUND FLOOR,
NARAINA INDUSTRIAL AREA,
PHASE L, NEW DELHI,
SOUTH WEST DELHI, DELHI, 110028.

.....DEFENDANT

(Through: Mr. Chander M. Lall, Sr. Advocate with Mr. Kapil Wadhwa, Ms. Priyanshi Bhageria and Ms.Ananya Mehan, Advocates.)

% Reserved on: 24.09.2026
Pronounced on: 03.11.2026

CNR No. DLHC010431792026

\+ **CS(COMM) 996/2026, CAV. 444/2026, I.A. 24980/2026 & I.A. 24981/2026**

AMBER NUTRITION PRIVATE LIMITED
THROUGH ITS AUTHORISED SIGNATORY
MR. RAJESH DHINGRA
332/2, BEHIND AGRAWAL TOL KANTA,
UDHYOG NAGAR, GRAM PALDA,
INDORE-452002, MADHYA PRADESH, INDIA

.....PLAINTIFF

(Through: Mr. Samrat S. Kang and Mr. Swapnil Agrawal, Advocates.)

Versus

1. MR. MANISH CHANDAK
TRADING AS M/S PANKAJ CONFECTIONARY
G-115, C/O RONAK CONFECTIONARY,
AGRO FOOD PARK, BORANDA,
JODHPUR – 342001, RAJASTHAN

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Signed By:PRIYA
Signing Date:03.11.2026 20:27:11

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Signed By:PURUSHAINDRA KUMAR KAURAV

.....DEFENDANT NO.1

2. **MR. JAI KISHAN BOOB**
TRADING AS M/S POONA SWEET PRODUCTS,
1, BEHIND GEETA BHAWAN, MAHESH SCHOOL ROAD,
JODHPUR, 342003, RAJASTHAN

.....DEFENDANT NO. 2

(Through: Mr. Shravan Kumar Bansal and Mr. Pankaj Kumar, Advocate for D-1.)

% Reserved on: 24.09.2026
Pronounced on: 03.11.2026

CNR No. DLHC010326252022

\+ **CS(COMM) 598/2022 and I.A. 121/2023**

JANGEER SINGH TRADING AS
JANGEER SINGH KABULSHAH
AGRICULTURE WORKS
NEAR NEW DHAN MANDI, ANOOPGARPH ROAD, RAISINGH NAGAR, DISTT. SRI GANGA NAGAR, RAJASTHAN, THROUGH ITS AUTHORISED SIGNATORY
MR. PARVINDER SINGH

.....PLAINTIFF

(Through: Mr. Vikas Khera (VC), Ms. SnehaSethia, Ms. Kumari Pragati and Ms. Payal Aggarwal, Advs..)

Versus

YOGESH JANGID
TRADING AS JANGID AGRO ENGINEERING
KANASIA NAKA, AB ROAD,
UJJAIN - 456770, MADHYA PRADESH

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Signing Date:03.11.2026 20:27:11

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Signed By:PURUSHAINDRA KUMAR KAURAV

.....DEFENDANT

(Through: Mr. J. Sai Deepak, Senior Advocate with Mr. Avinash Sharma, Mr. Raghav Nagar and Mr. Rishab Nagar, Advocates for D-1.)

% Reserved on: 28.09.2026
Pronounced on: 03.11.2026

CNR No. DLHC010437382026

\+ **CS(COMM) 1010/2026 and I.A. 25298/2026, I.A. 25299/2026, I.A. 25300/2026 & I.A. 25301/2026**

NAMASTU ENTERPRISE
PRIVATE LIMITED
THROUGH ITS AUTHORIZED REPRESENTATIVE,
MR. SUMIT MARDA
A COMPANY INCORPORATED UNDER THE COMPANIES ACT, 2013 (CIN: U46491WR2026PTC293004), AND A REGISTERED MICRO ENTERPRISE UNDER THE MSME ACT (UDYAM REG. NO. UDYAM-WB-08-0133978), REGISTERED OFFICE AT 19, PANCHANANTALA ROAD, BALLY, HOWRAH, WEST BENGAL – 711201

.....PLAINTIFF

(Through: Mr. J. Sai Deepak, Sr. Adv. with Mr. Saral Sharma, Mr. Karikey Sharma and Ms. Purnima Vashishtha, Advs..)

Versus

1. KAJALBEN MAHESHBHAI KAKLOTAR
PROPRIETOR OF M/S KHODAL ENTERPRISE
(TRADING AS "M. KAASA")
HAVING ITS PRINCIPAL ADDRESS AT THIRD FLOOR, FLAT NO-309, BUILDING- F, EWS-37(P2), TP NO. 45, FP NO. 117, SUMAN VANDAN-2, NR SAI PUJAN APP, JAHANGIRPURA, ICHCHHAPOR, SURAT, GUJARAT, 395005

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Signed By:PRIYA
Signing Date:03.11.2026 20:27:11

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Signed By:PURUSHAINDRA KUMAR KAURAV

ALSO AT:
221, SANTOSHI KRUPA SOC NR BAPA SITARAM
CHOWK, SURAT,
GUJARAT – 395004, INDIA

.....DEFENDANT NO.1

2. **AMAZON SELLER SERVICES**
PRIVATE LIMITED
CIN: U51900KA2010PTC053234
HAVING REGISTERED OFFICE AT SATTVA
HORIZON, SURVEY NO 6/1 AND 7/1, VINAYAK
NAGAR, KATTIGENAHALLI VENKATALA VILLAGE,
YELAHANKA HOBLI BANGALORE,
KARNATAKA – 560064

.....DEFENDANT NO.2

(Through: None.)

% Reserved on: 28.09.2026
Pronounced on: 03.11.2026

CNR No. DLHC010451972026

\+ **CS(COMM) 1041/2026 & I.As. 26095-99/2026**

ZYDUS WELLNESS PRODUCTS LTD
ZYDUS CORPORATE PARK
SCHEME NO. 63, SURVEY NO. 536
KHORAJ (GANDHINAGAR), NR. VAISHNODEVI CIRCLE
SARKHEJ – GANDHINAGAR HIGHWAY
AHMEDABAD – 382481, GUJARAT

… PLAINTIFF

(*Through: Mr. Adarsh Ramanujan with Ms. Archana Sahadeva, Mr. Rahul Bhujbal and Mr. Yash Raj, Advocates.*)

versus

TUSHAR CHIMANLAL CHITALIA
[TRADING AS: TUSHAR HEALTH CARE (INDIA)]

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Signing Date:03.11.2026
20:27:11

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By:PURUSHAINDRA
KUMAR KAURAV

2ND FLOOR, 219/220, DIAMOND INDUSTRIAL ESTATE
KETKI PADA ROAD, DAHISAR EAST
MUMBAI, MAHARASHTRA, 400068

AND ALSO D/B/A AND AT:
M/S HELLO (INDIA)
KH NO 999, SALEMPUR
RAJPUTANA INDUSTRIAL AREA
ROORKEE, HARIDWAR
UTTARAKHAND, 247667

.....DEFENDANT NO. 1

KUNAL SHAH
D/B/A: NAVKAR DISTRIBUTORS
FLOOR NO. 5, ROOM NO. 110, 22/24 ANANTWADI
BHULESHWAR, MUMBAI - 400002,
MAHARASHTRA

.....DEFENDANT NO. 2

ENDURANCE INTERNATIONAL
GROUP (INDIA) PVT. LTD.
D/B/A PUBLICDOMAINREGISTRY.COM
UNIT 401, 4TH FLOOR, IT BUILDING 3, NESCO IT PARK
NESCO COMPLEX, WESTERN EXPRESS HIGHWAY,
GOREGAON (EAST)
MUMBAI 400063

.....DEFENDANT NO. 3

INDIAMART INTERMESH LTD.
D/B/A WWW.INDIAMART.COM
1ST FLOOR, 29 DARYAGANJ
NETAJI SUBASH MARG,
DELHI – 110002

.....DEFENDANT NO. 4

INFOCOM NETWORK PVT. LTD.
A-86, PHASE-II OKHLA INDUSTRIAL
AREA DELHI – 110020

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Signed By:PRIYA
Signing Date:03.11.2026
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By:PURUSHAINDRA
KUMAR KAURAV

.....DEFENDANT NO. 5

JOHN DOE
ADDRESS UNKNOWN

.....DEFENDANT NO. 6

(*Through: None.*)

% Reserved on: 30.09.2026
Pronounced on: 03.11.2026

CNR No. DLHC010307162026

\+ **CS(COMM) 746/2026 and I.A. 18505-18510/2026**

1. **SANJAY KUMAR JAIN**
KARTA OF SANJAY JAIN (HUF)
TRADING AS M/S RADHA PHARMACY,
B/H.ARYA SAMAJ, SHEOGANJ,
DIST- SIROHI, (RAJASTHAN)

… PLAINTIFF NO.1

2. **KAACHAL EXPORTERS PRIVATE LIMITED**
BEHIND ARYA SAMAJ, SHEOGANJ,
SIROHI, RAJASTHAN,307027

… PLAINTIFF NO.2

(*Through: Mr.Harish Kumar and Mr.Pranav, Advocates*.)

versus

NANDI AYURVED
NEAR WATER TANK,
VILLAGE SANDIYA
THE. SOJAT DISTT. PALI,
RAJASTHAN, 306306

.....DEFENDANT NO. 1

NIRMAYA AYURVED
THROUGH ITS PROPRIETOR

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Signed By:PRIYA
Signing Date:03.11.2026 20:27:11

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Signed By:PURUSHAINDRA KUMAR KAURAV

VILLAGE SANDIYA, THE, SOJAT,
DISTT. PALI, RAJASTHAN-306306

.....DEFENDANT NO. 2

VAID DHANVANTARI AYURVEDA
NEAR BANSAL B.K.O
UBHAWAL ROAD, SANGRUR,
PUNJAB-148001

.....DEFENDANT NO. 3

RAMESH BELT HOUSE &
MAYUR PUJA BHANDAR
MATRIKUNDIYA, TEHSIL RASHMI,
CHITTORGARH, RAJASTHAN,
312203,

.....DEFENDANT NO. 4

INDIAMART INTERMESH LIMITED
1ST FLOOR, 29 DARYAGANJ,
NETAJI SUBASH MARG,
NEW DELHI , DELHI – 110002

.....DEFENDANT NO. 5

(*Through: None.*)

% Reserved on: 01.10.2026
Pronounced on: 03.11.2026

CNR No. DLHC010246432026

\+ **CS(COMM) 611/2026, I.A. 15270/2026, I.A. 15271/2026, I.A. 15272/2026, I.A. 15273/2026, I.A. 15274/2026, I.A. 15275/2026 & I.A. 27570/2026**

AMRITSAR HAVELI CUISINES
PRIVATE LIMITED
J-2/3, MAIN NAJAFGARH ROAD,
RAJOURI GARDEN, NEAR CENTURION BANK OF INDIA,
NEW DELHI-110027

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Signed By:PRIYA
Signing Date:03.11.2026
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Signed
By:PURUSHAINDRA
KUMAR KAURAV

… PLAINTIFF NO.1

RUBJEET SINGH GROVER
312, EAST MOHAN NAGAR,
AMRITSAR, PUNJAB, 143001

… PLAINTIFF NO.2

(*Through: Mr. Anshuman Upadhayay, Mr. Naseem Sheikh and Mr. Rahul Singh, Advs.*)

versus

AMARBIR SINGH
PARTNER OF CAFE GREEN BREW
TOWN HALL, INSIDE SARAGARHI SARAI,
INSIDE SARAGARHI SARAI,
AMRITSAR, PUNJAB- 143006

.....DEFENDANT NO. 1

KULWINDER SINGH
PARTNER OF CAFE GREEN BREW
TOWN HALL, INSIDE SARAGARHI SARAI, INSIDE SARAGARHI SARAI,
AMRITSAR, PUNJAB- 143006

.....DEFENDANT NO. 2

GAGANDEEP SINGH
PARTNER OF CAFE GREEN BREW
TOWN HALL, INSIDE SARAGARHI SARAI,
INSIDE SARAGARHI SARAI,
AMRITSAR, PUNJAB- 143006

.....DEFENDANT NO. 3

JASPAL SINGH SIDHU
PARTNER OF CAFE GREEN BREW

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Signing Date:03.11.2026
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Signed
By:PURUSHAINDRA
KUMAR KAURAV

TOWN HALL, INSIDE SARAGARHI SARAI, INSIDE SARAGARHI SARAI,
AMRITSAR, PUNJAB- 143006

.....DEFENDANT NO. 4

(*Through: None.*)

% Reserved on: 05.10.2026
Pronounced on: 03.11.2026

CNR No. DLHC010371962026

\+ **CS(COMM) 874/2026 and I.A. 21757-21761/2026**

PHARMED LIMITED
SATTVA MINDCOMP TECH PARK
GROUND FLOOR, OFFICE 1, 149-A, EPIP II PHASE,
WHITEFIELD INDUSTRIAL AREA,
BENGALURU - 560 066, KARNATAKA

Also at:
1/23-B, 2nd Floor, Asaf Ali Road,
New Delhi-110002, India

.....PLAINTIFF

(*Through: Ms.Lakshmidevi Somanath and Ms/Kanishka Vaish, Advocates.*)

versus

BEST BIOTECH
76-13-18B/6 A&B, OPP. AVSR SKY COURT,
BESIDE LANE OF SAMSKRUTI FUNCTION HALL
URMILA NAGAR ROAD, BEST BIOTECH STREET,
BHAVANIPURAM, VIJAYAWADA
ANDHRA PRADESH 520012.

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Signing Date:03.11.2026 20:27:11

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Signed By:PURUSHAINDRA KUMAR KAURAV

.....DEFENDANT NO. 1

SAVYA PHARMACEUTICALS
PLOT. NO-5A-4, SECTOR 09,
IIE PANTNAGAR, U.S.N. - 263153
UTTRAKHAND

.....DEFENDANT NO. 2

JUST DIAL LIMITED
PALM COURT, M.M. MALVIYA ROAD,
UPPER GOVIND NAGAR, MALAD (WEST),
MUMBAI-400097

Also at:
No. 184, 187, 3rd Floor, Temple Steps,
B Block, Anna Salai, Little Mount Saidapet,
Chennai - 600015

.....DEFENDANT NO. 3

(*Through: Mr.Avinash Kumar Sharma and Mr.B. Sidhi Pramodh Rayudu, Advocates for D-1.*
Mr. Bharat Garg with Ms. Surabhi Pandey and Mr. Davansh Garg, Advocates for D3.)

% Reserved on: 07.10.2026
Pronounced on: 03.11.2026

 # CNR No. DLHC010048972026

+ CS(COMM) 128/2026 & I.A. 3790/2026, I.A. 9921/2026

SOCIETY FOR HUMAN RESOURCE MANAGEMENT SHRM
A U.S. BASED COMPANY HAVING REGISTERED OFFICE AT:
1800 DUKE STREET, ALEXANDRIA,

Signature Not Verified
Signed By:PRIYA
Signing Date:03.11.2026 20:27:11

Signature Not Verified
Signed By:PURUSHAINDRA KUMAR KAURAV

VIRGINIA 22314,
UNITED STATES OF AMERICA

.....PLAINTIFF

(*Through: Mr. Neeraj Bhardwaj with Mr. N.K. Bhardwaj, Mr. Bikash Ghorai & Mr. Salil Oberoi, Advocates*.)

versus

STRATEGIC HRM
HAVING ITS REGISTERED OFFICE
HILITE BUSINESS PARK,
CALICUT, (KOZHIKODE) KERALA,
PIN- 673014

.....DEFENDANT NO. 1

GODADDY.COM LLC,
14455, NORTH HAYDEN ROAD,
SUITE-219, SCOTTSDALE,
ARIZONA 85260

.....DEFENDANT NO. 2

HOSTGATOR.COM LLC
5005 MITCHELLADALE
ST, SUITE 100, HOUSTON,
TEXAS, UNITED STATES- 77092

.....DEFENDANT NO. 3

(*Through: Ms. Julien George with Ms. Deepika Pokharia & Mr. Vedam Anand, Advocates for D1*.)

% Reserved on: 07.10.2026
Pronounced on: 03.11.2026

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Signed By:PRIYA
Signing Date:03.11.2026
20:27:11

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Signed
By:PURUSHAINDRA
KUMAR KAURAV

CNR No. DLHC010179982026

\+ **CS(COMM) 444/2026, I.A. 11717/2026, I.A. 16164/2026, I.A. 15483/2026 & I.A. 28513/2026**

KBB NUTS PVT. LIMITED
B-57 LAWRENCE ROAD, INDUSTRIAL AREA,
DELHI - 110035.

.....PLAINTIFF

(*Through: Mr. Manish Biala and Mr. Devesh Ratan, Advocates.*)

versus

MR. SURESH CHAND
PROPRIETOR, MIS ARUNA FLOOR DAL & OIL MILL
F-179, RIICO INDUSTRIAL AREA, GANGAPUR CITY,
SAWAI MADHOPUR, RAJASTHAN- 322201.

.....DEFENDANT NO. 1

MS. ARUNA DEVI
PROPRIETOR, MIS ARUNA ENTERPRISES
1 KRISHNA MILL, SHEETLA MATA ROAD,
GANGAPUR CITY,
SAWAI MADHOPUR, RAJASTHAN – 322201

.....DEFENDANT NO. 2

DNA NUTS & DRY FRUITS
THROUGH ITS PARTNERS
1 GANGAPUR CITY ,PURAANI ANAAJ MANDI,
NEAR MANDIR, GANGAPUR CITY,
SAWAI MADHOPUR, RAJASTHAN - 322201.

.....DEFENDANT NO. 3

MR. DEEPAK KUMAR GOYAL

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Signed By:PRIYA
Signing Date:03.11.2026 20:27:11

Signature Not Verified
Signed By:PURUSHAINDRA KUMAR KAURAV

PARTNER, DNA NUTS & DRY FRUITS
1 GANGAPUR CITY, PURAANI ANAAJ MANDI,
NEAR MANDIR, GANGAPUR CITY,
SAWAI MADHOPUR, RAJASTHAN - 322201.

.....DEFENDANT NO. 4

MR. ANSHUL KUMAR GUPTA
PARTNER, DNA NUTS & DRY FRUITS
1 GANGAPUR CITY ,PURAANI ANAAJ MANDI,
NEAR MANDIR, GANGAPUR CITY,
SAWAI MADHOPUR, RAJASTHAN - 322201.

.....DEFENDANT NO. 5

(*Through: Ms. Niyati Vishwakarma, Advocate for D-1 and 2 (thr. VC)*
Mr. Naveen Gupta and Ms. Sandhya Gupta, Advocates for D-3 to 5.)

% Reserved on: 09.10.2026
Pronounced on: 03.11.2026

CNR No. DLHC010391112026

\+ **CS(COMM) 917/2026 and I.A. 22773/2026, I.A. 22775/2026**

JSW MG MOTOR INDIA PRIVATE LIMITED
REPRESENTED BY ITS AUTHORISED SIGNATORY,
10TH FLOOR, MILESTONE EXPERION CENTRE
SECTOR 15, GURUGRAM, HARYANA- 122001

.....PLAINTIFF NO.1

SAIC MOTOR CORPORATION LIMITED
ROOM 509, BUILDING 1, NO. 563,

Signature Not Verified
Signed By:PRIYA
Signing Date:03.11.2026 20:27:11

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Signed By:PURUSHAINDRA KUMAR KAURAV

SONG TAO ROAD, PILOT FREE TRADE ZONE,
SHANGHAI, CHINA- 201203

.....PLAINTIFF NO.2

(*Through: Mr. Saif Khan, Mr. Prajjwal Kushwaha and Ms. Diya Vishwanath, Advocates.*)

versus

TRISTAR AUTO AGENCIES
(VIZAG) PRIVATE LIMITED,
REPRESENTED BY ITS MANAGING DIRECTOR,
B. RAJESH CHITTIBABU,
DOOR NO.38-13-54,
NH-5, LAKSHMI NAGAR, MARRIPALEM,
VISAKHAPATNAM-530018

.....DEFENDANT

(*Through: None.*)

% Reserved on: 09.10.2026
Pronounced on: 03.11.2026

CNR No. DLHC010375502026

\+ **CS(COMM) 883/2026 & I.A. 21989/2026**

SHIROMANI GURDWARA
PARBANDHAK COMMITTEE
THROUGH BALWINDER SINGH
SECRETARY & AUTHORISED REPRESENTATIVE
TEJA SINGH SAMUNDRI HALL,
SRI DARBAR SAHIB COMPLEX, AMRITSAR,
PUNJAB (INDIA) PIN – 143006

.....PLAINTIFF NO.1

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Signed By:PRIYA
Signing Date:03.11.2026
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Signature Not Verified
Signed
By:PURUSHAINDRA
KUMAR KAURAV

G-NEXT MEDIA PVT. LTD.
THROUGH KRISHAN KUMAR
FINANCE MANAGER & AUTHORISED REPRESENTATIVE
F-138, PHASE VIII B,
INDUSTRIAL FOCAL POINT, SAS NAGAR,
MOHALI, PUNJAB, 160055, INDIA,

.....PLAINTIFF NO.2

(*Through: Mr. Rajiv Nayar, Sr. Adv. with Mr. Kapil Midha, Mr. Karmanya Singh Sareen, Mr. Krishnagopal Abhay, Mr. Sahib Singh Dhillon, Ms. Pari Bhardwaj, Mr. Soumya Benerjee, Ms. Shree Sruthi, Ms. Tushita Poddar, Ms. Yadavi Malhotra, Mr. Pratham Vir, Mr. Shreyas Maheshwari and Mr. Naman Maheshwari, Advs. for P-1*.

Mr. J. Sai Deepak, Sr. Adv. with Ms. Mahima Kirori, Mr. Anshul Saharan and Ms. Purnima Vashishtha, Advs. for P-2.)

versus

GALACTIC TELEVISION
& COMMUNICATIONS
PVT. LTD.
CORPORATE OFFICE:
78, OKHLA INDUSTRIAL ESTATE, PHASE-3,
NEW DELHI – 110020

REGISTERED OFFICE:
SCO NO. 45 (FIRST FLOOR) SECTOR-82
SAS NAGAR (MOHALI), PUNJAB – 140306

.....DEFENDANT NO.1

GTC NETWORK UK LIMITED
THROUGH DIRECTOR
RABINDRA NARAYAN
HAVING REGISTERED ADDRESS:

Signature Not Verified
Signed By:PRIYA
Signing Date:03.11.2026
20:27:11

Signature Not Verified
Signed
By:PURUSHAINDRA
KUMAR KAURAV

167-169 GREAT PORTLAND STREET,
LONDON, ENGLAND, W1W 5PF

.....DEFENDANT NO.2

RABINDRA NARAYAN
MANAGING DIRECTOR OF DEFENDANT NO. 1
78, OKHLA INDUSTRIAL ESTATE, PHASE-3,
NEW DELHI – 110020

.....DEFENDANT NO.3

MANPREET SINGH
DIRECTOR OF DEFENDANT NO. 1
78, OKHLA INDUSTRIAL ESTATE, PHASE-3,
NEW DELHI - 110020

.....DEFENDANT NO.4

(*Through: Mr. P. S. Patwalia, Sr. Adv. and Mr. Pawan Singh Bindra, Sr. Adv. with Mrs. Pavitra Kaur, Mr. Harkirat Singh, Mr. Sushant Singh, Mr. Sushant Singh, Mr. Aditya Notani, Ms. Dhanushiya S., Ms. Deveshi Chand and Mr. Priyansh Kumar, Advocates.*)

% Reserved on: 12.10.2026
Pronounced on: 03.11.2026

 # CNR No. DLHC010494792026

\+ **CS(COMM) 1115/2026 and I.A. 28420-28426/2026**

MARICO LIMITED

7TH FLOOR, GRANDE PALLADIUM, 175, CST ROAD KALINA SANTACRUZ (EAST) MUMBAI-400098 MAHARASHTRA

Signature Not Verified
Signed By:PRIYA
Signing Date:03.11.2026 20:27:11

Signature Not Verified
Signed By:PURUSHAINDRA KUMAR KAURAV

....PLAINTIFF

(*Through: Mr.Neeraj Grover, Sr. Advocate with Mr.Ankur Sangal, Mr.Ankit, Mr.Shaurya, Mr.Varoon and Ms.Sanandika, Advocates.*)

versus

SHREE UDAY OIL AND FOOD INDUSTRIES LLP
PLOT NO. 3240, GIDC CHHATRAL, PHASE-3
MANGALAM ALLOYS, GANDHI NAGAR, KALOL
GUJARAT- 382729
ALSO AT:
A-309, SUMEL- 11, ABOVE VIJAY SALES
OPPOSITE NAMASTE CIRCLE
AHMEDABAD - 380004, GUJARAT

.....DEFENDANT

(Through: None.)

% Reserved on: 13.10.2026
Pronounced on: 03.11.2026

 # CNR No. DLHC010424552026

\+ **CS(COMM) 980/2026 and I.A. 24644/2026, I.A. 24645/2026, I.A. 24646/2026, I.A. 24647/2026, I.A. 24648/2026, I.A. 24649/2026 and I.A. 24650/2026**

HAVELI RESTAURANT AND RESORTS LTD
2ND FLOOR, G - 135,
JAIN COLONY, SECTOR - 22,
ROHINI, DELHI-110086.
ALSO AT
VILLAGE KHAJURLA, PHAGWARA,
KAPURTHALA, PUNJAB - 144402.

Signature Not Verified
Signed By:PRIYA
Signing Date:03.11.2026 20:27:11

Signature Not Verified
Signed By:PURUSHAINDRA KUMAR KAURAV

.....PLAINTIFF

(*Through: Mr. Peeyoosh Kalra, Mr. Srish Kumar Mishra, Mr. Vinayak Goel, Mr.Alexander Mathai Paikaday, Mr.Ankit Jain, Advocates and Mr.Ajay Sandhal, AR.*)

versus

SHUBHAM FOOD ENTERPRISES
SUKHI JOHRI, DHARAMPUR,
DHARAMPUR, SOLAN,
HIMACHAL PRADESH, 173209.

.....DEFENDANT

(Through: None.)

% Reserved on: 14.10.2026
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CNR No. DLHC010497832026

\+ **CS(COMM) 1120/2026 and I.A. 28592/2026, I.A. 28593/2026, I.A. 28594/2026, I.A. 28595/2026, I.A. 28596/2026, I.A. 28597/2026**

LABORATE PHARMACEUTICALS
INDIA LIMITED
CORPORATE OFFICE:
PLOT K-17, SECOND FLOOR, UDYOG NAGAR,
INDUSTRIAL AREA, ROHTAK ROAD,
NANGLOI, NEW DELHI-110041

.....PLAINTIFF

(*Through: Mr. Siddharth Bambh, Ms. S. Garg and Ms. Aroshi Pal, Advocates.*)

versus

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M/S JMBS HEALTHCARE
THROUGH ITS PARTNERS
ADDRESS:
KALA AMB ROAD, NEAR PREET PALACE,
NARAINGARH AMBALA, HARYANA- 134203
ALSO, AT:
PLOT NO. 92, HPSIDC INDUSTRIAL AREA,
NEAR SHREE SAI ENTERPRISES,
BADDI, HIMACHAL PRADESH - 173205

.....DEFENDANT

(*Through: None.*)

% Reserved on: 14.10.2026
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CNR No. DLHC010475012026

\+ **CS(COMM) 1081/2026 and I.A. 27355-27362/2026**

BEIERSDORF AG
BEIERSDORFSTRAßE 1-9
22529 HAMBURG, GERMANY

.....PLAINTIFF NO.1

NIVEA INDIA PVT. LTD.
KURLA (WEST), PHOENIX MARKET CITY,
A WING, 4TH FLOOR, ART GUILD HOUSE,
400070 MUMBAI, INDIA

.....PLAINTIFF NO. 2

(*Through: Mr. Pravin Anand, Mr. Dhruv Anand, Ms. Ms. Bhavya Verma and Mr.Dhananjay Khanna, Advocates.*)

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versus

DUVAC COSMEDICS
B/403, SAMANVAY SILICON,
OPP KALYAN HOTEL,
SAYAJIGUNJ, VADODARA – 390020
ALSO AT:
PLOT NO-504 VADODARA MARKET,
BHD JETALPUR GAM, AKOTA,
VADODARA-390020, GUJARAT

.....DEFENDANT NO. 1

GLEXON HEALTHCARE
PRIVATE LIMITED
SHYAM INDUSTRIAL HUB, A-18,
BAKROL-GATRAD RD,
BAKROL, GUJARAT – 382430

.....DEFENDANT NO. 2

M/S JAHNAVI MEDICAL STORE
SF 216, SIDDHARTH CREST,
OPPOSITE NIZAMPURA BUS STAND,
VADODARA – 390024, GUJARAT

.....DEFENDANT NO. 3

(Through: None.)

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CNR No. DLHC010041822026

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By:PURUSHAINDRA
KUMAR KAURAV

\+ **CS(COMM) 111/2026 and I.A. 3271/2026, I.A. 5167/2026**

KAJARIA CERAMICS LIMITED
CORPORATE OFFICE AT:
J-1/ B-1(EXTENSION)
MOHAN COOPERATIVE INDUSTRIAL ESTATE,
MATHURA ROAD, NEW DELHI- 110044
THROUGH ITS AUTHORIZED SIGNATORY
MR. SACHIN SAXENA

ALSO AT:
SF-11, SECOND FLOOR, JMD REGENT PLAZA,
MEHRAULI GURGAON ROAD,
VILLAGE SIKANDERPUR GHOSI,
GURGAON, HARYANA- 122001

.....PLAINTIFF

(*Through: Mr. J. Sai Deepak, Sr. Advocate with Mr. Rishabh Gupta, Ms. Akshita Makin, Mr. Vikrant Rana, Ms. Lucy Rana, Mr. R. Abhishek Avadhani, Advocates.*)

versus

MR. YOMESH VIJAYA
TRADING AS M/S. WESTERN DRYMIX
ADDRESS: PLOT NO. 205,
DELHI MIA ROAD
MATSYA INDUSRTRIAL AREA,
ALWAR RAJASTHAN – 301030

ALSO AT:
02/19, RC MANSION
PREET VIHAR, TRANSPORT NAGAR,
ALWAR, RAJASTHAN-301001

.....DEFENDANT

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(*Through: Mr. Ashutosh Kumar, Mr. Utkarsh Gupta, Mr.Sajan Shankdhar, Mr. Sanidhya Sharma, Mr. Deepank Singhal, Ms. Shruti Gupta and Mr. Ayush Sharma, Advocates.*)

% Reserved on: 16.10.2026
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VI. ORDER 245

I. AN OVERVIEW OF THE ISSUES RAISED AND THE ANSWERS FOUND

The present judgment deals with seventeen commercial suits filed before this Court. In more than half of these suits, neither parties, through any means, are at Delhi. In each of these suits, the court within whose territorial jurisdiction the parties are situated is competent to adjudicate upon the *lis* sought to be agitated before this Court. They however, while disturbing the horizontal allocation of territorial jurisdiction, knock this Court, on novel and ingenious grounds.

2. It is vehemently argued on behalf of the plaintiffs that this Court has been entertaining and deciding cases of parties located across the length and breadth of India. It has done so on the basis that part of cause of action has arisen within Delhi or that either of the parties carries on business at Delhi. It is argued by counsel that in the world of IP litigation, a suit for infringement along with passing off can be filed at a place where a website having the infringing products is accessible and commercial transactions *can* get concluded on the website. This, it is submitted, constitutes a part of the cause of action and makes a suit maintainable under Section 20(c) of the Civil Procedure Code, 1908.[1]

3. It is also submitted that a defendant or a plaintiff "*carries on business*" at a place from where the website advertising, promoting, or

[1] "CPC".

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offering for sale, the goods or services in question, is accessible. It is clarified by learned counsel that for jurisdiction to be conferred, the website, also, need not be hosted by the defendant, nor is it necessary that the listing (if any) be made by the defendant. Importantly, it has been argued, that because the plaintiff or a person set up by him, has placed an order on an e-marketplace like Flipkart or Amazon for the defendant's goods, and given the address of Delhi, jurisdiction is manifestly made out. Such a transaction, the Court may observe, the plaintiff or his agent could have done from Ladakh, Tamil Nadu, Arunachal Pradesh, or Gujarat. The argument of counsel, however, remains that this Court must entertain such a suit because its agent gave the delivery address of Delhi.

4. A statute or a provision cannot be interpreted in a manner that confers an unbridled, unguided and uncanalised right on the plaintiff to *create* jurisdiction within the territory of a given Court and obligates it to decide that *lis*. Such an exercise of an uncircumscribed right is bound to create a mockery of the concept of territoriality and the "*local limits*" of the court.

5. In today's digital world, every website is accessible pan-India, if not worldwide; services can be availed of through the internet in every remote corner of the country, and goods can be delivered to most, if not all, places. If the position of law is what has been stated above, jurisdictional rules would have no meaning. The horizontal division of jurisdiction in the world of IP disputes would cease to have any application. The jurisdictional provisions under the CPC, which allocate jurisdiction amongst courts, may as well be given a burial.

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6. In some of the decisions passed by this Court undoubtedly jurisdiction has been exercised in the manner canvassed by counsel. After enjoying, effectively, a pan-India jurisdiction, it becomes difficult for a court today to draw a Lakshman Rekha and restrain itself from stepping outside its bounds. This issue, however, demands closer consideration. The question is not one of losing territory but of institutional discipline. If jurisdiction is naturally made out, the Court must entertain the suit without hesitation. But if a dispute ought to be agitated before another court and is brought to Delhi, almost forcibly, and such a suit is entertained, the other rightful and natural forum which should have exercised jurisdiction over the matter gets deprived of the opportunity to adjudicate upon that cause of action. Institutional discipline and respect require this Court to refrain from entertaining such a suit. The statutory and constitutional scheme evinces a carefully structured division of courts' jurisdiction. Constitutional morality demands that this Court respect that scheme and abides by it.

7. It may be possible that some of the features that this Court has, arguably, no other High Court does. Its role in the advancement of IP law in this country, and its implication abroad, simply cannot be overstated.

8. The establishment of the IPD, following the abolition of the Intellectual Property Appellate Board, was accompanied by the IPD Rules and specialised Patent Suit Rules. These reflect an understanding that patent and other technology disputes may call for a different approach to pleadings, technical evidence, confidentiality and case management.

9. In fact, the World Intellectual Property Organization's International Guide to Patent Case Management for Judges too identifies several

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procedural features of the Delhi model: concurrent expert evidence or "hot-tubbing",[2] remote evidence,[3] preservation of evidence and litigation-hold notices,[4] guidance on damages,[5] consolidation of proceedings,[6] confidentiality clubs,[7] summary adjudication,[8] technically qualified assistance,[9] and mediation or early neutral evaluation.[10]

10. The filing procedure before this Court is also uniquely suited for commercial disputes. Actions in fresh, pending and disposed of cases are ordinarily filed electronically by the advocate or litigant in person. Court fees are capable of being deposited electronically, and hearings are conducted in physical, hybrid or video conferencing mode.

11. The Registry communicates objections to the filing advocate or litigant by email, SMS or web hosting,[11] and once the objections are cleared the case is processed for listing. Any urgent matter filed before 12 noon is put before the Court for hearing on the following working day,[12] and the daily cause lists of this Court notify that fresh petitions and applications filed before 12 noon are listed before the roster Bench accordingly. The practical consequence is that a plaintiff whose filing is free of defects may ordinarily expect the matter to be taken up on the next working day. This is

[2] Rule 16, IPD Rules.
[3] Rule 15, IPD Rules.
[4] Rule 18, IPD Rules.
[5] Rule 20, IPD Rules.
[6] Rule 26, IPD Rules.
[7] Rule 19, IPD Rules.
[8] Rule 27, IPD Rules.
[9] Rules 31 and 32, IPD Rules.
[10] Rule 37, IPD Rules.
[11] Rule 18.3 of the e-Filing Rules.
[12] Rule 12 of Chapter I of the Delhi High Court (Original Side) Rules, 2018.

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a unique feature which perhaps may not be available in any other court. It guarantees quick listing, hearing, and adjudication of disputes.

12. Two related features of this Court also give litigants a measure of certainty after a matter is instituted. *First*, an order is ordinarily recorded and uploaded on the website of this Court on every date on which a matter is listed, whether before the Bench or before the Joint Registrar, including where the proceeding is confined to an adjournment or to directions on pleadings. The record of proceedings is, therefore, available to the parties, and to anyone examining the file, without reliance on oral accounts of what transpired. *Second*, every matter ordinarily leaves the courtroom with a fixed next date, and that date is reflected on the case status page. Where a matter does not reach, it is ordinarily assigned a fresh date of listing. Matters are, thus, not left to languish without a date, and parties and counsel are able to plan the progress of the litigation, including compliance with timelines under the Commercial Courts Act, 2015, with reasonable predictability.

13. Last among these features, and one the most important is the Bar practising before this Court. It includes a large body of advocates and law firms who devote their practice to commercial and intellectual property litigation. This Court also has the advantage of being assisted by lawyers who are specialists and authorities in their fields. The doyens of India's IP Bar practice before this Court.

14. The uniqueness of this Court, thus, lies not simply in assigning IP matters to designated judges, but in building an institutional and procedural framework suited to the peculiar legal, scientific and commercial questions presented by IP disputes.

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15. India's IP landscape to a large extent has grown under the Banyan Tree, which is the Delhi High Court. While the Banyan provides shelter and comfort, it also stunts the growth of other trees below it.

16. There is no reason to believe that other High Courts will not rise to the occasion, create a specialised machinery like this Court, and make IP litigation conducive either before them, or the district courts.

17. This Court, without any doubt, must not command a reputation that no matter how minuscule a connection the *lis* has with Delhi, the plaintiff or the defendant, the High Court of Delhi, would entertain a suit.

18. In ***Aligarh Muslim University v. Vinay Engineering Enterprises (P) Ltd.***,[13] the Supreme Court in the context of another premier High Court observed "*we are surprised, not a little, that the High Court of Calcutta should have exercised jurisdiction in a case where it had absolutely no jurisdiction.*" In ***Oil and Natural Gas Commission v. Utpal Kumar Basu***,[14] which arose after the decision in ***Aligarh Muslim University***, the Supreme Court, noted that the institutional integrity of a court is predicated upon the manner in which its members conduct themselves. If a *lis* having no material connection with a given court is entertained, suspicions arise and eyebrows get raised. Para. 12 of the decision is extracted as under:

> "**12.** …It must be remembered that the image and prestige of a court depends on how the members of that institution conduct themselves. If an impression gains ground that even in cases which fall outside the territorial jurisdiction of the court, certain members of the court would be willing to exercise jurisdiction on the plea that some event, however trivial and unconnected with the cause of action had occurred within the jurisdiction of

[13] (1994) 4 SCC 710.
[14] (1994) 4 SCC 711.

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> the said court, litigants would seek to abuse the process by carrying the cause before such members giving rise to avoidable suspicion. That would lower the dignity of the institution and put the entire system to ridicule…"

19. Bearing in mind considerations of predictability, fairness, and the larger public interest, this Court has attempted to re-examine the caselaw on jurisdiction in IP suits. The position of law, as the discussion below shall reveal, is not as *laissez-faire* as learned counsel have contended it to be. A brief snapshot of the manner in which caselaw has been dealt with in the present judgment is as under:

20. The decisions of the Supreme Court in ***Patel Roadways Limited v. Prasad Trading Company***,[15] ***Dhodha House v. SK Maingi***,[16] and ***Indian Performing Rights Society v. Sanjay Dalia and Anr.***,[17] and of this Court in ***Ultra Home Construction Pvt. Ltd. v. Purushottam Kumar Chaubey & Ors.***[18] authoritatively declare the meaning of the expression "*carries on business*", as it appears in Sections 20(a) and (b) of the CPC and Sections 62(2) and 134(2) of the Copyright Act, 1957[19] and the Trade Marks Act, 1999,[20] respectively. The judgment of this Court in ***World Wrestling Entertainment, Inc. v. Reshma Collection & Ors.***,[21] despite noticing the decision of ***Dhodha House***, appears to have fallen foul of its material conclusions. The underlying reasoning of ***WWE***, more importantly, becomes completely unworkable after the decision of the Supreme Court in ***Sanjay Dalia*** and of this Court in ***Ultra Home***.

---

[15] (1991) 4 SCC 270. *Followed* in *New Moga Transport Co. v. United India Insurance Co. Ltd. and Ors.*, (2004) 4 SCC 677.
[16] (2006) 9 SCC 41.
[17] (2015) 10 SCC 161.
[18] 2016 SCC OnLine Del 376.
[19] "Copyright Act".
[20] "Trade Marks Act".
[21] 2014 SCC OnLine Del 2031.

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21. In the subsequent chain of decisions of our Court, which begin from ***Kohinoor Seed Fields India Pvt. Ltd. v. Veda Seed Sciences Pvt. Ltd.***[22] and end at ***ITC v. Adyar Gate Hotels Ltd.***,[23] it was not pointed out to the learned Division Bench that ***WWE*** is no longer a binding precedent on the issue raised in these cases. The observations and findings given by the learned Division Bench in these judgments, thus, may not be binding as they were rendered on the basis of ***WWE***.

22. Similarly, for claims concerning passing off, the decisions of our Court in ***Glen Raven Mills Inc. v. Vaspar Concepts Pvt. Ltd. and Anr.***,[24] and ***Indovax Pvt. Ltd. v. Merck Animal Health and Ors.***,[25] were not canvassed before the Court in ***Burger King Corporation v. Techchand Shewakramani and Ors***.[26] The decision in ***Burger King*** having been rendered without adverting to earlier applicable judgments on the issue of passing off, may not be binding insofar as it relates to a claim for passing off.

23. The judgment of the Division Bench of our Court in ***Banyan Tree Holding (P) Ltd. v. A. Murali Krishna Reddy and Anr.***,[27] continues to govern jurisdictional issues when a plaintiff pleads a cause of action for infringement or passing off on the basis of a website. ***Banyan Tree***, *inter alia*, requires the plaintiff to, *prima facie*, show using material/documents, that some commercial transactions using the website were entered into by

[22] 2025 SCC OnLine Del 8727.
[23] 2026 SCC OnLine Del 4852.
[24] 1995 SCC OnLine Del 724.
[25] 2017 SCC OnLine Del 9393.
[26] 2018 SCC OnLine Del 10881.
[27] 2009 SCC OnLine Del 3780.

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the defendant with a user of its website within the forum State. The decision of another Division Bench in ***Tata Sons Pvt. Ltd. v. Hakunamatata Tata Founders and Ors.***,[28] dispenses with this requirement in ***Banyan Tree*** on the basis of a decision of this Court in ***Millennium & Copthorne International Limited v. Aryans Plaza Services Pvt. Ltd. and Ors.***,[29] and of the Court of Appeal of England and Wales in ***Lifestyle Equities CV v. Amazon UK Services Ltd.***[30]

24. It was, however, not pointed out to the learned Division Bench in ***Tata Sons*** that the decision in ***Millennium & Copthorne International Limited*** was rendered by a learned Single Judge of our Court, which could not have disturbed the mandatory requirements of ***Banyan Tree***. It was also not brought to the notice of the Division Bench that the law in England was fundamentally different from that declared in ***Banyan Tree***. The finding rendered by the Division Bench that a "*looming presence*" and an ability to access the website may be sufficient to constitute "*targeting*" appears to be in conflict with both ***Banyan Tree*** and the law prevailing in England, as propounded in the judgment rendered by the UK Supreme Court,[31] in appeal against the judgment of the Court of Appeal in ***Lifestyle Equities***.

25. The use of an "*investigator*" to enter into trap transactions so as to concoct jurisdiction in a forum which otherwise has no jurisdiction is also impermissible, as declared in ***Banyan Tree***. The decisions of our Court in ***Machinenfabrik Rieter AG and Anr. v. Tex Tech Industries India Pvt. Ltd.***

[28] 2022 SCC OnLine Del 2968.
[29] 2018 SCC OnLine Del 8260.
[30] [2022] EWCA Civ 552.
[31] 2024 UKSC 8.

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and Anr.,[32] and ***Reiter AG and Anr. v. Kavassery Narayanaswamy Venkatasubramanian***,[33] hold that ***Banyan Tree's*** dictum concerning trap transactions does not apply to offline transactions. It was, however, not pointed out to the learned Benches in these cases that the conclusion of ***Banyan Tree*** on the issue of trap transactions was itself based on cases which concerned offline transactions. The decisions in ***Machinenfabrik Rieter AG*** and ***Reiter AG*** may not, therefore, be binding precedents on this issue.

26. Accordingly, the decisions which govern this Court are: *first*, ***Patel Roadways***, ***Sanjay Dalia***, and ***Ultra Home*** to interpret the expression "*carries on business*" under Section 20(a) of the CPC and Section 134(2) of the Trade Marks Act and 62(2) of the Copyright Act; *second*, ***Glen*** and ***Indovax*** for determining where the cause of action for a passing off action in the offline world has accrued; *third*, ***Burger King***, to adjudicate on territoriality for suits concerning trademark infringement in the offline world; and *fourth*, ***Banyan Tree***, for determining jurisdictional issues when a plaintiff pleads cause of action for infringement or passing off on the basis of a website.

27. The Court is conscious that finding some difficulty in the application of the aforenoted decisions, a reference order has been passed by a co-ordinate Bench,[34] to decide the issue of jurisdiction in infringement and passing off suits. The filing of fresh suits, however, has not come to a halt. Many matters require urgent interim relief to be granted and the issue of this

[32] 2021 SCC OnLine Del 1825.
[33] 2025 SCC OnLine Del 4379.
[34] 2026:DHC:7198.

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Court's territorial jurisdiction necessarily requires an adjudication. There cannot, it may be stressed, be a vacuum in law.

28. The Supreme Court in the case of ***Ashok Sadarangani v. Union of India and Ors.***,[35] was requested to abstain from pronouncing judgment on an issue which was the subject matter of a reference to the larger bench.[36] The Supreme Court, while rejecting the plea, observed as under:

> "**29.** …the pendency of a reference to a larger Bench, does not mean that all other proceedings involving the same issue would remain stayed till a decision was rendered in the reference…Till such time as the decisions cited at the Bar are not modified or altered in any way, they continue to hold the field."

Thus, through the present judgment, this Court intends to decipher, pending the reference made to a larger Bench,[37] the position of law governing territorial jurisdiction for infringement and passing off claims, arising under the law governing the intellectual property rights of the parties.

29. Learned counsel appearing for the parties in the captioned matters have been heard, and their written submissions and compilation of judgments, concerning the issues dealt with in the present judgement have also been perused. A thoughtful consideration has been given to the submissions made in the instant batch of matters.

30. A *lis* concerning infringement and passing off is governed by Section 20 of the CPC. A suit for infringement, *additionally*, is covered by Sections

---

[35] (2012) 11 SCC 321.
[36] (2012) 11 SCC 321, para. 23.
[37] *Hindustan Unilever Limited v. Kwick Living (I) Pvt. Ltd.*, CS (Comm) 904/2026, judgment dated 25.08.2026.

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62(2) and 134(2) of the Copyright and Trade Marks Act, respectively.[38] For ease of reference these provisions are reproduced, *in seriatim*, as under:

Section 20 of the CPC:

> "**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 works for gain, as aforesaid, acquiesce in such institution; or
>
> (c) the cause of action, wholly or in part, arises.
>
> Explanation.—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 62 of the Copyright Act:

> "**62. Jurisdiction of court over matters arising under this Chapter.**
>
> (1) Every suit or other civil proceeding arising under this Chapter in respect of the infringement of copyright in any work or the infringement of any other right conferred by this Act shall be instituted in the district court having jurisdiction.
>
> (2) For the purpose 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 other 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."

[38] Cumulatively termed as "special provisions".

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Section 134 of the Trade Marks Act:

> "**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."

31. The case law pertaining to specific aspects may be analysed. It is important, however, to caveat the discussion that follows by noting that since certain judgments deal with multiple issues, a straitjacket categorisation has not been possible. A judgment under a given heading may not exclusively deal with the topic identified in the heading.

II. ANALYSIS

A. THE PRAYERS TO BE TESTED

32. If a single suit has been filed alleging infringement and passing off, jurisdiction for both claims needs to be individually established before the suit can be termed as being maintainable.

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33. In ***Dhodha House***, the Supreme Court examined the decision of the Allahabad High Court holding that a suit under the Trade and Merchandise Marks Act, 1958, and the Copyright Act, 1957, was primarily under the former, for which resort cannot be made to Section 62 of the latter Act. Dismissing the appeal, SB Sinha J. observed:

> "**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."

34. Similarly, ***Dabur India Ltd. v. K.R. Industries***[39] arose from a suit filed before a learned Single Judge of this Court alleging copyright infringement and passing off *qua* a product's carton which the plaintiff claimed was protected as "*artistic work*" within the meaning of the Copyright Act. It was held that, insofar as the relief of passing off is concerned, jurisdiction in Delhi is not made out as the defendant resided in Andhra Pradesh, and there was no documentary evidence to show that the respondent was selling goods in Delhi. The said view was affirmed by the Division Bench and the case travelled to the Supreme Court. SB Sinha J. dismissed the appeal and upheld the view taken by the Division Bench and the Single Judge. The Supreme Court held that where jurisdiction for a suit for passing off is not made out before a given court, merely by clubbing prayers for infringement and passing off, and relying on Section 62(2) of the Copyright Act, jurisdiction cannot be established.

[39] (2008) 10 SCC 595.

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35. In ***Dabur India***, the Court held that a composite suit meant a suit founded on an infringement action where incidental powers of the court are required to be invoked. In such a case, the plaintiff seeks a remedy which can, even otherwise, be granted by the Court. A composite suit is not one where two different causes of action have been clubbed together. An action for passing off is distinct from an infringement claim, and Section 62 cannot be relied upon in such a case by clubbing both these causes in a single suit.

36. From the discussion above concerning the manner in which prayers in a suit are to be tested, it may be concluded that a suit for infringement is different from that of passing off. In a given case jurisdiction may be established for infringement but not for passing off. If a composite suit is filed seeking reliefs for both infringement and passing off, it must be established that jurisdiction is made out for each relief. If it is found that a court does not have jurisdiction to proceed with any of the reliefs, the suit cannot proceed.

37. Having noted the aforesaid, the specific provisions that can be invoked to plead jurisdiction may be examined.

B. "CARRIES ON BUSINESS"

38. The expression "*carries on business*" finds mention under Sections 20(a) and (b) of the CPC, and Sections 62(2) and 134(2) of the Copyright Act, 1957 and Trade Marks Act, 1999, respectively. While the CPC provision allows a suit to be instituted where the defendant "*carries on business*", the special provisions allow for a suit to be filed where the plaintiff "*carries on its business*".

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39. In ***Patel Roadways Ltd. v. Prasad Trading Company***,[40] the Supreme Court interpreted the phrase "*carries on business*" in the context of Section 20(a) of the CPC and the effect which the explanation to the said provision has on its construction. While two appeals were disposed of *via* a common order, the underlying facts of the appeals were identical. For the present purposes, reference may be made to one of them. M/s. Patel Roadways (P) Ltd., the defendant, carried on the business of a carrier and transported goods on hire. It had its principal office at Bombay and branch offices at various places, including at Tamil Nadu. A contract was entered into between the defendant and M/s. Prasad Trading Company, the plaintiff, who was a dealer in cardamom. Under the contract, the plaintiff entrusted goods to the defendant at its sub-ordinate office at Tamil Nadu. After the goods were transported by the defendant and kept in a godown at Delhi, they got destroyed and damaged in a fire. Contending that the fire was a result of negligence on the part of the defendant's staff, the plaintiff instituted a suit at Tamil Nadu.

40. Before the trial court, an objection of territorial jurisdiction was raised. It was the defendant's case that since it carried on business at Bombay, the courts at Bombay had jurisdiction to entertain the *lis* under Section 20(a) of the CPC. The jurisdiction of the courts at Madras was, in turn, ousted owing to the operation of an exclusive jurisdiction clause in the contract between the parties. This objection came to be rejected by the Trial Court, and also by the High Court in revision.

[40] (1991) 4 SCC 270.

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41. The Supreme Court found that the explanation to Section 20 is in two parts: the first part states "*a corporation shall be deemed to carry on business at its sole or principal office in India*", and the second part states "*in respect of any cause of action arising at any place where it has also a subordinate office, at such place*". The two parts of the explanation were found, by the Supreme Court, to deal with distinct scenarios; the first dealt with a case where a defendant-corporation has a sole office or a principal office at a particular place. In this case, the corporation shall be deemed to carry on business at that place where it has its sole office or principal office.

42. The second case dealt with by the explanation is where the principal office of a corporation is at one place, and the sub-ordinate office is at another place. In this case, if the cause of action has accrued at the place where the sub-ordinate office is situated, the corporation shall be considered to be carrying on business at that place. The Courts within whose jurisdiction a corporation has its principal office would then not have jurisdiction to entertain the *lis*. Paras. 9 and 12 of the decision in ***Patel Roadways*** read as under:

> "**9.** …The Explanation is in two parts, one before the word "or" occurring between the words "office in India" and the word "in respect of" and the other thereafter. The Explanation applies to a defendant which is a corporation, which term, as seen above, would include even a company such as the appellant in the instant case. The first part of the Explanation applies only to such a corporation which has its sole or principal office at a particular place. In that event the courts within whose jurisdiction the sole or principal office of the defendant is situate will also have jurisdiction inasmuch as even if the defendant may not be actually carrying on business at that place, it will "be deemed to carry on business" at that place because of the fiction created by the Explanation. The latter part of the Explanation takes care of a case where the defendant does not have a sole office but has a principal office at one place and has also a subordinate office at another place. **The words "at such place" occurring at the end of the**

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Explanation and the word "or" referred to above which is disjunctive clearly suggest that if the case falls within the latter part of the Explanation it is not the court within whose jurisdiction the principal office of the defendant is situate but the court within whose jurisdiction it has a subordinate office which alone shall have jurisdiction "in respect of any cause of action arising at any place where it has also a subordinate office".

****

12. We would also like to add that the interpretation sought to be placed by the appellant on the provision in question renders the Explanation totally redundant. If the intention of the legislature was, as is said on their behalf, that a suit against a corporation could be instituted either at the place of its sole or principal office (whether or not the corporation carries on business at that place) or at any other place where the cause of action arises, the provisions of clauses (*a*), (*b*) and (*c*) together with the first part of the Explanation would have completely achieved the purpose. Indeed the effect would have been wider. The suit could have been instituted at the place of the principal office because of the situation of such office (whether or not any actual business was carried on there). Alternatively, a suit could have been instituted at the place where the cause of action arose under clause (*c*) (irrespective of whether the corporation had a subordinate office in such place or not). This was, therefore, not the purpose of the Explanation. The Explanation is really an Explanation to clause (*a*). It is in the nature of a clarification on the scope of clause (*a*) viz. as to where the corporation can be said to carry on business. This, it is clarified, will be the place where the principal office is situated (whether or not any business actually is carried on there) or the place where a business is carried on giving rise to a cause of action (even though the principal office of the corporation is not located there) *so long as there is a subordinate office of the corporation situated at such place*. The linking together of the place where the cause of action arises with the place where a subordinate office is located clearly shows that the intention of the legislature was that, in the case of a corporation, for the purposes of clause (*a*), the location of the subordinate office, within the local limits of which a cause of action arises, is to be the relevant place for the filing of a suit and not the principal place of business. If the intention was that the location of the sole or principal office as well as the location of the subordinate office (within the limits of which a cause of action arises) are to be deemed to be places where the corporation is deemed to be carrying on business, the disjunctive "or" will not be there. Instead, the second part of the Explanation would have read "*and*, in respect of any cause of action arising at any place where it has a subordinate office, *also* at such place".

(Emphasis supplied)

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43. It may also be clarified that in ***Patel Roadways*** jurisdiction was sought to be established exclusively through Section 20(a) of the CPC. The case of the defendant in the said case was that despite cause of action (wholly or in part) not accruing at its principal office, which was at Bombay, jurisdiction of that forum Court was made out by an application of Section 20(a) of the CPC. It is this contention that the Supreme Court rejected.

44. The following conclusions can be drawn from the decision of the Court in ***Patel Roadways***: *first*, if a corporation has a sole office, it can be sued at that place under Section 20(a) of the CPC as it shall be deemed to carry on business at that place; *second*, if a corporation has more than one offices, meaning there is a principal office and other sub-ordinate office(s), and they are located at different places, then:

a. If no cause of action (wholly or in part) has arisen where the defendant-corporation has its subordinate office, then the corporation can be sued at the place where it has its principal office.
b. If cause of action (wholly or in part) has arisen where the defendant-corporation has its subordinate office, and no cause of action has arisen at the company's principal office, then a defendant-corporation can only be sued at the place of its sub-ordinate office and not at the place where it has its principal office.

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45. In ***Dhodha House v. SK Maingi***,[41] the Supreme Court decided two civil appeals by a common order. The first, being 6248/1997, arose from a decision of the Allahabad High Court, and is dealt with at para. 33 of this judgment. The discussion under this head need not be gone into for the present purposes. The second civil appeal 16/1999 arose, originally, from a suit filed before this Court for trademark and copyright infringement, along with an action for passing off. The defendant and the plaintiff were found to be carrying on business in diesel engines at Rajkot, Gujarat. Jurisdiction was sought to be invoked, *inter alia*, by relying on Section 62 of the Copyright Act, and claiming that the plaintiff "*carries on business*" at Delhi.[42] An interim injunction application of the plaintiff was rejected on the ground that jurisdiction was not made out. Upon an intra-court appeal being preferred before the Division Bench, the same was allowed.

46. The order of the Division Bench,[43] at para. 3 notes that the jurisdiction of Delhi was invoked on three counts. *Firstly*, in view of Section 62(2) of the Copyright Act. *Secondly*, on grounds that the defendants had sought registration of the trade mark for sale at Delhi as well. *Thirdly*, by invoking Section 20(c) of the CPC claiming that goods bearing the impugned mark were being sold at Delhi. The Division Bench did not delve into the third ground and found jurisdiction to be made out based on the first two. In order to conclude that the plaintiff was "*carrying on business*" at Delhi, the Division Bench relied upon the pleading made in the plaint that the

[41] (2006) 9 SCC 41.
[42] (2006) 9 SCC 41, para. 13.
[43] 1998 SCC OnLine Del 181.

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plaintiff's goods are sold in Delhi. Mere sale of goods was equated with a corporation carrying on business at that place.

47. The decision of the Division Bench was assailed before the Supreme Court, which held that merely because a corporation's goods are available in the market at Delhi or are actually being sold at Delhi, would not mean that the corporation is carrying on business at that place.[44] This view expressed by the Supreme Court at paras. 47 and 51 of the decision is in contradistinction to what was held by the Division Bench of this Court. It must be stressed that this observation of the Supreme Court in ***Dhodha House*** forms an essential part of the *ratio decidendi* of the said decision.

48. At para. 46, while relying on the authoritative commentary of Mulla on CPC, SB Sinha J., expounded on the meaning of the phrase "*carries on business*" and observed 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 thereover. 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,

[44] (2006) 9 SCC 41, paras. 47 and 51.

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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 C.D. & 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 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 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 Mulla on the Code of Civil Procedure, 15th Edn., Vol. I, pp. 246-47.]”

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49. From the aforenoted, it is clear, therefore, that as per ***Dhodha House***, "*carrying on business*" at a place means:

a. Having an interest in a business at that place, a voice in what is done, a share in the gain or loss and control thereover.
b. If it is contended that a corporation is carrying on business through an agent, at the bare minimum, that agent must be a special agent who attends exclusively to the business of the principal and carries on the business in the name of the principal.
c. The activities must also be an essential part of the business.
d. Most importantly, mere availability or sale of goods at a given place does not amount to "*carrying on of business*". This ruling is the most essential part of the *ratio decidendi* in ***Dhodha House***.

50. The principles expounded in ***Dhodha House*** were aptly applied by this Court in ***Sholay Media Entertainment and Anr. v. Yogesh Patel and Ors***.[45] In this case, a suit was filed for trademark infringement along with passing off. It was alleged that the defendant owned www.sholay.com, which violated the plaintiff's mark. To establish jurisdiction, it was averred that the defendant advertised SHOLAY, in a magazine called "*IT-Information Technology*", which was circulated and sold in Delhi. The magazine issue was also stated to be accompanied by a free CD, that directly connected the user to the defendant's website. Relying on ***Dhodha House***, S. Ravindra Bhat J. (as his Lordship then was), found that goods being

[45] 2010 SCC OnLine Del 4738, per S. Ravindra Bhat J.

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available, or even sold, in Delhi would not be sufficient to conclude that a corporation "*carries on business*" at a given place; the "*essential part of the business*" ought to take place there. The decision in ***Sholay Media Entertainment***, thus, represents a perfect and apt application of the ***Dhodha House*** principles.

51. A departure from the position of law enunciated in ***Dhodha House*** appears to have been made in ***World Wrestling Entertainment, Inc. v. Reshma Collection & Ors***.[46] The suit was filed for trademark and copyright infringement, along with an action of passing off. The plaintiff-company was incorporated in the State of Delaware, United States and all the defendants resided in Mumbai. It was an admitted position that the defendants did not carry on business within the territory of Delhi. Jurisdiction was sought to be established by the plaintiff by relying upon Sections 134(2) and 62(2) of the Trade Marks Act and Copyright Act. Upon there arising a doubt as to the territorial jurisdiction of the Court, arguments took place on this issue. In exercise of powers under Order VII Rule 10 of the CPC, *vide* a detailed order[47] dated 04.10.2013, the learned Single Judge returned the plaint for want of territorial jurisdiction.

52. Para. 8 of the order of the learned Single Judge in ***WWE*** notes the grounds on the basis of which jurisdiction of this Court was sought to be invoked. It reads as under:

> "**8.** In Paragraph 32 of the plaint, the plaintiff claims jurisdiction of this court under Section 134(2) of the Trademarks Act, 1999 and Section 62(2)

[46] 2014 SCC OnLine Del 2031 (DB).
[47] 2013:DHC:5122.

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of the Copyright Act, 1957 by claiming that the plaintiff carries on business within the territorial jurisdiction of this Court in the following manner –

i. The plaintiff's programmes consisting of its various characters are broadcast at Delhi

ii. The plaintiff's products such as its merchandising goods and books are available in Delhi

iii. The plaintiff's goods and services are sold to consumers in Delhi through its websites which can be accessed in Delhi"

53. From paras. 21 to 23, the Court painstakingly analysed the issue at hand and concluded that the plaintiff, under the specialised provisions, is not "*carrying on business*" within the territory of Delhi. It was observed that if mere accessibility of a website was sufficient to constitute carrying on of business, the plaintiff, could file a suit wherever its website was accessible. Upon testing the purported presence of the plaintiff in India on the touchstone of the principles laid down in ***Dhodha House***, Vipin Sanghi J. (as his Lordship then was) found that the plaintiff was not "*carrying on business*" at Delhi. Jurisdiction under Sections 134(2) of the Trade Marks Act and 62(2) of the Copyright Act was, thus, not made out. Paras. 21 to 23 of the decision deserve to be reproduced and read as under:

"**21.** I may deal with the plaintiff's submission regarding territorial jurisdiction on account of its website being accessible in Delhi first, as bulk of the submissions have been advanced on this issue. Section 134(2) of the Act uses the expression "carries on business". The objective of inserting Section 134(2) was to provide the plaintiff a convenient forum to file a suit for infringement, as long as the plaintiff voluntarily resides, carries on business or personally works for gain at such place. The said provision goes beyond the normal rules laid down in the C.P.C. for vesting jurisdiction in Courts. The test to be satisfied as regards the aspect of carrying on business has been laid down in Dhodha House (supra). The sum and substance of the criteria laid down in Dhodha House (supra) is that an essential part of the plaintiff's business, coupled with an element of control exercised by the plaintiff, must exist in such place where the plaintiff claims to be carrying on business either on its own or through an exclusive agent.

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22. The aforementioned criteria will be equally applicable to a party that concludes transactions with its customers over the medium of internet as opposed to a physical retail space. Internet is another medium which provides audio-visual interactive facility for doing business. Merely because it is a more advanced or superior medium, it does not impinge on the determination of the issue whether the merchandiser is carrying on business at a particular place. Prior to the advent of e-commerce over the internet, and even now, business was and continues to be done over telephone and fax. Merely because a person has embarked upon an ecommerce business model, the tests which apply for determination of issues, such as – when and where the contract is made, or whether the vendor carries on business at the place where the merchandise may be sold, or service may be offered, would not change and would be the same as apply to communications over telephone and fax (see Bhagwan Goverdhandas Kedia Vs. Girdharilal Parshottamdas & Co. AIR 1966 SC 543). In such cases, the plaintiff would have to show that it actually has business interest at the relevant place; a voice in what is done; a share in the gain or loss and some control thereover. For example, the plaintiff could show that it has an exclusive C&F operator in the forum State, or an exclusive dealer that stocks the goods or services of the plaintiff in the forum State – to be delivered or shipped as per a consumer's convenience. The plaintiff could show that it has a registered/branch office to address a consumer's dissatisfaction over the plaintiff's merchandise or services. The plaintiff can show that it has an exclusive tie up with an agent to manufacture the plaintiff's goods for a particular geography. In the present case, no essential part of the plaintiffs business is carried on at Delhi. In fact, the plaintiff has not pleaded to having any branch office or exclusive agent anywhere in India, let alone Delhi. Merely because the website of the plaintiff is accessible in Delhi is not sufficient to clothe this court with jurisdiction.

23. If the plaintiff's submission were to be accepted, it would mean that the plaintiff could file a suit at any place which provides internet access to the plaintiffs website, irrespective of the defendant's location, only on account of the plaintiff's website being accessible in that State. The insertion of Section 134(2) was with a view to enable the plaintiff to institute a suit where it has actual and substantial business interest so that an additional forum convenient to the plaintiff is available. If the intent of the legislature had been to vest jurisdiction solely on account of accessibility of plaintiff's website at the place of suing, then the same would have been expressly provided for, especially keeping in mind plaintiff's submissions that the legislature has recognized new media on account of various amendments."

54. The learned Single Judge in ***WWE*** had also dealt with the plaintiff's grounds invoking jurisdiction under Section 20(c), which did not, ultimately,

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become an issue before the Division Bench. However, the reasoning of the learned Single Judge on this issue is exceptionally lucid and deserves to be reproduced:

> "**28.** …The broadcast of the plaintiff's programs in Delhi is also not sufficient to confer jurisdiction. Just as mere advertisement in a journal or paper is not sufficient to confer jurisdiction (See ONGC Vs. Utpal Kumar Basu, 1994 (4) SCC 711). Similarly, broadcast of the plaintiff's programmes is insufficient to vest jurisdiction in this Court.
>
> **29.** The plaintiffs submission founded upon "New Media" has no merit. Wherever the legislature thought it necessary, it amended the laws to make provision for the "New Media". The Parliament has not amended the Act, the Copyright Act, or the C.P.C even while amending other legislations, and enacting the I.T. Act, in the manner as contended by Mr. Anand. The "new media", as aforesaid, does not change the basic concepts or legal principles which apply to trade and commerce. They continue to remain the same as applicable to the "old media" i.e. telephone and FAX. Even otherwise, I am of the view that the proposition advanced by Mr. Anand has no merit as, its acceptance would lead to undue hardship to those resorting to e-commerce and open them to multifarious litigations in every nook and corner of the world where their goods or services may be sold over the internet, even though they do not meet the requirements laid down in Banyan Tree (supra). The same would stifle the growth of e-commerce."

55. This order of the learned Single Judge was assailed before the Division Bench which allowed the appeal.

56. The Division Bench in ***WWE*** found that jurisdiction under the special provisions can be invoked as the plaintiff was "*to a certain extent, carrying on business*" at Delhi. The facts that constituted carrying on of business were *firstly*, customers in Delhi making offers to purchase merchandise and goods. *Secondly*, these goods being confirmed/accepted by the plaintiff through its website. *Thirdly*, money being paid from Delhi. The Court opined that the availability of transactions through the website at a particular place is virtually the same as a seller having shops in that place in the

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physical world. As per the Division Bench, if there was a shop of the plaintiff in Delhi from where it sold its various goods and services, "*it could not be denied that the plaintiff carried on business in Delhi.*" Para. 24 of the said decision captures the reasoning and is extracted as under:

> "**24.** But, we are not concerned with the question of cause of action between the appellant/plaintiff and its customers in Delhi because the defendants are not such customers and they are, in any event, all residents of Mumbai. What we are examining is whether the third condition specified in Dhodha House (supra) is satisfied or not. In other words, if the contracts and/or transactions entered into between the appellant/plaintiff on the one hand and its customers are being concluded in Delhi, can it not be said that the essential part of the business of the appellant/plaintiff, insofar as its transactions with customers in Delhi are concerned, takes place in Delhi? The offers are made by customers at Delhi. The offers are subject to confirmation/acceptance of the appellant/plaintiff through its website. The money would emanate or be paid from Delhi. Can it not then be considered that the appellant/plaintiff is, to a certain extent, carrying on business at Delhi? In our view, it would be so. Because of the advancements in technology and the rapid growth of new models of conducting business over the internet, it is possible for an entity to have a virtual presence in a place which is located at a distance from the place where it has a physical presence. The availability of transactions through the website at a particular place is virtually the same thing as a seller having shops in that place in the physical world. Let us assume for the sake of argument that the appellant/plaintiff had a shop in Delhi from where it sold its various goods and services. In that case, it could not be denied that the plaintiff carried on business in Delhi. This is apart from the fact that the appellant/plaintiff may also have been regarded as having voluntarily resided in Delhi. When the shop in the "physical sense" is replaced by the "virtual" shop because of the advancement of technology, in our view, it cannot be said that the appellant/plaintiff would not carry on business in Delhi."

57. Quite a few issues arise concerning the reasoning adopted by the Division Bench in ***WWE***. They shall be cumulatively considered after taking note of the decisions in ***Sanjay Dalia*** and ***Ultra Home***.

58. The decision of the Supreme Court in ***Sanjay Dalia***, originally arose by the filing of CS (OS) 527/2007 before this Court. The plaintiff in the said

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case was a non-profit-making company having its registered office at Mumbai. The plaintiff claimed that it was established for the purposes of monitoring, protecting, and enforcing the rights, interests, and privileges of its members (comprising authors, composers, and publishers of literary and/or musical works), as well as on behalf of the members of other sister concerns who are owners of copyrights in their literary and musical works. Defendant no. 1 was the Chief General Manager of defendant no. 2-Cineline Cinemas. Defendant no. 2 was claimed to have 33 screens up and running in various locations and 97 screens in the making.

59. It was alleged in the plaint that the defendants had been indulging in continuous violation of the rights of the plaintiff by communicating to the public literary and musical works from the plaintiff's repertoire without having obtained a license from the plaintiff. An objection of territorial jurisdiction was raised on the ground that the entire cause of action had arisen in Mumbai. Both the plaintiff and the defendant no. 2 were also stated to have their principal offices in Mumbai. The assignment deeds, which formed the fulcrum of the plaintiff's case, were also executed in Mumbai by artists residing in Mumbai. The plaintiff, however, relying on Section 62(2), claimed that it was "*carrying on business*" in Delhi through its branch office, and thus was entitled to maintain its suit at Delhi.

60. A novel argument was put forth by the learned senior counsel[48] appearing for the defendants therein. He submitted that the explanation to Section 20(a) of the CPC ought to be read into Section 62(2) of the Copyright Act and Section 134(2) of the Trade Marks Act. *Per contra,* the

[48] Mr. Rajiv Nayyar.

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learned senior counsel appearing for the plaintiff submitted, while relying upon the Joint Committee deliberations with respect to the Copyright Bill, 1955, and the decision of the Supreme Court in the case of ***Exphar SA***,[49] that the explanation to Section 20(a) of the CPC cannot be incorporated into Section 62(2) of the Copyright Act.

61. Badar Durrez Ahmed J., sitting as a Single Judge of our Court in ***Sanjay Dalia*** *vide* order[50] dated 31.08.2007 accepted the contentions of the defendants and read into Section 62(2) of the Copyright Act, the explanation appended to Section 20(a) of the CPC. In categorical terms, the Court found that "*merely having a branch office at Delhi would not mean that the plaintiff carries on business in Delhi. The plaintiff would be deemed to carry on business at a branch office only if cause of action had arisen in Delhi*".

62. The plaintiff preferred an intra-court appeal which was dismissed *vide* order[51] dated 19.11.2008. Notable observations were made by the Division Bench concerning the jurisdictional avenues available to a plaintiff and when, generally, they can be invoked and curtailed. These observations are discussed in the later part of this judgment. Specifically, on the appeal which was before the Division Bench, at the outset, Mr. A.S. Chandhiok, learned senior counsel with his usual fairness to the Court, had accepted that no part of the cause of action had arisen at Delhi. His contention, however, was that Section 62(2) of the Copyright Act does not require the accrual of cause of action at the branch office, in order to constitute "*carrying on business*". The Division Bench noted that while the explanation is absent in the text of

[49] (2004) 3 SCC 688.
[50] 2007:DHC:1031.
[51] 2008:DHC:3060-DB.

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Section 62(2), the CPC was the "*grundnorm, the ethos and essence of which percolates through all other statutes.*" While affirming the view of the learned Single Judge, the appeal came to be dismissed by the Division Bench. This order came to be assailed before the Supreme Court in ***Sanjay Dalia***.[52]

63. The Supreme Court interpreted the additional option available to a plaintiff under Sections 62 and 134(2) of the Copyright Act and Trade Marks Act respectively. The Court held that the option is subject to the caveat that if the plaintiff resides, carries on business or personally works for gain at a place where the cause of action has also arisen, the suit should be filed at that place and not at some other places where the plaintiff may have a branch office, etc. The Supreme Court, thus, incorporated the explanation appended to Section 20 of the CPC into Section 62 of the Copyright Act and Section 134(2) of the Trade Marks Act. The decision of the Division Bench and the learned Single Judge were, resultantly, affirmed.

64. In ***Ultra Home Construction Pvt. Ltd. v. Purushottam Kumar Chaubey & Ors.***,[53] a Division Bench of this Court headed by Badar Durrez Ahmed J. after relying upon ***Sanjay Dalia*** and ***Patel Roadways*** iterated two significant propositions:

First, that for the purposes of Section 20 of the CPC, when the principal office and subordinate office of a company are situated at different places, the company would be deemed to carry on business either at the principal office, or at its subordinate office if cause of action has accrued at that place,

[52] (2015) 10 SCC 161.
[53] 2016 SCC OnLine Del 376.

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but not at both places.[54] *Second*, the application of ***Sanjay Dalia*** leads to four distinct factual scenarios, and the additional option under Sections 134(2) and 62(2) of the Trade Marks Act and the Copyright Act, respectively, can be exercised only in the following manner:

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

65. Before delving, further, a brief analysis may be made, concerning the judgment of ***WWE***, the issues with its reasoning, and the authoritative force it carries post the decision of the Supreme Court in ***Sanjay Dalia*** and in ***Ultra Home***.

66. *Firstly*, at the outset it may be noted that the Division Bench's conclusion in ***WWE*** that "*it could not be denied that the plaintiff carried on business in Delhi*" if it had a shop from where it sold its goods and services, goes against the express words of ***Dhodha House***. At para. 51 the Supreme Court in ***Dhodha House*** had observed "*...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 is clear that the sale of goods, in and of itself, either through a physical store or a "*virtual store*", would not be sufficient to

[54] 2016 SCC OnLine Del 376, para. 12.

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hold that a corporation "*carries on business*" at that place. Depending upon the nature of the business engaged in and the kind of activity being undertaken at a given place, it needs to be determined, whether, among other things, "*the essential part of the business*" is conducted at that place.

67. *Secondly*, while placing reliance on para. 46(3) of ***Dhodha House***, the Division Bench had found that the case of the plaintiff was akin to the example given by SB Sinha J. of a Bombay firm having a branch office at Amritsar, where orders were received, subject to confirmation by the head office at Bombay and where money was paid and disbursed. Since in ***Dhodha House***, the branch office at Amritsar, in the example, was considered as a place where business was carried on, the Division Bench, by the use of analogy, found that the plaintiff-corporation in ***WWE*** was "*carrying on business*" in Delhi. The example taken note of, however, does not appear to be applicable to the plaintiff's facts; particularly, when examined in light of the other examples given in ***Dhodha House***. These examples noted by SB Sinha J. at para. 46(3) of the said decision are:

a. 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;
b. 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;

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c. 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;

d. 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; and

e. When a company though 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.

68. A mapping of the above examples to the facts of ***WWE*** would reveal that a website that has its server outside India, and allows customers in Delhi to buy products is closer to examples (b) and (c) than example (d), which the Division Bench took into consideration. It is again important to clarify that mere conclusion of commercial transactions, in and of itself, is not sufficient to satisfy the requirement of "*carrying on business*". This formed part of the *ratio decidendi* of ***Dhodha House***, and was expressly mentioned at paras. 47 and 51 of the decision.

69. The view that mere conclusion of transactions in ***WWE***'s facts could not constitute "*carrying on business*" is also strengthened by the nature of business engaged in by the plaintiff therein. Incorporated in the State of

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Delaware, USA, the plaintiff-company was engaged in the development, production and marketing of television programming, live events and the licensing and sale of branded consumer products featuring its brand. The plaintiff was stated to have offered a variety of memorabilia including, but not limited to, apparel, posters, calendars, fact books, sunglasses, water bottles, key-rings, DVDs, etc. It was stated to have more than 200 licenses distributing its products in 86 countries, including India. It had been averred by the plaintiff that it licensed out its well-known trademarks and the images/characters to different parties for use on merchandise in a wide range of products.

70. This being the expanse, nature and breadth of the plaintiff's business, a simple purchase of a product/service *via* the internet could not have constituted "*carrying on business*" at Delhi. A perusal of the judgment would also reveal that while the activity of entering into transactions has been described in detail by the Division Bench the issue of whether this activity is an "*essential part*" of the plaintiff's business has not been analysed. Indeed, owing to this, the conclusion of the Division Bench was that the plaintiff "*to a certain extent*" carries on business in Delhi. Section 134(2) of the Trade Marks Act and Section 62(2) of the Copyright Act, however, do not allow a plaintiff to sue at a place where it carries on business "*to a certain extent*".

71. *Thirdly*, the conclusion arrived at by the Division Bench would allow a corporation not having any presence in India to sue a defendant at all places where it engages in online website sales with customers at a given place. A foreign corporation can, relying on the additional avenues under

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Sections 62(2) and 134(2) of the Copyright and Trade Marks Act, respectively, sue a defendant belonging to Ladakh at the courts in Kanyakumari, if the plaintiff has made such sales at Kanyakumari. Such an interpretation would allow the *additional* option, granted to a plaintiff under the specialised statutes, to be used as a means to harass a defendant and indulge in forum shopping.

72. While analysing the decisions rendered on this issue and the applicable statutory regime, this Court is conscious of the settled principle that what binds the Court is not every line and observation made in the judgment but the *ratio decidendi* of the decision. It is the legal principle on the basis of which a conclusion is arrived at and an order is given, that is to be followed by Courts.

73. The defendants were residents of Mumbai and the plaintiff was a multinational company having ample resources and wealth. The additional options under the Trade Mark and Copyright Act were intended to, as noted in the Joint Committee report[55], provide relief to authors, who were deterred from instituting infringement proceedings because the Court was at a considerable distance from their place of ordinary residence.

74. The consequence of there not being a place where the plaintiff is "*carrying on business*" for the purposes of the special legislations would simply mean that the plaintiff has to file a suit under Section 20. A plaintiff-corporation like the one in ***WWE*** would face no difficulty, at all, by

[55] Published in the Gazette of India dated 23.11.1956.

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instituting the suit at the place where the defendant resides, carries on business, or personally works for gain.

75. Considering the discussion above, the decision in ***WWE*** would not govern the field on this issue, and would have to be restricted to its own peculiar and unique facts. Such facts may possibly exist in a case dealt with at paras. 77-78 below.

76. What remains of Badar Durrez Ahmed J.'s opinion in ***WWE*** after his own subsequent opinion in ***Ultra Home*** and the decision of the Supreme Court in ***Sanjay Dalia***, which in turn affirmed his Lordship's[56] decision rendered by him as a Single Judge, may now be examined. Two situations may be considered:

77. *Firstly*, where the plaintiff is entering into commercial transactions, through the means of internet, with customers only within the jurisdiction of one court. And *secondly*, where the plaintiff is entering into commercial transactions, through the means of internet, with customers within the jurisdiction of multiple courts.

78. In the first case, if the principles in ***WWE*** are applied, a deemed physical office would be created at the sole place where commercial transactions are getting concluded. Since that would be the sole office, applying the dictum in ***Sanjay Dalia*** and ***Ultra Home***, the plaintiff-company shall be deemed to carry on business at that given place, and jurisdiction under the special provisions may be made out. This, however, shall be rare as it would be rather abnormal for an international corporation not having

[56] Badar Durrez Ahmed J.

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any presence in India to have transactions only within the jurisdiction of one court.

79. In order to bring oneself within this first category, a plaintiff may deliberately omit to plead that transactions are also getting concluded within the jurisdiction of other courts. In such a case, a given court may put suitable questions to the plaintiff, *inter alia*, under Section 168 of the Bharatiya Sakshya Adhiniyam, 2023[57]. If it is found that the plaintiff had cleverly attempted to conceal from the court, facts which had a bearing on jurisdiction, he need not, it is trite law, be heard on merits at all. He who comes to the court seeking an equitable relief must come with clean hands disclosing all that is material.

80. However, if, after being honest and fair to the Court, a company is found to be concluding contracts only within the jurisdiction of one Court, jurisdiction may be made out under the specialised statutes, under the ***WWE*** reasoning. This may also, arguably, amount to specifically targeting a given forum state as per the standard in ***Banyan Tree***,[58] and resort to the *additional* forum may, perhaps, not even be required.

81. In the second category, which would be most cases, transactions would get concluded within the jurisdiction of multiple forum courts. As per the ruling in ***WWE*** itself, there would be multiple deemed physical stores, all at the same footing, spread across multiple jurisdictions. Amongst these stores, there would be no "*principal office*". Resultantly, these sub-offices

[57] "BSA".
[58] 2009 SCC OnLine Del 3780.

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would be deemed to be "*carrying on business*" only when cause of action (as per the standard in ***Banyan Tree***) accrues at that place.

82. Post the decisions in ***Sanjay Dalia*** and ***Ultra Home***, the mere presence of a store at a given place without the accrual of cause of action, cannot be considered to be "*carrying on business*". As was noted by Badar Durrez Ahmed J. himself as a Single Judge in ***Sanjay Dalia***,[59] "*merely having a branch office at Delhi would not mean that the plaintiff carries on business in Delhi. The plaintiff would be deemed to carry on business at a branch office only if cause of action had arisen in Delhi*".

83. If it can be established that cause of action as per the ***Banyan Tree*** standard had accrued at the place where the deemed physical stores exist, a basis to sue, under Section 20(c) of the CPC, would already exist. A resort to the specialised provisions again may not be required. Thus, for an overwhelming number of cases, the decision in ***WWE***, post ***Sanjay Dalia*** and ***Ultra Home***, can no longer be made applicable.

84. It may be argued that under certain circumstances the additional option to sue under Section 134(2) of the Trade Marks Act and Section 62(2) of the Copyright Act would not, meaningfully, exist for a foreign company. When could, arguably, such a case arise? Where an international conglomerate, that has no physical presence in India, wishes to protect its IP rights, which are purportedly infringed by website sales in India, within the jurisdiction of multiple courts in India. Inconvenience to such a plaintiff by

[59] Which ultimately came to be affirmed both by the Division Bench and the Supreme Court.

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an insistence to sue under the conventional Section 20 grounds, does not seem to be a real possibility.

85. Therefore, no real prejudice would be caused if the option, which was intended to provide small artists in India the opportunity to sue for their intellectual property, is not made available to an international giant. An interpretation to the contrary would allow a company to harass a defendant by filing suits, at any one of the multiple places where its online sales are taking place. The *additional* option intended to redress the difficulties of artists cannot be interpreted in a way that allows the plaintiff to erode the foundations of conventional jurisdictional rules. In this connection, the following dictum of CK Thakker J. in ***Laxman Prasad***[60] may be taken note of:

> "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."[61]

86. An unmodified and wholesale application of the rule in ***WWE*** would place the defendant be at the mercy of the plaintiff. This would, as was pithily observed by the Coordinate Bench "*through the very concept of territorial jurisdiction of courts to the winds.*"[62]

87. Thus, owing to ***WWE*** being in the teeth of the *ratio* of ***Dhodha House***, and after the decisions in ***Sanjay Dalia*** and ***Ultra Home***, no longer being workable, the decision of the Division Bench no longer governs the issue.

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[60] (2008) 1 SCC 618.
[61] (2008) 1 SCC 618, para. 35.
[62] CS (Comm) 904/2026, judgment dated 25.08.2026, para. 52.

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88. The decision of the Division Bench in ***Blueberry Books & Ors. v. Google India Pvt. Ltd.***,[63] does not disturb the conclusion reached above. In the said case, the Division Bench sat in appeal over an order of the learned Single Judge, accepting the interim applications made by some of the defendants, whereby they were directed to be deleted from the array of parties in the plaintiff's copyright infringement suit.

89. The suit filed by the plaintiff in ***Blueberry Books*** claimed that the defendants were infringing the copyrighted work of the plaintiff through internet applications across several platforms and website applications. At the outset, it was noted that the plaintiff was a Delhi based firm. On this short ground, it was found that jurisdiction under Section 62(2) of the Copyright Act was made out.[64] In relation to an argument made that jurisdiction of this Court was ousted as infringing activity took place outside borders of India and in USA alone, it was observed that once jurisdiction under Section 62(2) of the Copyright Act was made out, it was not to be additionally proven, that the infringing activity also took place within Delhi. The observations made by the Division Bench at para. 19 were made in passing, and as noted in the paragraph itself, were *in arguendo*. They do not constitute binding precedent.

90. In ***Allied Blenders & Distillers Pvt. Ltd. v. Agribiotech Industries Ltd.***,[65] a suit was instituted for trademark and copyright infringement along with a claim for passing off, for its mark and artwork "OFFICERS CHOICE" and "OFFICERS CHOICE BLUE", registered in favour of the

[63] 2016:DHC:4326-DB.
[64] 2016:DHC:4326-DB, para. 14.
[65] 2020 SCC OnLine Del 2861.

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plaintiff. Jurisdiction of Delhi, under Section 20(a) of the CPC was invoked. It was submitted that the defendant "*carries on business*" at Delhi through its office bearing the address of Beetal House, New Delhi.[66] This address, it was argued by counsel therein, was also indicated to be an address of the defendant on its own website. While hearing the plaintiff's application under Order XXXIX Rule 1 and 2, for ad-interim reliefs, a jurisdictional objection was raised by the defendant.

91. The Court found that at the *ad-interim* stage, the website of the defendant, containing the Beetal House Address under the "*Contact Us*" page, was sufficient to *prima facie* conclude that the defendant carried on business at Delhi. The analysis provided for in ***Dhodha House*** for determining whether a corporation "*carries on business*" was found to require completion of pleadings and evidence, and thus, was not delved into. For ease of analysis, the "*Contact Us*" page of the defendant therein is extracted as under:

> "**REGISTERED OFFICE**:
> ADDRESS:
> SP-825, Road No. 14,
> Vishwakarma Industrial Area,
> Jaipur 302013 (Rajasthan)
> Tel. No. 01412331771-2,
> Fax. 0141 2330810
> E-mail : info@bajoriagroup.in
>
> **REGISTRARS**:
> ADDRESS:
> Beetal House, 3rd Floor,
> 99 Madangir, Behind Local Shopping Centre,
> Near Dada Harsukhdas Mandir,
> New Delhi-110062

[66] "Beetal House Address".

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Phone-91-11-2996 1281-83
Fax-91-11-2996 1284
E-mail : beetal@beetalfinancial.com

COMPLIANCE OFFICER:
ADDRESS: Ms Anisha Jain,
SP-825, Road No. 14,
Vishwakarma Industrial Area,
Jaipur-302013, (Rajasthan) Tel. No. : 0141-2331771/2
Fax. No. : 0141-2330810
E-mail : bajoriagroup@dataone.in"

(Emphasis supplied)

92. While it is true that what was before the court was simply the plaint and along with it a document showing the "*Contact Us*" page of the defendant, on the basis of that material as well, the ***Dhodha House*** test, if applied, would have led to a different conclusion. The "*Contact Us*" page showed two addresses of the defendant. The first was the address to the defendant's registered office and the second was the address to an office which bore the heading "REGISTRARS". It would, *ex facie*, indicate that the Beetal House Address was that of the registrars and not the corporation. Even otherwise, even if the address of the registrars was to be considered as that of the corporation, what was ultimately before the court were two offices.

93. In such a situation, naturally, under the explanation to Section 20 of the CPC, the defendant-company shall not be considered as being one with a sole office. It became essential, therefore, to determine where its principal place of business was and where was its sub-ordinate office. It was not brought to the notice of the Coordinate Bench that in ***Sanjay Dalia***, itself, the Supreme Court noted that ordinarily, the residence of a company would

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be where its registered office is.[67] The controlling power, also, as a fact, *generally*, was found to be exercised at the registered office, and that office, is, therefore, the principal place of business.[68]

94. The defendant in ***Allied Blenders*** as per the plaint, was not selling its goods in Delhi. The compliance officer, as the webpage of the defendant narrated, was also situated at the registered office i.e., at Jaipur, Rajasthan. In such a situation, even by a *prima facie* consideration of the material, it would appear that the principal place of business was at the registered Jaipur office. The Beetal House Address at Delhi would then be a sub-ordinate office. For the purposes of Section 20(a), such a place would carry on business, only when cause of action also accrued at that place. It would be difficult, therefore, to hold, even while considering the plaint alone, that the defendant was "*carrying on business*" at the Beetal House Address.

95. Lastly, it may also be highlighted that the decision of ***Allied Blenders & Distillers Pvt. Ltd.***, was rendered while adjudicating an *ad-interim* interlocutory prayer of the plaintiff. The Court did not render any final decision on the rights and obligations of the parties. It was merely an ad-interim order subject to the outcome, not merely of the suit, but also of the interim injunction application. The precedential value of such a judgment is, therefore, doubtful. In any case, the decision of ***Allied Blenders & Distillers Pvt. Ltd.***, is not a binding precedent and turns on its own unique facts.

96. In ***Cable News Networks INC v. CTVN Calcutta Television Network Pvt. Ltd.***,[69] a company incorporated in Delaware, US, with its headquarters

[67] *Morgan Stanley Mutual Fund v. Kartick Das*, (1994) 4 SCC 225.
[68] (2015) 10 SCC 161, para. 16.

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in Atlanta, Georgia, filed a suit before this Court, primarily, for trademark infringement along with a claim for passing off. There was no subordinate office that the plaintiff had within the jurisdiction of Delhi. The defendant had its registered office at Kolkata. The plaintiff's case was that the defendant conducted its business under the name Uttar Bangla and commenced using the name Calcutta News, with the acronym CN only in 2014. The design of the defendant's logo with C and N, joined at the bottom, was contended to approach the plaintiff's logo so close as to create confusion.

97. The Court observed that the defendant carried on business within the territorial limits of Delhi. Para. 114 of the said decision contains the reasoning and reads as under:

> "**114.** Viewed thus, it is clear that the averments in the present plaint, as enumerated in para 42.2.15 supra, sufficiently assert that the defendant carries on business within the jurisdiction of this Court. The defendant is engaged in the business of dissemination of news, over its news channel. There is a specific assertion, in para 49(a) of the plaint, that the defendant carries on business within the territory of this Court through its website, social media pages and YouTube channels. How it does so, cannot be examined under Order VII Rule 10 of the CPC. Further, para 49 goes on to assert, in so many words, that the defendants are offering news services under the impugned logos within the territory of this Court. The business of the defendant being offering of news services, this assertion is a complete answer to the submission, of the defendant, that the suit is bad for want of territorial jurisdiction and has, therefore, to be returned under Order VII Rule 10."

98. The registered office of the defendant in the said case was at Kolkata. As per ***Sanjay Dalia***, specifically para. 16, the defendant-company would be deemed to have its principal office at Kolkata. Given that mere sale of goods

[69] 2023 SCC OnLine Del 2436.

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cannot constitute carrying on of business, similarly, mere display of news could also not have attracted Section 20(a) of the CPC. The essentiality analysis required under ***Dhodha House*** was not sufficiently pressed before the learned Single Judge. Similar observations are to be made concerning the conclusion at para. 118 of the said judgment that the plaintiff carried on business at Delhi because its pan-India news channel was viewed in Delhi.

99. In ***Kohinoor Seed Fields India Pvt. Ltd. v. Veda Seed Sciences Pvt. Ltd.***,[70] the plaintiff had filed a suit for infringement of its registered trademark along with a claim for passing off. The case against the defendant was that while a Marketing Agreement was entered into between the parties, under which the defendant was permitted to use the plaintiff's mark, the use undertaken by the defendant was in violation and outside the scope of the said agreement. The jurisdiction paragraph in the plaint is reproduced at para. 3.2 of the judgment which reads as under:

> "**3.2.** …
>
> JURISDICTION
>
> 50. The present suit is a consolidated suit for infringement and/or passing off three Plaintiff's Subject Marks, by the same Defendant, arising out of the same course of transaction. This Hon'ble High Court has jurisdiction to entertain the present suit under Section 134(2)[3] of the Trade Marks Act, 1999 since the Plaintiff's registered address is within the jurisdiction of this Hon'ble Court, i.e., New Delhi, and the Plaintiff ordinarily carries on business in New Delhi. The two registered marks asserted in the present suit has been registered with the Delhi Trademarks Registry. Further, the seed packets of the impugned goods of the Defendant are available on various e-commerce platforms like India Mart etc., which are available for access within New Delhi, and in any event, are dynamic websites that permits communication and placement of orders. In addition, the relationship between parties to the suit arises out of the Marketing Agreement executed in New Delhi. As such, this Hon'ble High Court of Delhi has territorial

[70] 2025 SCC OnLine Del 8727.

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> jurisdiction to entertain the present suit. The suit is valued beyond the minimum pecuniary jurisdiction of this Hon'ble Court and is also a commercial suit within the meaning of the Commercial Courts Act, 2015."

100. The Court found that Delhi courts had territorial jurisdiction to maintain and entertain the plaint on quite a few grounds, one of which deserves consideration under the present heading.

101. The Division Bench concluded that the mere fact of the defendant's product being available for sale on an e-commerce website is sufficient to satisfy the requirement of Section 20(a) i.e., of the defendant carrying on business within the territory of Delhi. To arrive at this conclusion, the Court relied upon ***WWE*** and what it considered to be its *ratio*, namely, that a website allowing the purchase of a product is akin to a physical store of brick-and-mortar.

102. The reasoning in ***WWE***, has been questioned in this judgement at paras. 66-71 and 76-87. It has also been detailed as to why it no longer governs the field. Distinct from the merits of ***WWE***, the applicability of ***WWE*** to ***Kohinoor Seed Fields*** is also possibly doubtful. In ***WWE***, the plaint had averred that commercial transactions were being concluded at Delhi. *Per contra*, no such averment was present in ***Kohinoor Seed Fields***. Even otherwise, unlike a case where a sole office of a corporation is present, which in turn is deemed as the place where it is carrying on business, where multiple offices are present, it is essential for the Court to inquire where the principal place of business is.

103. Additionally, in ***WWE***, the website on which the transactions were getting concluded belonged to the plaintiff itself, while in ***Kohinoor Seed***

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Fields, it were third-party marketplaces. Thus, even assuming ***WWE*** to be the law governing the issue raised in ***Kohinoor Seed Fields***, its reasoning of transactions getting concluded being akin to sales taking place at a physical store cannot apply to ***Kohinoor Seed Fields*** as the website itself was not of the individual whose store was sought to be created. Thus, owing to it not being pointed out to the Division Bench that ***WWE*** on facts may not be applicable, and that ***WWE*** was and is no longer the authority holding the field, the decision in ***Kohinoor Seed Fields***, in turn, is not treated to be binding precedent on this issue.

104. Relying on ***Kohinoor Seed Fields***, three decisions were rendered which are ***Raju Kumar v. Vinod Sah***,[71] ***Sauss Home Products Pvt. Ltd. v. Reckitt Benckiser India Pvt. Ltd.***,[72] and ***ITC Ltd. v. Adyar Gate Hotels Ltd.***[73] Each of these three cases involves the application of the rule laid down in ***Kohinoor Seed Fields***.

105. The material portion of ***Raju Kumar*** reads as under:

> "**20.** Section 20 CPC specifically empowers a plaintiff to sue a defendant before any court within which the defendant principally carries on its business or where the whole or part of the cause of action has arisen. As we have held in our decisions in Diamond Modular and Kohinoor-II, prominently following the earlier Division Bench in World Wrestling Entertainment, in the e-commerce age, every virtual platform over which the defendant's goods or services would be available operates as a brick and mortar store present in every location where that website is accessible. Though, in Banyan Tree Holding, the Court had held that it is necessary to show conclusion of a commercial transaction over the said website, that position now does not survive after the decision in World Wrestling Entertainment, which postulates that even the possibility of concluding a commercial transaction would be sufficient. Tata Sons further dilutes the

[71] 2026 SCC OnLine Del 893.
[72] 2026 SCC OnLine Del 937, paras. 61-65.
[73] 2026 SCC OnLine Del 4852.

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principle by holding that even the possibility of interacting over a website, without any commercial element involved, would also be sufficient to invoke territorial jurisdiction of a particular court within whose jurisdiction the website is accessible."

106. The material portion of ***Sauss Home Products*** reads as under:

"**61.** On the aspect of territorial jurisdiction, the Division Bench of this Court has already held in Kohinoor Seed Fields India Pvt. Ltd. v. Veda Seed Sciences Pvt. Ltd. that the availability of the products of the appellant on the India Mart website would by itself confer jurisdiction on any Court within which the website was accessible. ...

****

62. The law has, thus, travelled from Banyan Tree Holding to World Wrestling Entertainment v. Reshma Collection and thereafter to Tata Sons. In view of the fact that the appellant's product was admittedly available on the India Mart platform, it could not be said that the appellant was not carrying on business within the jurisdiction of this Court. The fact that the Indiamart platform may have been a B2B21 platform rather than a B2C22 platform, cannot make any substantial difference to this legal position in view of the law as it has developed on the aspect of territorial jurisdiction."

107. In ***Adyar Gate***, the plaintiff-company having its registered office at Kolkata, West Bengal filed a suit before this Court contending that the defendant was infringing its trademark "DAKSHIN" by using it at its restaurant in Chennai. The plaintiff also contended that the defendant was passing off its services as those of the plaintiff. An *ad-interim* injunction was granted by the learned Single Judge of our Court but the main injunction application was dismissed on grounds of territorial jurisdiction as also on merits. Assailing this order of dismissal, the Division Bench was moved.

108. The Division Bench in ***Adyar Gate*** clarified that the defendant had no branch or outlet in Delhi and that it is not physically possible to avail the

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services provided in the Chennai Dakshin restaurant from Delhi.[74] The Court, however, concluded that jurisdiction at Delhi was made out under Section 20(a) of the CPC. Two independent reasons were given to arrive at this conclusion. *Firstly*, the defendant was carrying on business in relation to its restaurant in Chennai at Delhi and at every place where the Zomato page could be accessed and a reservation could be booked using the "*Order Online*" link.[75] *Secondly*, and additionally, it was found that jurisdiction was also made out at Delhi because the defendant was responding to critical reviews by its customers of its Chennai restaurant on the Zomato page, which was accessible at Delhi.[76] The development in the law taken note of at para. 98 of the judgment reads as under:

> "**98.** As per the law which has developed over the decisions in *Banyan Tree Holding*, *World Wrestling Entertainment*, *Ultra Home Construction*, *Tata Sons*, *Kohinoor Seed Fields* and *Sauss Home Products*, among others, interactive accessibility is the key to determining territorial jurisdiction. The accessibility must be interactive. In other words, a mere webpage which provides information, and with which it is not possible to interact but only to learn about the goods or services of a defendant, may not confer jurisdiction over a Court from within whose jurisdiction the website can be accessed. However, if the website is interactive and, more particularly, if it is possible to conclude a commercial transaction over the website, territorial jurisdiction would prima facie exist."

109. It can, thus, be seen that ***Kohinoor Seed Fields*** and its application in ***Raju Kumar***, ***Sauss Home Products***, and ***Adyar Gate*** are premised on the application of ***WWE*** to Section 20(a) of the CPC and of the purported dilution of the principles in ***Banyan Tree*** in the subsequent decision of ***Tata Sons***. Paras. 179-186 of this judgment raise certain issues concerning the

[74] 2026 SCC OnLine Del 4852, para. 88.
[75] 2026 SCC OnLine Del 4852, para. 98.
[76] 2026 SCC OnLine Del 4852, para. 102.

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decision of ***Tata Sons***. It suffices to observe at this stage that there is no real curtailment of the ***Banyan Tree*** principles in ***Tata Sons***. The requirement of concluding commercial transactions still remains a fundamental requirement for conferring jurisdiction under Section 20(c) of the CPC. Insofar as the decision of ***WWE*** is concerned, the analysis above has revealed that its reasoning was at odds with ***Dhodha House*** and post the decisions in ***Sanjay Dalia*** and ***Ultra Home***, the judgment in ***WWE*** may not govern the field.

110. Cumulatively, it was not pointed out to the Division Bench that the incorporation of ***WWE*** into Section 20(a) of the CPC, and the claim of ***Banyan Tree*** having been diluted, may not be correct. Resultantly, ***Kohinoor Seed Fields***, and the decisions that follow it, do not constitute binding precedent on this issue. It is further settled that a judgment is precedent for what it decides, it can never be binding *qua* issues which were not raised before it.

111. At last, the effect of the decision in ***Kohinoor*** as seen through ***Adyar Gate***, may be appreciated through the means of an example. Let there be a defendant having its registered office at Kanyakumari and a sub-ordinate office, through the means of an actual flourishing restaurant, at Delhi. Assume that cause of action may have accrued at any place apart from Delhi. If the plaintiff, in such a case, files a suit in Delhi, invokes Section 20(a) of the CPC, and contends that the defendant is carrying on its business at Delhi, the plaint would be returned. The dictum of ***Patel Roadways*** would allow the plaintiff to file at the place of its sub-ordinate office (in this the restaurant at Delhi) only when cause of action has also accrued at that place. Meaning, thereby, that a restaurant having a number of employees and a

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considerable infrastructure, is not in and of itself sufficient to contend that the defendant is carrying on business at Delhi.

112. But if instead of investing capital, time and human resource at Delhi, a defendant were to have a website that allows people to make bookings at its restaurant in Kanyakumari, as per the dictum of ***Kohinoor*** and ***Adyar Gate***, the defendant would be carrying on business at Delhi and become susceptible to the jurisdiction of Delhi courts under Section 20(a) of the CPC. It is this conundrum that gets first created by ***WWE***, and the learned Division Bench is made to apply in ***Kohinoor*** and ***Adyar Gate***. As noted above, owing to the errors in ***WWE*** not being pointed out to the Division Benches, the said decisions are not binding on the issue raised.

113. It may also be noted that a Special Leave Petition, challenging the decision in ***Kohinoor Seed Fields***, is presently pending before the Supreme Court, on which notice was issued *vide* order dated 20.02.2026.

114. A brief reference may also be made to the decision of the Division Bench in ***Hindustan Unilever Limited v. Kwick Living (I) Pvt. Ltd.***,[77] where, it was observed, *inter alia*, that a defendant's own declaration as to its "*principal place of business*" to the Goods and Services Tax authorities, would be sufficient to satisfy the requirements of "*carrying on business*" under Section 20(a) of the CPC. Though the ultimate conclusion of the Division Bench was arrived at on the basis of additional grounds, this specific finding, may be analysed in some depth.

[77] 2026 SCC OnLine Del 6703.

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115. It was not pointed out to the Division Bench that the "*principal place of business*", under the Goods and Services Tax Act, 2017, is a defined term.[78] Section 2(89) of the Act reads as under:

> "**2. Definitions.**
> **In this Act**, unless the context otherwise requires:
> (89) "principal place of business" means the place of business specified as the principal place of business in the certificate of registration"

(Emphasis supplied)

116. Under Section 25 of the GST Act, 2017,[79] a corporation is required to register itself in each State/Union Territory where it becomes liable for registration. In every such State it has to provide a "*principal place of business*" which is within that State/Union Territory. The meaning of the expression "*principal office*" as it appears in the explanation to Section 20, is, ordinarily, as per ***Sanjay Dalia***, the place of its registered office. The rationale being that this is generally the place where the controlling power of the corporation is exercised. The principal office is also at a single place regardless of the States in which a company may operate.

117. The import, requirements, and constituent elements, of what constitutes a "*principal office*" is fundamentally in contradistinction to what is considered as the "*principal place of business*" under the GST Act. The declaration made by the defendant for the purposes of GST, in order to comply with the requirement of the GST Act, cannot be incorporated to determine where the corporation has its "*principal office*" for the purposes

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[78] "GST Act".

[79] "Section 25. Procedure for registration.
(1) Every person who is liable to be registered under section 22 or section 24 shall apply for registration in every such State or Union territory in which he is so liable within thirty days from the date on which he becomes liable to registration, in such manner and subject to such conditions as may be prescribed…"

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of Section 20(a) of the CPC. In ***Hindustan Unilever***, the binding and applicable statutory provisions, were not pointed out to the Division Bench. Resultantly, the conclusion on this issue, may not have binding effect.

118. From the discussion above, the following conclusions may be drawn concerning the interpretation of the expression "*carries on business*":

a. The decision of ***WWE***, does not govern the field concerning the interpretation of the expression "*carries on business*" owing to: *first*, it being irreconcilable with the judgments in ***Sanjay Dalia*** and ***Ultra Home***; and *second*, it ignoring material portions of ***Dhodha House***.

b. The judgment in ***Kohinoor Seed Fields***, which incorporates the dictum of ***WWE***, and applies it to the expression "*carries on business*" under Section 20(a) of the CPC, is not a controlling authority on the interpretation of this expression. The decisions of ***Raju Kumar*** and ***Sauss Home*** which apply the dictum in ***Kohinoor Seed Fields***, similarly, are not authorities on this issue.

c. The law, therefore, concerning the meaning and import of the expression "*carries on business*" as it appears in Section 20(a) and (b) of the CPC, Sections 134(2) and 62(2) of the Trade Marks Act and Copyright Act, respectively, is governed by the pronouncements of the Supreme Court in, *inter alia*, ***Patel Roadways***, ***Dhodha House*** and ***Sanjay Dalia***, as also the dictum of this Court in ***Ultra Home***.

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d. If a corporation has a sole office, it shall be deemed to carry on business at that place of its sole office. If, however, there is more than one office, it must be deciphered where the principal place of business of that corporation is. This principal office shall ordinarily be the place of its registered office. Once the principal office is discovered, the other offices shall be the sub-ordinate offices/branch offices.

e. A corporation shall be deemed to carry on business at its sub-ordinate office if the cause of action for a given suit accrues at that place. In such a scenario it shall not be open for the company to sue a defendant at the place of its principal office, where no cause of action has accrued.

C. "CAUSE OF ACTION, WHOLLY OR IN PART"

119. There are various dimensions to the expression "*cause of action, wholly or in part*", as it appears in Section 20(c) of the CPC. It is again difficult to compartmentalise them in defined silos but for the ease of exposition, they are being considered under the heads that follow.

(i) Quia Timet Action

120. The learned authors of the celebrated commentary ***Snell's Equity***,[80] at para. 18-029, has observed the following in relation to a *quia timet* action:

> "**(2) Claimant's rights not yet interfered with.**
>
> Although the claimant must establish his right, he may be entitled to an injunction even though an infringement has not taken place but is merely

[80] John McGhee, QC and Steven Elliott, QC, 34th Ed., Sweet and Maxwell, 2020.

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> feared or threatened; for "preventing justice excelleth punishing justice". This class of action, known as *quia timet*, has long been established, **but the claimant must establish a strong case**; "no one can obtain a quia timet order by merely saying 'Timeo"'. **He must prove that there is an imminent danger of very substantial damage, or further damage**, e.g. by showing that the threatened act "is attended with extreme probability of irreparable injury to the property of the plaintiffs, including also danger to their existence". The court applies a two-stage test: "(a) First, is there a **strong probability** that, unless restrained by injunction, the defendant will act in breach of the claimant's rights? (b) Secondly, if the defendant did an act in contravention of the claimant's rights, would the harm resulting be so grave and irreparable that, notwithstanding the grant of an immediate interlocutory injunction (at the time of actual infringement of the claimant's rights) to restrain further occurrence of the acts complained of, a remedy of damages would be inadequate?"

(Emphasis supplied)

121. In ***M/s Jawahar Engineering Co. and Ors. v. M/s. Javahar Engineers Pvt. Ltd.***,[81] the plaintiffs claiming to be the registered trade mark holder of the mark '*Javahar*' filed a suit claiming that the defendants had applied for the registration of the trade mark '*Jawahar*' in respect of diesel oil engines, *inter alia*, for the Union Territories of Delhi and Chandigarh. This application was advertised in the Trade Mark Journal.

122. After the completion of pleadings, a preliminary issue on territorial jurisdiction was framed. The learned Single Judge decided the issue against the defendant and found that requisite territorial jurisdiction to entertain the suit was made out. It was held that jurisdiction was established, as an advertisement in the Trade Marks Journal was published by the Registrar of Trade Marks, Delhi. Upon an intra-court appeal being preferred, the Division Bench held that "*the real point which gives the court jurisdiction is*

[81] 1983 SCC OnLine Del 41.

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not the place where the advertisement has appeared, but the fact that the trade mark is sought for sale in Delhi amongst other places."[82]

123. The Division Bench of this Court in the case of ***M/s PM Diesels Ltd. v. M/s. Patel Field Marshal Inds. and Anr.***,[83] had relied upon the decision of ***Jawahar Engineering***, to conclude that jurisdiction of Delhi was made out by an application for registration of trade mark being filed by the defendant. This order in ***PM Diesels*** was assailed before the Supreme Court, which was decided by the decision in ***Dhodha House***.

124. SB Sinha J. in ***Dhodha House*** while disagreeing with the reasoning in ***Javahar Engineers*** observed that an application for trade mark registration could either be rejected or allowed. The mere filing of an application before the concerned registrar, therefore, does not affect jurisdiction nor does it constitute a cause of action, wholly or in part, to maintain a suit.

125. In ***Pfizer Products, Inc. v. Rajesh Chopra and Ors.***,[84] Badar Durrez Ahmed J. observed that the decision in ***Javahar Engineers*** was merely distinguished in ***Dhodha House*** and not disapproved. It was opined by the Court that ***Javahar Engineers*** continued to be good law, even after the decision in ***Dhodha House***.

126. The decision of the Supreme Court in ***K. Narayanan and Anr. v. S. Murali***,[85] decisively settles the issue. The case arose from an action of passing off filed by the plaintiff against the defendant on the ground that an

[82] 1983 SCC OnLine Del 41, para. 10.
[83] 1998 SCC OnLine Del 181.
[84] 2006 SCC OnLine Del 177. This decision has also been referenced by Dr. Sikri J. in *LG Corporation & Anr. v. Intermarket Electroplasters (P) Ltd. and Anr.*, 2006 SCC OnLine Del 1661 and was also approved by the Division Bench in *Pfizer Products Inc v. Rajesh Chopra*, 2006 (32) PTC 301, para. 13.
[85] (2008) 10 SCC 479.

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application seeking pan-India registration of the trade mark was filed by the defendant before the Trade Mark Registry at Chennai. The High Court of Madras revoked the leave to sue, which was affirmed by the Division Bench, and the matter reached the Supreme Court. Relying on ***Jawahar Engineers***, it was submitted before the Supreme Court that when an injunction is sought, it is not necessary that the threat should have become a reality before the injunction is granted or refused; it can even be sought for a threat which is yet to materialise.

127. The Supreme Court held that a proposed registration of a mark which may or may not be granted, will not confer a cause of action to the plaintiff, whether the application for registration is filed by the plaintiff or the defendant. The material portion of the judgment reads as under:

> "**11.** Let us now consider the submissions of the learned counsel for the parties. The learned counsel for the appellants argued before us that the Division Bench of the High Court in its impugned judgment had taken a contrary view from the judgment of the Division Bench of the High Court of Delhi in Jawahar Engg. Co. v. Jawahar Engineers (P) Ltd. [1983 PTC 207 (Del)] which has held that the real point which confers jurisdiction on the court is not the place where the advertisement is published but the place for which the trade mark is sought for sale. It has also held that when an injunction is sought, it is not necessary that the threat should have become a reality before the injunction is granted or refused and it can even be sought for a threat that is still to materialise.
>
> ****
>
> **13.** The learned counsel for the appellants submitted that when the respondent filed a trade mark application at the Trade Mark Registry at Chennai, a threat was communicated regarding the use of the trade mark in Chennai, and it was immaterial whether there was actual use or not and the appellants would be entitled to an injunction (being a prohibitive remedy) against the said mark. The learned counsel for the appellants finally argued that the respondent had based its application for registration of the trade mark on use of the mark throughout India without any geographical limitation from 1-4-1995, which included the city of Chennai, which thus

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> entitled the appellants to file the suit at the High Court of Madras based on the claims made in the trade mark application.
>
> ****
>
> "**20.** Having heard the learned counsel for the parties and after carefully examining the aforementioned judgment of the High Court and also of the learned Single Judge, we do not find any infirmity in the judgment of Division Bench of the High Court holding that before registration is granted for the trade mark, there is no right in the person to assert that the mark has been infringed and that a proposed registration which may or may not be granted, will not confer a cause of action to the plaintiff, whether the application for registration is filed by the plaintiff or the defendant."

128. In ***Deepak Kumar Kheka v. Yogesh Kumar Jaiswal & Ors.***,[86] a registered holder of trademarks had filed a suit before the Commercial Court at Saket seeking permanent injunction and certain other consequential reliefs. It was an admitted position that no goods bearing the trade mark were prevalent in the market. However, on the ground that "*a strong and credible apprehension that the impugned goods bearing the impugned trade marks (were) going to be infused into the markets*" within the jurisdiction of the Commercial Court at Saket, the suit was instituted as a *quia timet* action. Relying on ***K Narayanan***, the Commercial Court allowed the defendant's application under Order VII Rule 11 and rejected the plaint on the ground that it did not disclose a cause of action. This order was impugned before the Division Bench of this Court.

129. It was canvassed before the Division Bench that the Supreme Court's observations in ***K. Narayanan*** were confined only to cases of passing off. Rejecting this contention, the Division Bench held:

[86] 2025:DHC:6176-DB

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> "**18.** What Mr. Bansal essentially seeks is that we should read the reference to "infringement", in para 20 of the judgment of the Supreme Court as referring to passing off.
>
> **19.** It goes without saying that this Court can hardly seek to rewrite a judgment of the Supreme Court. Moreover, even in the opening sentence of para 13 of the same decision, we find that the Court has recorded the submission of the Counsel for the appellant before it held that the filing of a trademark application by the respondent at the Trade Mark Registry at Chennai amounted to a communication of a threat regarding the use of the trademark at Chennai and it was immaterial whether there was actual use or not. Clearly, these two observations, read together, indicate that the Supreme Court is of the view that no application for injunction on the ground of infringement of the trademark would lie where the defendant has only applied for a registration of the mark.
>
> **20.** When we read paras 13 and 20 in juxtaposition, it is clear that the Supreme Court has held that no cause of action, to maintain a suit for infringement, would lie merely on the defendant filing an application for registration of a trade mark."

130. It is, thus, clear that the filing of an application for registration of trade mark does not give rise to a cause of action for filing a *quia timet* suit for infringement or passing off.

131. In ***Allied Blenders & Distillers Pvt. Ltd. v. R.K. Distillery Pvt. Ltd.***,[87] a Division Bench of this Court dealt with an order of the learned Single Judge returning the plaint for want of jurisdiction. The suit was filed by the plaintiff for trademark and copyright infringement along with a claim for passing off. The plaintiff's trademark in respect of whiskey was "*Officers Choice*", whereas the respondent's mark was "*Regular Choice*". The plaintiff did not have its registered office in Delhi and the defendant did not reside in Delhi. The infringing goods were sold at Andhra Pradesh and not at Delhi. The Court, while setting aside the order of the learned Single Judge,

[87] FAO (OS) No. 251/2016.

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held that the suit of the plaintiff was in the nature of a *quia timet* action based on the apprehension that the defendant would start selling its whiskey under the impugned mark and label "*Regular Choice*" in Delhi.

132. For determining the question of territorial jurisdiction while considering an application under Order VII Rule 10, it was re-iterated by the Court in ***R.K. Distillery*** that the averments made in the plaint are to be taken as true and correct. Considering the pleadings made by the plaintiff, specifically at para. 28 in the plaint, it was found that the plaint could not be returned. Para. 28 of the plaint reads as under:

> "**JURISDICTION**:
>
> **28.** This Hon'ble Court has the territorial jurisdiction to try and entertain the instant suit by virtue of Section 62 (2) of the Copyright Act, 1957 and Section 134(2) of the Trade Marks Act 1999 as the Plaintiff being the owner of the copyright and the registered proprietor of the trademark in issue has its office located at A-61/5, Ground floor, G.T. Kamal Road Industrial Area, Azadpur, Delhi. Moreover, the Plaintiff is also carrying on its business within the territorial limits of this Hon'ble Court in a variety of ways such as (but not limited to) sale of its products under the relevant marks in New Delhi. The scale of business and activity of the Defendant is not known at present and it is apprehended as being highly likely that the product sold under the impugned mark "Regular Choice" will be made available in New Delhi. As the scope and extent of the Defendant's business is not known at present, it is believed that they have a reasonably large scale business around India and it is therefore strongly apprehended that they will launch the impugned product in New Delhi and would be available within the jurisdiction of this Hon'ble Court. It is submitted that the threat that the Defendants will sell and / or offer for sale the impugned product within the jurisdiction of this Hon'ble Court is credible and imminent. There is a reasonable apprehension that the Defendant is likely to sell its products bearing the impugned mark and label within the jurisdiction of this Hon'ble Court. Thus, giving rise to a substantial and integral part of the cause of action within the jurisdiction of this Hon'ble Court. This Hon'ble Court therefore has the necessary jurisdiction by virtue of Section 20 of the Code of Civil Procedure, 1908."

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133. Importantly, the Division Bench in ***R.K. Distillery*** further observed that while the plaint's averments for adjudicating an application under Order VII Rule 10 need to be considered as true and correct, while adjudicating an application for interim injunction, relatively stricter scrutiny is warranted. The defendant's written statement/reply to the interim injunction application as also the documents placed by it on record, can be considered at this stage. For the grant of interim injunction, a plaintiff is required to establish a *prima facie* case that jurisdiction does in fact exist. Para. 22 of the said decision reads as under:

> "**22.** We must make it clear that the considerations with regard to territorial jurisdiction in the context of Order VII Rule 10, CPC are entirely different from those in the context of an application under Order XXXIX Rules 1 & 2, CPC or in the context of an issue framed in the suit with regard to territorial jurisdiction. While in the backdrop of Order VII Rule 10, it is only the averments contained in the plaint that have to be seen in the case of an application for the grant of interim relief under Order XXXIX Rules 1 & 2, the contentions of the defendant in the reply to this application as also those contained in the written statement are required to be examined to arrive at a prima facie view. So, while in the case of an Order VII Rule 10 CPC application, the issue of jurisdiction is decided on the basis of what is stated in the plaint and, that too, after assuming the statements to be correct, an application under Order XXXIX Rules 1 & 2, CPC requires the examination of the contentions of the defendants that may be contained in the written statement and / or the reply to the application as also the other material which may be placed by the defendant before the court. Here, there is no question of considering the pleas of the plaintiff by way of a demurrer. Furthermore, the standards would be higher when an issue with regard to territorial jurisdiction is to be finally decided in the course of trial of the suit. Thus, while for the purposes of an examination under Order VII Rule 10, CPC, the court may come to the conclusion that it has territorial jurisdiction, this would not come in the way of the defendant in raising a question as to territorial jurisdiction, both when the issue of temporary injunction under Order XXXIX Rules 1 & 2, CPC is being considered and when an issue as to territorial jurisdiction is being decided in the course of trial of the suit. To put it differently, while a plaintiff may succeed in demonstrating, for the purposes of Order VII Rule 10 CPC that this court has territorial jurisdiction and that the plaint ought not to be returned, he

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> may fail in obtaining an order of interim injunction on the ground that the plaintiff's entitlement is itself shaky because the issue of territorial jurisdiction is highly debatable and prima facie not tenable. Therefore, the decision of the court in putting down an objection of the defendant and in rejecting the defendant's prayer for return of the plaint under Order VII Rule 10, CPC, would not come in the way of the defendant raising the question of territorial jurisdiction, both as an objection to the grant of an interim injunction as also at the time of decision of the issue of territorial jurisdiction, if framed, at the time of trial of the suit."

134. Similarly, ***M/s Allied Blenders & Distillers Pvt. Ltd. v. Prag Distillery Pvt. Ltd. and Anr.***,[88] was a decision which arose from facts that were largely similar to those in ***R.K. Distillery Pvt. Ltd.***. The Division Bench held "*the mere fact that the plaint contained an averment that there was credible and imminent apprehension that the infringing product would be launched by the defendants within the territorial jurisdiction of this court, would by itself constitute a cause of action*".

135. In ***Shree Nath Heritage Liquor Pvt. Ltd. and Anr. v. Octaga Green Power and Sugar Co. Ltd. and Ors.***,[89] the Court decided on the preliminary issue framed by it on the question of territorial jurisdiction. The suit was filed for design infringement and passing off action by defendant's "GRENADE XXX RESERVE BOTTLE" rum product. Neither the plaintiff nor the defendant resided within the jurisdiction of this Court. The impugned product also was not sold in Delhi. Jurisdiction was pleaded contending the suit to be a *quia timet* action on grounds that the defendant's product is about to be launched in Delhi. Reliance was placed on the decision of the Supreme Court in ***Kuldip Singh v. Subhash Chander Jain***

[88] FAO (OS) No. 49/2017.
[89] 2017 SCC OnLine Del 9137.

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and Ors.,[90] where R.C. Lahoti J., while finding the suit in question therein to be pre-mature, importantly observed:

> "**6.** A quia timet action is a bill in equity. It is an action preventive in nature and a specie of precautionary justice intended to prevent apprehended wrong or anticipated mischief and not to undo a wrong or mischief when it has already been done. In such an action the court, if convinced, may interfere by appointment of receiver or by directing security to be furnished or by issuing an injunction or any other remedial process. In Fletcher v. Bealey [(1885) 28 Ch D 688 : 54 LJ Ch 424 : 52 LT 541] , Mr Justice Pearson explained the law as to actions quia timet as follows:
>
> > "There are at least two necessary ingredients for a quia timet action. There must, if no actual damage is proved, **be proof of imminent danger**, and there must also be proof that the apprehended damage will, if it comes, be very substantial. I should almost say it must be proved that it will be irreparable, because, if the danger is not proved to be so imminent that no one can doubt that, if the remedy is delayed the damage will be suffered, I think it must be shown that, if the damage does occur at any time, it will come in such a way and under such circumstances that it will be impossible for the plaintiff to protect himself against it if relief is denied to him in a quia timet action".
>
> **7.** Kerr on Injunctions (6th Edn., 1999) states the law on "threatened injury" as under:
>
> > "The court will not in general interfere until an actual nuisance has been committed; but it may, by virtue of its jurisdiction to restrain acts which, when completed, will result in a ground of action, interfere before any actual nuisance has been committed, where it is satisfied that the act complained of will inevitably result in a nuisance. **The plaintiff, however, must show a strong case of probability that the apprehended mischief will in fact arise in order to induce the court to interfere. If there is no reason for supposing that there is any danger of mischief of a serious character being done before the interference of the court can be invoked, an injunction will not be granted**".

(Emphasis supplied)

[90] (2000) 4 SCC 50.

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136. Relying on ***Kuldip Singh***, in ***Shree Nath Heritage Liquor***, this Court held that even for a *quia timet* action, a plaintiff has to show that there is a *strong* possibility of the defendants selling their product in Delhi, which is likely to cause injury to its business and trade mark. Significantly, it was noted that the defendant therein did not have an excise license for Delhi which would enable it to sell the impugned product. The plaintiff, also, did not plead that the defendant possesses an excise license which would allow the defendant to sell the impugned product at Delhi. While stressing on the fact that neither the plaintiff nor the defendant were in Delhi, the plaint was found to be an attempt at forum shopping and an outcome of clever drafting. Resultantly, the plaint was returned.

137. The standard of scrutiny applied by the Division Benches in ***Prag Distillery Pvt. Ltd.*** and ***R.K. Distillery Pvt. Ltd.*** for a *quia timet* action was far lesser. While the decision in ***Shree Nath Heritage Liquour*** could be justified on the ground that it was passed on the preliminary issue which was framed after the completion of pleadings, it seems more appropriate to view it in the context of the additional issues which came to be raised before the learned Single Judge. The decision of RC Lahoti J. in ***Kuldip Singh*** was not noticed by the Division Benches, nor was the issue of the goods concerned being regulated by the Excise Act, and requiring a license to sell, adverted to. Both these aspects have a bearing on whether a cause of action for a *quia timet* action was made out. A judgment, it is trite law, is a precedent for what it decides and not what can be inferred from it. The issues not presented before a Court can never be said to be decided by it.

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138. A brief reference may also be made to the decision of ***Allied Blenders & Distillers Pvt. Ltd. v. Agribiotech Industries Ltd.***,[91] where jurisdiction was sought to be invoked on the ground that the suit was in the nature of a *quia timet* action and cause of action under Section 20(c) of the CPC has been made out. It was found that "*the mere apprehension of the likelihood of the defendant launching the allegedly infringing product within the territorial jurisdiction of this Court, would confer jurisdiction*".[92] The decision of ***Shree Nath Heritage***, was not adequately canvassed before the learned Single Judge. In ***Shree Nath Heritage***, the court had observed that a *strong* possibility of the defendants selling the impugned goods must be established. For alcohol, which is an excisable commodity, a license to sell must exist with a defendant for a *quia timet* action to be made out.

139. In ***Novartis AG and Anr. v. Zydus Healthcare Limited and Anr.***,[93] a Division Bench of this Court crystallised the manner in which an application seeking outright rejection of a *quia timet* plaint is to be adjudicated. Paras. 50 and 51 of the said decision read as under:

> "**50.** What has to be seen, therefore, in assessing whether a quia timet plaint can be rejected outright under Order VII Rule 11, is
>
> (i) whether the plaint alleges
>
> (a) a deliberate expressed intention to engage in activity the result of which would raise a **strong possibility of infringement**,
>
> (b) that the **activity to be engaged in is imminent**, and

[91] 2020 SCC OnLine Del 2861.
[92] 2020 SCC OnLine Del 2861, para. 42.
[93] 2022 SCC OnLine Del 4373.

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(c) that, if the defendant were to engage in the activity, the plaintiff would suffer **substantial**, if not irreparable, **prejudice**,

(ii) that the claim of the plaintiff **is not merely speculative**, in the hope that sufficient facts, to support the allegations, would be gleaned on discovery during the course of trial, and

(iii) that the plaint contains **cogent, precise and material recitals of facts**.

51. Nothing more is to be seen, when examining an Order VII Rule 11 challenge."

(Emphasis supplied)

140. From the discussion above, concerning *quia timet* actions, it can be concluded that:

a. The cause of action for *quia timet* action accrues when the defendant expresses a deliberate intention to engage in an activity the result of which would raise a strong possibility of infringement.

b. The activity to be engaged in must be imminent, and of such a character that if the defendant were to engage in the activity, the plaintiff would suffer substantial, if not irreparable, prejudice.

c. For goods and services that are subject to regulatory control, in determining whether a *quia timet* action is maintainable, it is essential to consider whether the defendant holds the required licences or permissions, statutory or otherwise, required for their sale, use or any other commercial exploitation. For instance, for the commercial sale of liquor, an excise license

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under the State's specific Excise Act is required, for manufacturing a pharmaceutical product, license under the Drugs and Cosmetics Act, 1940 may be required, and for the sale of insecticides a license under the Insecticides Act, 1968 may be required.

(ii) An Action for Passing Off

141. In ***Himachal Pradesh Horticulture Produce Marketing and Processing Corp. Ltd. v. M/s. Mohan Meakin Breweries Ltd.***,[94] the plaintiff had filed a suit for infringement and passing off seeking, *inter alia*, a permanent injunction and rendition of accounts. In order to establish territorial jurisdiction of the Courts at Ludhiana, the plaintiff had averred that apple juice manufactured by the defendant was sold with the plaintiff's mark in Ludhiana.

142. The High Court of Punjab and Haryana placing reliance on the opinion of Cornelius J. in ***Firm Bhagwan Dass v. Watkins Mayor and Co.***,[95] observed that cause of action wholly or in part, for a claim of passing off, can be said to have arisen only when: *first*, the defendant has directly made sales of the goods carrying the impugned trademark within the jurisdiction of a given Court. *Second*, the sales are made by the defendant not to an individual consumer but to a distributor or a wholesaler or a retailer. *Third*, such sales are at a commercial scale.

143. The Court in ***Mohan Meakin*** opined that if this much was not insisted upon, corporations can make a mockery of jurisdictional rules and big firms

[94] 1980 SCC OnLine P&H 297.
[95] AIR 1947 Lah 289.

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could file civil actions as per their own whims and fancies. Para. 9 of the said decision is worth reproducing and reads as under:

> "**9.** …If this much is not insisted upon, then the defendant can be **dragged into litigation in any part of the country** by only adducing flimsy kind of evidence that has been adduced in the present case by a company which has its head office at Solan in Himachal Pradesh where the defendant too have their head office and where it was convenient to the plaintiff to prosecute the suit and to the defendant to defend the suit. A big firm like Mohan Meakin Breweries Limited has its ramifications all over the country **and it is easy for it to have dragged this public Corporation into litigation even at a far off place like Kanya Kumari if the only evidence necessary to give jurisdiction to that Court was of purchasing of a few bottles by any agent of Mohan Meakin Limited from someone locally there.**"

(Emphasis supplied)

It must be stressed that the said decision was delivered on the 29th of September, 1980, approximately 15 years before the official release of public internet services in India.

144. In ***Glen Raven Mills Inc. v. Vaspar Concepts Pvt. Ltd. and Anr.***,[96] a suit for trademark infringement along with passing off was filed before this Court seeking, *inter alia*, a permanent injunction. The plaint narrated that the plaintiff instructed its attorneys to investigate the use of the impugned mark by the defendant. As part of the investigation, one Mr. Debjit Gupta, a resident of Delhi, placed an order for goods under the impugned mark *via* exchange of letters. Thereafter, pursuant to the order, goods were dispatched by the defendants and were delivered to Mr. Gupta at Delhi.

145. S.K. Mahajan J. concluded that goods could not be stated to be delivered in Delhi. The Court noticed that freight had been paid by the plaintiff, and the carrier, thus, was found to be the plaintiff's agent. Relying

[96] 1995 SCC OnLine Del 724.

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on Section 39 of the Sale of Goods Act, 1930,[97] it was held that the delivery of goods to the carrier/agent was made at Bangalore, which shall be deemed to be the delivery to the plaintiff. The entire contract for supply of goods was, thus, completed at Bangalore with no cause of action, wholly or in part, accruing in Delhi.

146. Further in ***Glen***, this Court analysed, that assuming the delivery did in fact happen in Delhi, whether jurisdiction was made out under Section 20(c) of the CPC. Placing reliance on the decisions of ***Mohan Meakin Breweries Limited*** and ***Bhagwan Dass***, the Court observed that in a case of passing off, it is necessary to prove that the supply made by the defendant at a particular place was on a commercial scale. There should also be a direct transaction of sale and purchase between the defendant and a distributor, whole-seller or a retailer, and such transactions should be of a commercial proportion.[98] Para. 12 of the said decision reads as under:

> "**12.** With a view, therefore, to give jurisdiction to the Court in a case of passing off, it is necessary to prove that the supply made by the defendant at a particular place was on a commercial scale. There should have been direct transaction of sale and purchase between the defendant and a distributor or a wholeseller or a retailer and such transactions should be of commercial proportion."

147. In ***Indovax Pvt. Ltd. v. Merck Animal Health and Ors.***,[99] originally a suit for trademark infringement along with passing off was filed, which subsequently, was confined by the plaintiff to passing off alone. Neither the plaintiffs nor the defendants resided within the jurisdiction of the court. The question which arose was whether cause of action can be said to have arisen

[97] "Sale of Goods Act".
[98] 1995 SCC OnLine Del 724, para. 12.
[99] 2017 SCC OnLine Del 9393.

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within the jurisdiction of the forum court. To support its case, the plaintiff along with the plaint had filed an invoice issued in Jind, Haryana to prove the accrual of cause of action. Subsequently, however, the plaintiff filed on record three invoices of one 'Baxi Medical Stores' in Delhi, along with the amended plaint. These invoices were purported to be issued not to the plaintiff but to third parties.

148. Deepa Sharma J. in ***Indovax*** appointed a Local Commissioner in order to discover the source from where Baxi Medical Stores procured the stock of the impugned products, sold under the invoices attached by the plaintiff. The Local Commissioner in its report dated 26.11.2013 stated that Baxi Medical Stores sourced the stock from Karnal, Haryana and that the proprietor of Baxi Medical Stores also admitted that he is not a distributor of defendants and had merely procured the three vials of product INNOVAX from outside Delhi. The proceedings were found to be an abuse of process and an attempt by the plaintiff to forum-shop.

149. The Court reiterated the test, *inter alia*, laid down in ***Glen***, namely, that for cause of action to accrue in a suit for passing off, the defendant must have directly made sales of the goods carrying the impugned trademark, not to an individual consumer, but to a distributor, wholesaler or retailer, at a commercial scale. Mere availability of goods, it was opined, does not confer jurisdiction. The invoices put on record by the plaintiff were found to be a result of the plaintiff's own acts. The Court found that the impugned goods were otherwise not available in Delhi, but were *procured* from the authorised dealer of the defendant at Haryana. No cause of action was found

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to have arisen within the jurisdiction of Delhi and the plaint was resultantly returned.

150. From the discussion above, it may be concluded that in a suit for passing off:

a. Cause of action (wholly or in part) can be said to have arisen within the territorial jurisdiction of a court only if the defendant has made sales of the goods carrying the impugned trademark within the jurisdiction of a given Court. Direct sales are made by the defendant not to an individual consumer but to a distributor, wholesaler or a retailer. Such sales are at a commercial scale. Mere availability of goods within the jurisdiction of a forum court does not confer jurisdiction.

b. Sale of goods within the territorial jurisdiction of the forum court by a firm which does not act as a distributor, wholesaler, retailer, or agent of the defendant, does not confer jurisdiction.

c. Where goods are procured by a firm from another firm that is outside the jurisdiction of the forum court and in turn sold within the territory of the forum court, jurisdiction shall not, be conferred.

d. Additionally, delivery of goods to the agent/carrier of the plaintiff or its investigator, for onward transmission, is deemed delivery upon the plaintiff or its investigator. This conclusion is not restricted to suits for passing off, but is a general conclusion

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arrived at by the application of Section 39 of the Sale of Goods Act.

(iii) An Action for Infringement in the Offline World

151. In the year 1915, the Allahabad High Court in the case of ***Kheshtra Pal Sharma v. Pancham Singh Varma***,[100] decided a civil revision filed against the judgment of the District Judge, affirming the Subordinate Judge's order returning the plaint in a suit for trademark infringement and passing off on the ground that territorial jurisdiction was not made out. The plaint averred that the plaintiff had been making and selling in Muttra a medicine named "*Sudha Sindhu*". The mark "*Suddha Sindhu*" was claimed to be registered in favour of the plaintiff. The defendant, a resident of Gaya, had advertised for sale at Gaya, a medicine made by him and named "*Asli Sudha Sindhu*". Advertisements of the defendant's medicine had appeared in papers published in Muttra, and in circulars and hand-bills distributed in Muttra.

152. Dr. Tej Bahadur Sapru along with Pandit Motilal Nehru appeared for the revisionists and argued that if a person advertises as his own, a trade mark belonging to another, he thereby infringes the mark. The distribution of hand-bills and the publication of advertisement in Muttra was contended to be the infringement complained of which gave the plaintiff his cause of action. *Per contra*, Dr. Sunder Lal appeared for the respondent and argued that for jurisdiction of a given court to be invoked there must be actual sale of the impugned goods within the local limits of a given court.

[100] 1915 SCC OnLine All 115.

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153. The Division Bench found actual sale to be dispensable to determine infringement of a registered trademark. Mere advertisement was found to be sufficient to invoke jurisdiction of a given Court. The material portion of the judgment reads as under:

> "The question is whether the publication of the advertisement, by the respondent, of his medicine, Asli Sudha Sindhu, in papers, hand-bills and circulars published in Muttra is an infringement of the applicant's trademark. For the purpose of this application we must of course assume that the applicant is entitled to the trade mark which he claims, and that the respondent's advertisement is calculated to induce people to believe that they will get from him the applicant's medicine. No authority has been produced in support of the argument that such an advertisement cannot be an infringement of the trade mark. On the other hand several English cases have been cited which show that it has been held for some years past that a trade mark may be infringed by means of an advertisement. We think it is sufficient to refer to the decisions in Jay v. Ladler (1), Bourne v. Swan and Edgar, Limited (2), and to the injunction which was issued by the House of Lords in the case of Frank Reddaway v. George Banham (3). On the authorities we must hold that if the facts are as alleged by the applicant his trade mark has been infringed within the jurisdiction of the Subordinate Judge of Muttra. We therefore allow this application, set aside the orders of the courts below and direct that the record be returned to the court of first instance and the suit restored to the pending file to be disposed of according to law. Costs here and hereto will be costs in the cause."

154. In ***Burger King Corporation v. Techchand Shewakramani and Ors.***,[101] the plaintiff had filed a suit for trademark infringement along with a claim for passing off for its mark "BURGER KING" and "HUNGRY JACK'S". All the defendants were based out of Mumbai and the plaintiff was a US based company. The question before the court was whether territorial jurisdiction was made out in Delhi. On the website of the defendant, it was mentioned that street carts containing the impugned mark of the plaintiff were "*coming soon*" at Delhi. The threat of the defendants

[101] 2018 SCC OnLine Del 10881.

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launching Burger King carts in Delhi was found by the Court to be imminent and credible, particularly because of, among other things, an article appearing in the *Business Digest* magazine on 30.07.2014. Considering the unique facts and circumstances of the said case, the court found that jurisdiction for a *quia timet* was made out in Delhi.

155. In ***M/s. Intas Pharmaceuticals Ltd. v. Allergen Inc.***,[102] a Division Bench of this Court noted that the dictum in ***Dhodha House*** of jurisdiction not being conferred by goods manufactured by the plaintiff being available or sold in the market of Delhi, applied while interpreting the phrase "*carries on business*" and not while construing Section 20(c). In the said case, the plaint had averred that the impugned goods were sold and distributed within the jurisdiction of the forum court. The defendant had not denied this pleading in its written statement. Finding sale and distribution of goods in Delhi to be an admitted position, the Court held that jurisdiction of Delhi Courts is made out.

156. Similarly, in ***Pfizer Enterprises Sarl v. Cipla Ltd.***,[103] a Division Bench of this Court dealt with a suit for trademark infringement along with a claim for passing off. Jurisdiction of Delhi courts was sought to be invoked, *inter alia*, on the ground that the defendant's products under the impugned mark are available for sale in Delhi and jurisdiction under Section 20(c) of the CPC was, therefore, made out. *Qua* the ***Pfizer appeal***[104] which arose from an order of a learned Single Judge dated 16.07.2008, the Division

[102] 2006 SCC OnLine Del 802.
[103] 2009 (107) DRJ 735 (DB).
[104] Two separate appeals were decided *vide* a common order in *Pfizer Enterprises Sarl*. One of the appeals was the *Pfizer Appeal* (FAO (OS) 356/2008).

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Bench noted that the defendant had not specifically traversed the pleadings pertaining to the territorial jurisdiction of this Court. Resultantly, the plaintiff would not be required to lead any evidence on this aspect of the case. Thus, the factum of sale of the impugned goods having been admitted, jurisdiction was found to be made out.

157. While the conclusion in ***Burger King*** of jurisdiction for a *quia timet* action being made out was sufficient to adjudicate upon the controversy which arose in the said case, additional observations were made concerning the elements of "*cause of action*" in a passing off and infringement suit. It was held by the Court that cause of action for a trademark infringement suit arises when a person "*uses in the course of trade*" any mark without the owner's consent. After referring to the definition of using a mark under Section 2(2) of the Trade Marks Act, and other provisions relating to the rights conferred upon a registered mark holder, the court found that any unauthorised use of the mark within the jurisdiction of this Court would constitute a cause of action to sue. Paras. 19 and 21-22 of the decision read as under:

> "**19.** What constitutes cause of action in the context of a suit alleging violation of rights in a trade mark, would therefore be the question. In a case involving trade mark infringement, infringement happens when a person "uses in the course of trade" any mark without the owner's consent. Thus, use of a mark is the cause of action in an infringement as also in a passing off action. If use takes place in a territory where the suit is filed, that court has the jurisdiction to entertain the suit. When there is use of a mark, there is a cause of action to sue, where the use takes place. it is relevant to point out that "use" of a trade mark as per Section 2(2)(c) of the TM Act is as under:
>
> "(2) In this Act, unless the context otherwise requires, any reference—
>
> ***
>
> (c) to the use of a mark—

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> (i) in relation to goods, shall be construed as a reference to the use of the mark upon, or in any physical or in any other relation whatsoever, to such goods;
> (ii) in relation to services, shall be construed as a reference to the use of the mark as or as part of any statement about the availability, provision or performance of such services;"
>
> ****
>
> **21.** Thus, jurisdiction of a court in a trade mark action, could be invoked where there is use upon or in relation to goods. The phrase "in relation to" has been interpreted to include advertising, promotion, publicity, etc. Thus, in addition to actual sale of goods and providing services, if a person advertises his or her business under the mark in a territory, promotes his or her business under the mark in a territory or for example invites franchisee queries from a particular territory, sources goods from a particular territory, manufactures goods in a particular territory, assembles goods in a particular territory, undertakes printing of packaging in a particular territory, exports goods from a particular territory, it would constitute "use of a mark".
>
> **22.** This scheme of the TM Act is amply clear from a reading of Sections 28 and 29 as also Section 56. Under Section 28, the rights conferred are the exclusive right to use of a mark. Under Section 29, use of a mark could be any form of use, including—
> • as part of a trade name or a corporate name or name of a business concern [Section 29(5)];
> • use by affixing it to products/services [Section 29(6)(b)];
> • use by affixing it to packaging [Section 29(6)(b)];
> • use by offering goods/services for sale;
> • use for the purpose of import or export[Section 29(6)(c)];
> • use on business papers [Section 29(6)(d)];
> • use in comparative advertising which is detrimental to distinctive character or repute of the mark [Section 29(4)];
> • use in advertising [Section 29(7)];
> • Applying a mark in a territory for purposes of export of goods/services [Section 56(1)]; and
> • Use by which a trade connection is created between the user and the proprietor [Section 56(2)]."

158. At para. 23 of the decision in ***Burger King***, the learned Senior Judge observed that "*principles which apply to infringement, actions to determine "use" would equally apply to passing off actions.*" The decisions of this Court in ***Glen*** and ***Indovax***, which were earlier in time, were not pointed out

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to the learned Single Judge. The finding at para. 23 is in the teeth of the *ratio* in ***Glen*** and ***Indovax*** insofar as an action of passing off is concerned. Since these judgements were not taken note of by the learned Single Judge, no justification can be found in ***Burger King*** to deviate from the views taken in the earlier decisions. Thus, the observations made by the learned Single Judge in ***Burger King*** are to be confined exclusively to infringement cases while ***Glen*** and ***Indovax*** continue to hold the field for passing off cases.

159. An example of what may not constitute cause of action may now be considered. In ***Kohinoor Seed Fields India Pvt. Ltd. v. Veda Seed Sciences Pvt. Ltd.***,[105] the plaintiff had filed a suit for infringement of its registered trademark along with a claim for passing off. Upon an objection of territorial jurisdiction being raised, this Court found that jurisdiction of Delhi was made out on a number of grounds. One of these grounds was that the trademark was registered at Delhi. The Court opined that the factum of registration at Delhi was part of the cause of action as it was an essential fact needed to be proved to support the right to judgment.

160. The decisions of the Supreme Court in ***Alchemist Ltd. and Anr. v. State Bank of Sikkim and Ors.***,[106] and ***Union of India v. Adani Exports Ltd.***,[107] were, however, not pointed to the Division Bench.

161. In ***Union of India v. Adani Exports Ltd.***,[108] the writ petitioner had challenged the denial of benefits under an import-export passport scheme before Gujarat High Court, which had entertained the writ petition, and the

[105] 2025 SCC OnLine Del 8727.
[106] (2007) 11 SCC 335.
[107] (2002) 1 SCC 567.
[108] (2002) 1 SCC 567.

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same was assailed before the Supreme Court. Different factual *indicia*, *prima facie*, appearing to favour the jurisdiction of different High Courts were present. Facts supporting the jurisdiction of the Gujarat High Court were:

The petitioner carried out business of export and import from Ahmedabad; non-granting and denial of utilisation of the credit in the passbook was to affect the business at Ahmedabad; the orders of export and import of the petitioner are placed from and are executed at Ahmedabad; documents and payments for export and import are sent/made at Ahmedabad; and credit of duty claimed in respect of exports were handled from Ahmedabad since export orders as well as payments were received at Ahmedabad.

162. Facts supporting the jurisdiction of Madras High Court:

Passbook in question was issued by an authority at Chennai; designated authority, which is the competent person in respect of matters concerning the Passbook Scheme is at Chennai; the entries in the passbook under the scheme are to be made by authorities at Chennai; and the export of prawns made by the petitioner and the import of the inputs, benefit of which the petitioner was seeking, will also have to be made through the Chennai port.

163. The Supreme Court in ***Adani Exports*** held that the Gujarat High Court did not have jurisdiction to entertain the *lis*, and it was the Madras High Court, before which the writ petition should have been filed. It was re-iterated by the Supreme Court that each and every fact pleaded in the petition does not constitute a cause of action unless the facts have a nexus and relevance with the dispute. Facts which have no bearing on the *lis* or the

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dispute involved in the case do not constitute cause of action (wholly or in part).

164. In ***Alchemist Ltd.***, a company having its registered and corporate office at Chandigarh, in furtherance of an invitation to offer made by the State of Sikkim, concerning disinvestment in the Bank of Sikkim, deposited 4.50 crores with the State Bank of India, Chandigarh. Upon the proposal of the company being rejected, the High Court of Punjab and Haryana was moved claiming that a part of the cause of action had accrued within its jurisdiction. The High Court found that no part of cause of action had arisen within its territory. This finding was affirmed by the Supreme Court noting:

> "**37.** From the aforesaid discussion and keeping in view the ratio laid down in a catena of decisions by this Court, it is clear that for the purpose of deciding whether facts averred by the appellant-petitioner would or would not constitute a part of cause of action, one has to consider whether such fact constitutes a material, essential, or integral part of the cause of action. It is no doubt true that even if a small fraction of the cause of action arises within the jurisdiction of the court, the court would have territorial jurisdiction to entertain the suit/petition. Nevertheless it must be a "part of cause of action", nothing less than that."

165. If the logic of ***Kohinoor Seed Fields*** was to be applied to the facts of ***Alchemist Ltd.***, the factum of proving part-performance at Chandigarh, by depositing 4.50 crores at the branch office of the State Bank of India, was material to the judgment. Arguably, it would also be important for such a corporation to prove that it was actually incorporated. But would the *situs* of incorporation have any bearing on the cause of action? Certainly not. In the facts of ***Kohinoor Seed Fields***, the factum of the trademark being registered at Delhi has nothing to do with the bundle of facts constituting the cause of action. Thus, owing to the decisions of ***Alchemist Ltd.*** and ***Adani Exports***

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not being pointed out to the learned Division Bench, the decision of ***Kohinoor Seed Fields***, may not be binding on this issue.

166. From the discussion above, it may be concluded that in a suit for infringement of trademark:

a. Cause of action (wholly or in part) can be said to have arisen within the territorial jurisdiction of a court when the defendant, in the course of trade, *uses* a mark which is identical with or deceptively similar to the trade mark, in relation to goods or services in respect of which the trade mark is registered, within the jurisdiction of the forum court.

b. Registration of a mark within the jurisdiction of a given court does not constitute a part of the cause of action.

(iv) An Action for Infringement in the Online World

167. There are multitude of forums available to a plaintiff in order to sue for infringement or passing off. For instance, they may sue where the defendant resides, carries on business, or personally works for gain. Additionally, under the specialised statutes, if applicable, where the plaintiff resides, carries on business or personally works for gain. Another set of forums are to be made available under Section 20(c) of the CPC in the context of online activity.

168. CS(COMM)-980/2026 is one of the commercial suits dealt with in the present batch of matters. In the said case, jurisdiction of Delhi courts is pleaded on the grounds that the "*infringing activities of the Defendant are*

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not geographically limited but are borderless and accessible from anywhere, including New Delhi, in view of the online activities being conducted through various online platforms." This case, and specifically the pleading made, is a prime example of why high jurisdictional thresholds ought to be set under Section 20(c) of the CPC, where infringement is claimed through the use of internet. The requirement of proving cause of action (wholly or in part), in the context of internet activity, cannot encompass each and every one of the wrongs mentioned in ***Burger King***.

169. Although an internet activity may constitute a statutory wrong under the Trade Marks Act or the Copyright Act, it may not confer jurisdiction on a given court, owing to other counter-vailing considerations, that are required to be balanced with the right of the plaintiff. These considerations include, *inter alia*, predictability i.e., a given defendant must have a reasonable idea of where it may be sued. It ought not to be the case that for a particular act purportedly done by a defendant it could be equally sued at Ladakh and at Jhumri Telaiya. Next, the jurisdictional avenues made available must be fair and reasonable. The places where the plaintiff can sue cannot be, as is claimed in CS(COMM)-980/2026, at all places where the so-called borderless infringing activity is taking place. Some degree of balancing is essential.

170. There is, it may be clarified, no cavil with the age old proposition that where there is a right there is a remedy. None can question whether a plaintiff has a right to sue upon infringement taking place. The issue, however, concerns where it can sue.

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171. The decision of the Division Bench of this Court in ***Banyan Tree Holding (P) Ltd. v. A. Murali Krishna Reddy and Anr.***,[109] which was rendered approximately 17 years ago, recognised the concern noted above. The Division Bench being conscious of the scheme of the Trade Marks Act, including the multifarious acts that constitute infringement, provided a high threshold for when Section 20(c) of the CPC can be invoked. It may again be stressed that if jurisdictional rules are to have any meaning at all, in the context of internet activity, high thresholds are necessarily required to be set. The decision in ***Banyan*** may now be examined.

172. The judgment arose from a reference order[110] made by a learned Single Judge of this Court. After considering the submissions made by Mr. Pravin Anand, the Division Bench framed the following questions:

> "**7.** …
>
> (i) For the purposes of a passing off action, or an infringement action where the Plaintiff is not carrying on business within the jurisdiction of a court, in what circumstances can it be said that the hosting of a universally accessible website by the defendants lends jurisdiction to such Court where such suit is filed ("the forum court")?
>
> (ii) In a passing off or infringement action, where the defendant is sought to be sued on the basis that its website is accessible in the forum state, what is the extent of the burden on the Plaintiff to prima facie establish that the forum court has jurisdiction to entertain the suit?
>
> (iii) Is it permissible for the Plaintiff to establish such prima facie case through "trap orders" or "trap transactions"?"

173. The material portion of the discussion made by the Court concerning the first question, reads as under:

[109] 2009 SCC OnLine Del 3780.
[110] 2008 SCC OnLine Del 1740.

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"**40.** …It appears to this court that for the purposes of a passing off action or an action for infringement where the Plaintiff is not carrying on business within the jurisdiction of the forum court, and where there is no long arm statute, the Plaintiff would have to show that the defendant purposefully availed itself of the jurisdiction of the forum court. It is not enough merely to show that the website hosted by the defendant is an interactive one. It would have to be shown that the nature of the activity indulged in by the defendant by the use of the website was with an intention to conclude a commercial transaction with the website user.

****

42. This Court holds that jurisdiction of the forum court does not get attracted merely on the basis of interactivity of the website which is accessible in the forum state. The degree of the interactivity apart, the nature of the activity permissible and whether it results in a commercial transaction has to be examined. For the "effects" test to apply, the Plaintiff must necessarily plead and show prima facie that the specific targeting[111] of the forum state by the defendant resulted in an injury or harm to the Plaintiff within the forum state. For the purposes of a passing off or an infringement action (where the plaintiff is not located within the jurisdiction of the court), the injurious effect on the Plaintiff's business, goodwill or reputation within the forum state as a result of the defendant's website being accessed in the forum state would have to be shown. Naturally therefore, this would require the presence of the Plaintiff in the forum state and not merely the possibility of such presence in the future. Secondly, to show that an injurious effect has been felt by the Plaintiff it would have to be shown that viewers in the forum state were specifically targeted. Therefore the "effects" test would have to be applied in conjunction with the "sliding scale" test to determine if the forum court has jurisdiction to try a suit concerning internet based disputes."

The material portion of the discussion made by the Court concerning the second question reads as under:

"**45.** This court holds that in order to prima facie establish that the defendant purposefully availed of the jurisdiction of this court, the Plaintiff would have to show that the defendant engaged in some commercial activity in the forum

[111] Para. 22 of the decision in *Banyan Tree*, after relying on the comments of Prof. Thomas Schultz and Prof. Michael Geist, explained targeting as follows:
"Schultz defines targeting to mean "in essence that the activity must be intended to have effects within the territory of the state asserting jurisdiction." According to another scholar, Professor Michael Geist ("Is There a There There? Towards Greater Certainty for Internet Jurisdiction" 16 Berkeley Tech LJ (2001) 1345 at 1357) the principle of targeting is to "identify the intentions of the parties and to assess the steps taken to either enter or avoid a particular jurisdiction." Targeting is described as "something more than effects, but less than physical presence…."

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> State by targeting its website specifically at customers within that State. … In any action for passing off or infringement, it would have to be shown that the defendant by using its mark intended to pass off its goods as that of the Plaintiff's. A mere hosting of a website which can be accessible from anyone from within the jurisdiction of the court is not sufficient for this purpose. Also a mere posting of an advertisement by the defendant depicting its mark on a passive website which does not enable the defendant to enter into any commercial transaction with the viewer in the forum state cannot satisfy the requirement of giving rise to a cause of action in the forum state. Even an interactive website, which is not shown to be specifically targeted at viewers in the forum state for commercial transactions, will not result in the court of the forum state having jurisdiction. In sum, for the purposes of Section 20(c) CPC, in order to show that some part of the cause of action has arisen in the forum state by the use of the internet by the defendant, the Plaintiff will have to show prima facie that the said website, whether euphemistically termed as "passive plus" or "interactive" was specifically targeted at viewers in the forum state for commercial transactions. **The Plaintiff would have to plead this and produce material to prima facie show that some commercial transaction using the website was entered into by the defendant with a user of its website within the forum state and that the specific targeting of the forum state by the defendant resulted in an injury or harm to the Plaintiff within the forum state.** Question no. (ii) is answered accordingly."

(Emphasis supplied)

174. Importantly, in ***Banyan Tree***, the Court consciously rejected the contention that purposeful availment ought to be replaced by purposeful avoidance. The acceptance of purposeful avoidance as a test would allow jurisdiction to be conferred merely because blinkers and blockers have not been put *qua* the forum state's access to the website, and commercial transactions have in turn taken place. Thus, the mere fact that a website has not restricted its accessibility to a forum court cannot be sufficient to conclude that targeting and purposeful availment has taken place.

175. In ***Sholay Media Entertaiment***, the ***Banyan Tree*** standard was found to not have been met and the plaint was returned to the plaintiff. Importantly, this Court relied upon an important decision of the Karnataka

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High Court in ***Presteege Property Developers Ltd. v. Prestige Estates Projects Ltd.***,[112] which held that even booking or placing an order through the internet is insufficient to conclude that a transaction took place within the jurisdiction of a given court.

176. Next, in ***Impressario Entertainment & Hospitality Pvt. Ltd. v. S&D Hospitality***,[113] a suit was filed by the plaintiff for the infringement of its registered trademark along with a claim for passing off. It was contended that the plaintiff was the owner of the registered trademark "SOCIAL" and "STONE WATER" which it utilised with respect to cafes. While the registered office of the plaintiff was in Mumbai, it was stated that it ran four cafes in Delhi. It was claimed that the defendant ran two restaurants at Hyderabad using the trade mark "SOCIAL MONEY", which infringed the plaintiff's trademark and constituted the tort of passing off. Jurisdiction of Delhi was sought to be claimed on grounds that the defendant had its presence on websites like Zomato[114] and Dine-Out, from which it could invite customers of the plaintiff to visit its outlet in Hyderabad.

177. While ordering for the return the plaint, this Court in ***Impressario*** held that the listing of the cafe on the given website was neither sufficient to constitute cause of action (wholly or in part) nor to claim that the defendant carried on business within Delhi. Even if it was assumed that customers in Delhi actually made bookings on the websites, this was found to be insufficient as the actual transaction was to take place at Hyderabad. The

[112] MFA No. 494 and 13696, 2006.
[113] 2018 SCC OnLine Del 6392.
[114] Back then, Zomato did not deliver food.

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analysis made at para. 19 of the decision deserves reproduction and reads as under:

> "**19.** Thus even if the defendant has been able to attract customers from other jurisdiction including by way of Zomato and Dine-Out, the services of the defendant cannot be availed unless the customers go to Hyderabad. Through Zomato and Dine Out the customers will only be able to invite a customer and resume a table at the restaurant of the defendant at Hyderabad. The commercial transaction would take place only on the customer availing the services of the defendant at Hyderabad. Claim of the plaintiff is that at least one customer through the website booked the table at defendant's restaurant from Delhi believing that it was a restaurant of the plaintiff. On the basis of a solitary transaction, through internet plaintiff cannot claim that cause of action having arisen at Delhi this Court will have territorial jurisdiction to entertain the suit. Facts pleaded in the plaint do not pass the tests laid down by the Division Bench of this Court in Banyan Tree Holding (P) Ltd. (supra)."

It may be highlighted that the decision in ***Impressario*** involved the application of the ***Banyan Tree*** standard to a case of trademark infringement.

178. In ***Tata Sons Pvt. Ltd. v. Hakunamatata Tata Founders and Others***,[115] the plaintiff was the holding company of the TATA Group of Companies that had filed a suit, primarily, for trademark infringement along with a claim for passing off. The plaintiff owned the registered trademark "TATA" and the defendants were claimed to be using its mark for doing online trading in cryptocurrency through their websites "www.tatabonus.com" and "www.hakunamatata.finance". It was further averred that the owner of the websites had its office based in the UK. Behind the website, there were also a team of individuals who were UK nationals of

[115] 2022 SCC OnLine Del 2968.

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Pakistani origin. The question was whether territorial jurisdiction was made out.

179. The Division Bench began its analysis by citing a decision in ***Millennium & Copthorne International Limited v. Aryans Plaza Services Pvt. Ltd. and Ors.***,[116] where a learned Single Judge diluted the ***Banyan Tree*** standard and dispensed with the requirement of showing injury or harm to the plaintiff within the forum state. The second question answered in ***Banyan Tree*** was what is the burden of proof on the plaintiff to *prima facie* establish that the forum court has jurisdiction to entertain a suit. This was answered by the Division Bench by holding that the plaintiff would have to plead and produce material to *prima facie* show that some commercial transaction using the website was entered into by the defendant with a user of its website within the forum state resulting in an injury or harm to the plaintiff within the forum state. This answer given by the Division Bench was ignored by the learned Single Judge in ***Millennium & Copthorne International Limited***. A perusal of the decision in ***Millennium & Copthorne International Limited*** would reveal that no reasons were given to detract from the view in ***Banyan Tree***. The learned Single Judge, thus, could not have diluted the ruling in ***Banyan Tree***.

180. In ***Tata Sons***, the Court, thereafter, referred to a decision of the Court of Appeal of England and Wales in ***Lifestyle Equities CV v. Amazon UK Services Ltd.***,[117] and laid down that "*targeting*" is to be interpreted as per the

[116] 2018 SCC OnLine Del 8260.
[117] [2022] EWCA Civ 552.

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dictum in ***Lifestyle Equities CV***.[118] While the decision in ***Banyan Tree*** was premised on the tests adopted in the USA, ***Tata Sons*** switched the baton to the law declared by English courts which was premised on "*targeting*" as opposed to *specific* targeting which was required under the ***Banyan Tree*** standard.

181. Para. 22 of ***Tata Sons*** deserves to be extracted, it reads as under:

> "**22.** We are in complete agreement with the above view of the English court. Even if a website is not directed at customers in a particular country, the fact that they are not restricted by the website to have access to it, is enough to characterise it as targeting. Targeting need not be a very aggressive act of marketing aiming at a particular set of customers. Mere looming presence of a website in a geography and ability of the customers therein to access the website is sufficient, in a given case. It may not be forgotten that in the matters of infringement of trade mark, it is the possibility of confusion and deception in the mind of public due to infringing trade mark that is good enough for the court to grant injunction."

182. The opinion of the Division Bench that a given website not being restricted to a forum constitutes targeting does not sit well with the observations made in para. 41 of ***Banyan Tree***. In the said paragraph, the argument of "*purposeful availment*" being replaced with the test of "*purposeful avoidance*" was rejected. Thus, the mere fact that filters don't exist to block the access at a forum state cannot be sufficient to constitute specific targeting. The plaintiff must not merely show the lack of blockers but something in addition to that.

183. The finding that a "*mere looming presence of a website in a geography and ability of the customers therein to access the website is*

[118] It may be noted that the decision of the Court of Appeal, though affirmed in its outcome by the Supreme Court of the United Kingdom in *Lifestyle Equities CV and Anr. v. Amazon UK Services Ltd. and Ors.*, 2024 UKSC 8, was modified to some extent in terms of its reasoning.

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sufficient" appears to be against the *ratio* of both ***Banyan Tree*** and ***Lifestyle Equities CV*** where the UK Supreme Court, in appeal from the decision of the Court of Appeal, observed as under:

> "**18.** Accessibility of the website was not enough, however, as the court went on to explain, at para 94: "On the other hand, the mere accessibility of the trader's or the intermediary's website in the member state in which the consumer is domiciled is insufficient. The same is true of mention of an e-mail address and of other contact details, or of use of a language or a currency which are the language and/or currency generally used in the member state in which the trader is established.
>
> ****
>
> **21.** On the other hand, the court continued, at para 64, mere accessibility of the accused website from the territory covered by the trade mark was not enough to establish targeting of consumers in that territory. That would have the consequence that such websites and advertisements which, although obviously targeted solely at consumers in third states, would wrongly be subject to EU law.
>
> ****
>
> **25.** The Court of Appeal revisited the issue of targeting in Argos Ltd v Argos Systems Inc [2018] EWCA Civ 2211; [2019] Bus LR 1728. There, Floyd LJ (with whom Lord Kitchin JSC and Sir Colin Rimer agreed) emphasised, at para 48, that the mere fact that a website is accessible from anywhere in the world, and therefore may attract occasional interest from consumers there when this is not intended, should not give rise to any liability. He continued…"

184. The reasoning adopted in ***Tata Sons*** to dilute the decision in ***Banyan Tree***, thus would have no precedential value.

185. Independently, however, a fact centric limitation could be added to the rule in ***Banyan Tree***. In ***Banyan Tree***, the defendants were residents of Hyderabad. The question which the Division Bench, therefore, answered was: what would warrant jurisdiction being conferred upon a given forum court under Section 20(c) of the CPC, given that the avenues under Section 20(a) always remain open. In order to prevent Section 20(c) from becoming an unruly horse, the burden of proof requirement under ***Banyan Tree*** was

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conceived of. However, in the facts of ***Tata Sons***, the defendant had no presence in India at all. If a given plaintiff cannot invoke the provisions of Section 134(2) of the Trade Marks Act and Section 62(2) of the Copyright Act, then the only avenue which remains available is Section 20(c).

186. If, in such a case, compliance with the burden of proof under the ***Banyan Tree*** standard is demanded, a plaintiff may not be able to sue at all. Thus, in the peculiar facts and circumstances of a case, particularly, where the defendants had no presence in India the ***Banyan Tree*** standard may be relaxed. This relaxation is not available where defendants reside in Delhi and no exceptional situations are presented.

187. Before parting with the decision in ***Tata Sons***, a brief observation may be made on the decision of ***Lifestyle Equities CV***, which was relied upon in ***Tata Sons***. While the said decision of the English court was premised on the language used in the EU regulations, and thus is not *per se* applicable, some guidance may be taken in the manner in which *targeting* is adjudged.

188. The specific targeting and purposeful availment required by ***Banyan Tree*** is not intended to be a subjective intention of a person to step into a forum court's territory. The Court while seeking compliance with the ***Banyan Tree*** standards is not engaging in an exercise to determine the state of mind of the person controlling the corporation. The intention is to be objectively determined by analysing the *indicia* available on a given website. The words used by the UK Supreme Court, at para. 30 provide some guidance: "*the task of the court is to decide whether the foreign trader's activities, viewed objectively, from the perspective of the average*

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consumer, are targeted at such consumers in the UK. It is therefore not necessary to establish that the foreign trader had the subjective intention of targeting customers in the UK".

189. In ***Cable News Networks INC v. CTVN Calcutta Television Network Pvt. Ltd.***,[119] a learned Single Judge, after relying upon ***WWE*** and ***Tata Sons***, dispensed with the requirement propounded in ***Banyan Tree*** of *prima facie* proving that an actual commercial transaction took place. This, as has been noted above, may not be permissible.

190. In ***Johnson & Johnson Pte. Ltd. v. Abbireddi Satish Kumar and Ors.***,[120] a suit for trademark infringement was filed by the plaintiff claiming that its "ORSL" marks and trade dress were being infringed by the defendant. The Court gave the following reasoning at para. 19 to conclude that jurisdiction at Delhi was made out:

> "**19.** Considering the averments made in the plaint, it is manifest that this Court has jurisdiction in the present matter. The plaintiff has made categorical averments in the plaint as regards placing an order for the products of the defendants in Delhi. Thus, when the website marketing the goods of the defendants is accessible from Delhi, though the said website may have stopped its operation subsequently, and products may not have been ultimately delivered in Delhi, the very fact that the said website could be accessed with the products of the defendants shown online, at the time of filing of the suit, this Court would have territorial jurisdiction. The same would constitute use in relation to goods, as the goods of the defendants were promoted and advertised through the third-party website, within the jurisdiction of this Court, at the time of filing of the suit."

191. A reading of the said decision would reveal that the learned Single Judge did not, at all, avert to the decision in ***Banyan Tree***. Reference was made to ***Burger King Corporation***, and its exhortation on the "*use*" of a

[119] 2023 SCC OnLine Del 2436.
[120] 2025 SCC OnLine Del 688.

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mark was used to claim that the mere listing of goods on a website is sufficient to confer jurisdiction. It may be noted that the ***Banyan Tree*** tests apply to infringement cases as well. ***Burger King Corporation*** merely describes the kinds of infringement that may take place by various uses of the mark. However, if the infringement is online, the ***Banyan Tree*** tests must necessarily govern the field. The only way in which ***Burger King*** could be considered as superseding the dictum in ***Banyan Tree*** would be if it can be said that the Division Bench in ***Banyan Tree*** was not aware of the ways in which a trademark gets infringed under the Trade Marks Act. There is no indication that the Bench was not aware of the provisions relating to this aspect.

192. In ***Sun Pharmaceuticals Pvt. Ltd. v. Artura Pharmaceuticals P. Ltd.***,[121] a co-ordinate bench of this Court relying on ***Tata Sons Ltd.***, held that the requirement to consummate a commercial transaction has been dispensed with *in toto*. Resultantly, by merely relying on the "*Contact Page*" of the defendant's website, it was concluded that the ***Banyan Tree*** standard of purposeful availment through specific targeting, was satisfied. As noticed above, the same may not be permissible, least of all, because of the foundational factual difference between ***Tata Sons Ltd.*** and ***Sun Pharmaceuticals***. Similar observations may be made regarding the decision in ***Ravinder Singh v. Regoshin Healthcare Pvt. Ltd. and Ors.***,[122] which was rendered relying on ***Sun Pharmaceuticals***.

[121] 2025 SCC OnLine Del 8642.
[122] 2026 SCC OnLine Del 3716.

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193. The decision of ***Kohinoor Seed Fields*** has already been considered under the heading of "*carrying on business*". It has been observed at paras. 102-103 and 111-112 of this judgement, that the incorporation of ***WWE*** into Section 20(a) of the CPC may not be correct. The reliance on ***Tata Sons*** to hold that the principle in ***Banyan Tree*** has been diluted has also been examined, and it has been found that material issues were not pointed out to the Division Bench. Additionally, it appears that ***Kohinoor Seed Fields***, has also made an observation on Section 20(c) of the CPC. While there may not be a detailed analysis of how access to websites constitutes cause of action, in para. 20.3 of the judgment, the Division Bench has concluded that the impugned goods being available for sale across e-commerce websites, including at Delhi, constitutes a substantial part of the cause of action. The said paragraph reads as under:

> "**20.3** We need not delve too deep into this aspect, as, in our view, **a substantial part of the cause of action in the present case does arise within the territorial jurisdiction of this Court, because** (i) the asserted trade marks of the appellant stand registered within the jurisdiction of this Court, (ii) the Marketing Agreement was executed at Delhi and (iii) **the allegedly infringing goods of the respondent are available for sale and purchase, across e-commerce websites, at Delhi**. As such, no occasion arises to invoke the Ultra Home Construction doctrine.

(Emphasis supplied)

194. This conclusion was reached by the Division Bench despite observing at para. 19.5.5 that the decision in ***WWE*** is not an authority on Section 20(c) of the CPC. It would be fit to merely observe that the observations made in the context of Section 20(c) constituted *obiter dicta* and not binding precedent.

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195. The subsequent decision in ***Rukhmani Keshwani v. Raju Agarbatti Works & Anr.***,[123] however, applies the passing reference in ***Kohinoor Seed Fields*** to the substantive interpretation of Section 20(c). Previously, Courts attempted to move around the decision in ***Banyan Tree***, recognising its application in the domain of Section 20(c). In ***Rukhmani Keshwani***, the Court found that the law has developed past ***Banyan Tree***. Paras. 54 to 56 and 58 of the decision in ***Rukhmani Keshwani*** are reproduced as under:

> "**54.** The jurisprudence governing internet-based territorial jurisdiction has evolved progressively, beginning with the principles enunciated in Banyan Tree Holding (P) Ltd. v. A. Murali Krishna Reddy, where the Court differentiated between a passive website and an interactive commercial platform designed to target consumers within a particular jurisdiction.
>
> **55.** This principle, however, did not remain confined to the narrow passive versus interactive website dichotomy. The doctrine was subsequently expanded and contextualized in WWE (supra), wherein the Court recognized that the true test is whether the defendant has purposefully availed itself of the forum by commercially targeting customers therein through electronic means.
>
> **56.** The aforesaid principles were further elaborated by one of us (C. Hari Shankar J.) in Kohinoor Seed Fields India Pvt. Ltd. v. Veda Seed Sciences Pvt. Ltd., where this Court, while noting the transformation of commercial activity in the digital era, observed that modern ecommerce platforms are designed to transcend territorial barriers and facilitate commercial engagement across jurisdictions. This Court emphasized that once a defendant consciously projects its goods or services through interactive online interfaces enabling commercial solicitation, inquiry, negotiation, or purchase by consumers situated within a forum State, such activity constitutes a material part of the cause of action.
>
> ********
>
> **58.** The ratio emerging from Kohinoor Seed Fields India Pvt. Ltd (supra) is that the Court must examine the substance of the commercial targeting and the purposeful availment of the forum, rather than mechanically confining itself to the existence or absence of completed transactions. Thus, where online listings are intended to solicit business, display commercial contact

[123] 2026 SCC OnLine Del 4904.

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> details, facilitate customer interaction, and expand market reach into multiple jurisdictions, the territorial nexus is sufficiently established.

196. It is difficult to discern a basis in either ***WWE*** or ***Kohinoor Seed Fields*** for the conclusions noted in paras. 54 to 56 and 58 above.

197. ***WWE*** as has been noted above was a decision rendered in the context of Section 62(2) of the Copyright Act and Section 134(2) of the Trade Marks Act. Badar Durrez Ahmed J., explicitly, at para. 8 of the decision notes that the decision of ***Banyan Tree*** shall not have any application. If that be the case, the finding in ***Rukhmani Keshwani*** at para. 55 that the doctrine of ***Banyan Tree*** was "*expanded and contextualised*" in ***WWE***, may not be correct.

198. Next, the finding rendered in para. 56 of ***Rukhmani Keshwani*** that ***Kohinoor Seed Fields*** has held that an activity constituting the conscious projection of goods or services "*through interactive online interfaces enabling commercial solicitation, inquiry, negotiation, or purchase by consumers*" also does not seem to find support in the text of ***Kohinoor Seed Fields***. Similar observations may be made with respect to the ruling in para. 58 of ***Rukhmani Keshwani*** that ***Kohinoor Seed Fields*** allows for sufficient "*territorial nexus*" to be made out if online listings are intended to "*solicit business, display commercial contact details, facilitate customer interaction, and expand market reach into multiple jurisdictions.*" In the context of Section 20(c) of the CPC, this appears to be against the dictum of ***Banyan Tree***. Further, in para. 59 of ***Rukhmani Keshwani*** the following has been observed:

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> "**59.** This Bench in Raju Kumar v. Vinod Sah (authored by C. Hari Shankar J.) relied upon and applied the principles enunciated in Kohinoor Seed Fields India Pvt. Ltd (supra) while determining territorial jurisdiction in online trademark disputes. The judgment in Raju Kumar (supra) has since been affirmed by the Supreme Court in Vinod Sah v. Raju Kumar."

199. It appears that an SLP[124] was dismissed against the decision of ***Raju Kumar v. Vinod Sah***. It is trite law, as was also declared in ***Kunhayammed and Ors. v. State of Kerala and Anr.***,[125] that the dismissal of an SLP *in limine* does not amount to a merger of the impugned decision with the order of the Supreme Court. Thus, the order remains as that of our Court.

200. Before parting, a brief reference may especially be made to the Copyright Act. The decisions of this Court in ***Nilesh Girkar v. Zee Entertainment Enterprises Ltd. and Ors.***,[126] and ***Zee Entertainment Enterprises Ltd. v. Mohalla Tech Pvt. Ltd.***,[127] concern factual matrices where the conclusion of commercial transactions may not be possible. In such a situation it would not be appropriate to insist upon a commercial transaction where none can take place. Making available a copyrighted film on rogue websites would give rise to a cause of action by it becoming accessible in Delhi. That is not, however, the end of the inquiry. As the discussion below shall reveal, considerations of *forum conveniens* shall have a role to play. The place where the uprooting of the protected content takes place, where the plaintiff resides and carries on business, are material considerations to determine as to whether the cause of action at Delhi is

[124] SLP (C) No. 12585/2026, order dt. 30.04.2026.
[125] AIR 2000 SC 2587.
[126] 2025 SCC OnLine Del 6040.
[127] 2025:DHC:11002.

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slender/minuscule and the *lis* is better left to be adjudicated by another court that is *forum conveniens*.

201. From the discussion above the following conclusions can be drawn concerning cause of action for infringement and passing off in the online world:

a. To establish that cause of action (wholly or in part) has arisen through the means of website activity, the plaintiff must demonstrate that the defendant has purposefully availed itself of the jurisdiction of the forum court by specifically targeting persons within its territory and it resulting in an injury or harm to the plaintiff within the forum state.

b. Additionally, the plaintiff must also demonstrate the conclusion of commercially concluded transactions between the defendant and persons within the forum court's jurisdiction through the website in question.

c. The requirement of *prima facie* demonstrating commercially concluded transactions taking place can be relaxed in a case where the plaintiff cannot invoke the provisions of Section 134(2) of the Trade Marks Act and Section 62(2) of the Copyright Act, and the defendant has no presence in India at all.

D. "DYNAMIC EFFECT" AND IT CONFERRING JURISDICTION

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202. In a number of cases concerning the present batch of matters, for instance CS(COMM) 611/2026, CS(COMM) 917/2026, CS(COMM) 444/2026, and CS(COMM) 874/2026, the plaintiff has claimed jurisdiction of Delhi on the basis of the elusive expression of the "*Dynamic Effect*" of the infringement taking place in Delhi. There is no reference made at the bar to dictionaries, lexicons, or commentaries to indicate what dynamic effect is. The arguments of counsel would indicate that it constitutes the effect that an infringement has at the place where the plaintiff has its presence.

203. A brief reference may also be made to the decision in ***Adyar Gate***, where jurisdiction was also found to be made out under Section 20(c) of the CPC. The case concerned an action for trade mark infringement and passing off filed by ITC Ltd. which had its registered office at Kolkata and a restaurant at Delhi. Invoking an expression, which may ordinarily lie in the doctrine of *forum conveniens*, the Court held that the "*determinative part*" of the cause of action had accrued at Delhi. By observing that the use of the mark by the defendant in its restaurant at Chennai, had an effect on ITC Ltd.'s restaurant at Delhi, jurisdiction of this Court was established. By doing so, the Court, effectively applied the dynamic effect principle using the text of Section 20(c).

204. The dynamic effect principle and such an interpretation of part cause of action, in the opinion of this Court, may not confer jurisdiction. The rationale behind the legislature enacting Section 62(2) of the Copyright Act and Section 134(2) of the Trade Marks Act was allowing a given plaintiff to sue where it resides, carries on business or personally works for gain. If indeed, the effect, dynamic or otherwise, of an infringement could confer

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jurisdiction under Section 20(c) of the CPC, why would the legislature have enacted the specialised provisions? No tenable answer can be found. The concept of dynamic effect, therefore, appears to be unknown to jurisdictional principles governing the specialised statutes and the CPC. A pleading that invokes jurisdiction basis the "*dynamic effect*" like it does in the above-noted suits, ought to be ignored.

205. From the discussion above the following conclusions concerning the principle of *dynamic effect* can be drawn:

a. If the principle of *dynamic effect* is applied to cases of infringement, the amendment to the Trade Marks Act and the Copyright Act shall be rendered otiose. Jurisdiction, therefore, cannot be established basis this principle.

b. An attempt to find jurisdiction under Section 20(c) of the CPC on the basis that the effect of the infringement is felt at the place where the plaintiff has its presence, also, goes against the spirit of the specialised provisions. It also renders the amendments nugatory. Such an interpretation, thus, ordinarily ought to be avoided.

E. THE USE OF AN "*INVESTIGATOR*"

206. In ***Machinenfabrik Rieter AG and Anr. v. Tex Tech Industries India Pvt. Ltd. and Anr.***,[128] a suit was filed for trademark and patent infringement. The plaintiffs had their registered office in Mumbai, defendant no. 1 was placed in Coimbatore, Tamil Nadu, and defendant no. 2 was a resident of

[128] 2021 SCC OnLine Del 1825.

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Chandigarh. None of the parties had their head office, branch office, or residence within the territorial jurisdiction of this Court. Delhi's jurisdiction was sought to be invoked by making the following pleadings:

> "That the plaintiffs instructed their investigator to ascertain the scope and extent of the defendant no. 1's activities. Pursuant to initial investigation, the plaintiffs' investigator placed an order with defendant 1 via an email dated 26-12-2019; a performa invoice was issued on 27-12-2019; thereafter, an email was received from a representative of defendant 2 who informed the investigator that defendant 2 is a supplier of spare parts manufactured by defendant 1. The plaintiffs, then, made the payment and samples were despatched by defendant 1 on 29-1-2020 and the same were received by the plaintiff's investigator on 31-1-2020 in Delhi. Two such separate orders were also received by the plaintiffs' investigator. It was claimed by the plaintiff that the products so received from defendant 1 at Delhi infringe the plaintiffs' patent. The plaintiffs had also filed documents including invoices showing delivery of goods in Delhi."

207. It was found by the Court that the dictum of the Division Bench in ***Banyan Tree***, concerning the impermissibility of trap transactions, does not apply to offline transactions. Para. 13, in which the finding was reached, reads as under:

> "**13.** In my opinion the above judgment of the Division Bench does not have application to the facts of this case. That was a case in which territorial jurisdiction was claimed by the plaintiff based on the defendants alleged presence in Delhi through their website which was accessible in Delhi. It was contended that the website is not a passive website since inputs from customers through interactive web page were being taken. The court was dealing with the issue of territorial jurisdiction of this Court on account of the defendants hosting a website which was accessible in Delhi. It was in those facts that the Division Bench had come to the aforenoted conclusions. The present case is a case of offline transaction."

208. Two issues arise concerning the above-noted conclusion: *first*, a learned Single Judge in ***Indovax (P) Ltd.*** had already applied the law laid down in ***Banyan Tree*** to offline transactions; no reasons were given for departing from the said view; and *second*, a reading of ***Banyan Tree***,

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particularly paras. 46-56, would reveal that the discussion of ***Banyan Tree*** was not made solely in the context of online transactions. The case law, taken note of by the Division Bench to arrive at the answer to the third question formulated in the reference, was not exclusively concerning online transactions.

209. As a matter of principle as well, allowing jurisdiction to be conferred through transactions entered into between an investigator of the plaintiff and a given defendant seems unjust and unfair. Allowing this to happen would allow litigants to engage in forum shopping and litigation tourism. If this were to be condoned, all that is required is for a given plaintiff to have a clever enough agent who orchestrates a well-designed plan to concoct jurisdiction before a given court. It has been settled by a catena of decisions that jurisdiction cannot be conferred on a court where none in actuality exists. By allowing this, effectively, jurisdiction is being artificially created at a given place which the plaintiff believes is favourable to him. The "*investigator*" may very well be at Port Blair, or arguably may be asked to be at that place, when a defendant is at Ladakh. The mere fact that goods were delivered in Port Blair should not become a reason to force the person at Ladakh to go to Port Blair.

210. Jurisdiction rules can never be interpreted in a manner that allows a plaintiff to engage in such a mischief. Courts are not meant to be silent spectator in this theatre called "*jurisdiction*" scripted by the plaintiff. The scene in such scripted plays usually goes in the following manner:

An investigator in Delhi is engaged by a company in Mumbai to get goods delivered from a company, which operates in Chennai. This Court is moved

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and a vociferous plea is raised that under Section 20(c) of the CPC cause of action has partly arisen in Delhi. In order to protect the plaintiff's goodwill, the counsel for the plaintiff eloquently argues that urgent *ex parte ad-interim* reliefs are required to be granted.

211. Such '*gaming of the system*' cannot be allowed to go by. Transactions with such an "*investigator*", in and of themselves, are not sufficient to invoke the jurisdiction of this Court. Two exceptions, however, are possible: *first*, where the plaintiff can *prima facie* demonstrate, on the basis of his plaint and the documents attached with it, that but for such an "*investigator*" being hired to plead jurisdiction, cause of action under Section 20(c) of the CPC could not be maintained before another court. And *second*, where *ex facie* it can be demonstrated that sales of the impugned goods are taking place within a forum court, and an investigator merely provides evidence. For instance, if the defendant has readily supplied its goods within Delhi to various retailers, distributors and stockists, and the plaintiff's investigator buys these goods from these classes of persons, that report may not be discarded.

212. However, if in the natural course of events, jurisdiction can in fact be founded under Section 20(c) of the CPC at a place other than Delhi, the use of an "*investigator*" to forge jurisdiction before this court, shall, ordinarily, be an abuse of the process of law and impermissible. The fact of the plaintiff being aware of the defendant using his registered trademark, or passing off its goods, in the ordinary and natural course of the trade, at a jurisdiction different from Delhi, is most material to the *lis*. If the plaintiff is aware of such facts the option of engaging an "*investigator*" may get foreclosed. Non-

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disclosure with respect to this, shall amount to the plaintiff coming to the court with unclean hands. An equitable relief of injunction can never be granted to such a claimant. It is trite law as was also noted by RC Lahoti J. in ***Dorstener Maschinenfabrik AG v. Sand Plast India Ltd. and Ors.***,[129] that despite a given claimant satisfying the trinity requirements, an injunction can be refused on grounds, *inter alia*, of conduct as it is an equitable relief.

213. Additionally, it may be noted that despite the plaintiff not disclosing to the court facts pertaining to the defendant's usual, natural, and ordinary sale/use of the impugned mark, the Court may in exercise of powers conferred under Section 168 of the BSA put relevant questions to the parties. The said provision reads as under:

> "**168. Judge's power to put questions or order production.**
> The Judge may, in order to discover or obtain proof of relevant facts, ask any question he considers necessary, in any form, at any time, of any witness, or of the parties about any fact; and may order the production of any document or thing; and neither the parties nor their representatives shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question:
> Provided that the judgment must be based upon facts declared by this Adhiniyam to be relevant, and duly proved:
> Provided further that this section shall not authorise any Judge to compel any witness to answer any question, or to produce any document which such witness would be entitled to refuse to answer or produce under sections 127 to 136, both inclusive, if the question were asked or the document were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under section 151 or 152; nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted."

[129] 1994 SCC OnLine Del 777.

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214. Sir James Fitzjames Stephen in his speech,[130] while elaborating on the purpose of Section 165 of the Indian Evidence Act, 1872 (the precursor to the BSA), opined:

> "…It is absolutely necessary that the Judge should not only hear what is put before him by others, but that he should ascertain by his own inquiries how the facts actually stand. In order to do this, it will frequently be necessary for him to go into matters which are not themselves relevant to the matter in issue, but may lead to something that is, and it is in order to arm Judges with express authority to do this that section 165, which has been so much objected to, has been framed."

A brief reference may also be made to the following portion of ***Sir John Woodroffe & Syed Amir Ali's Law of Evidence***:[131]

> "Section 165 is intended to arm the judge with the most extensive power possible for the purpose of getting at the truth. The effect of this section is that in order to get to the bottom of the matter before it, the court will be able to look at and enquire into every fact whatever and thus possibly acquire valuable indicative evidence which may lead to other evidence strictly relevant and admissible."[132]

And:

> "It is obvious that the judge contemplated by the section is not a mere umpire at a witcombat between the lawyers for the parties whose only duty is to enforce the rules of the game and declare at the end of the combat who has won and who has lost."[133]

215. The subsequent decision in ***Reiter AG and Anr. v. Kavassery Narayanaswamy Venkatasubramanian***,[134] was rendered on the basis of the decision in ***Machinenfabrik Rieter AG***; the conclusion reached may be doubted on the grounds detailed above.

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[130] Speech of the Hon'ble Sir James Fitzjames Stephen on the 12 March 1872, in submitting the Report of the Committee to the Council.
[131] 21st Ed., 2020, Lexis Nexis.
[132] 21st Ed., 2020, Lexis Nexis, Vol. IV, Pg. 4873.
[133] 21st Ed., 2020, Lexis Nexis, Vol. IV, Pg. 4881.
[134] 2025 SCC OnLine Del 4379.

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216. From the discussion above, the following conclusions can be drawn concerning the use of an investigator/agent to establish jurisdiction:

a. As a rule, the use of an investigator or any other person set up by the plaintiff to find jurisdiction before a forum court amounts to concocting jurisdiction. The findings of such an investigator, thus, ordinarily, cannot be relied upon.

b. The two exceptions to this rule are: *first*, where the plaintiff can *prima facie* demonstrate, on the basis of his plaint and the documents attached with it, that but for such an "*investigator*" being hired to plead jurisdiction, cause of action under Section 20(c) of the CPC could not be maintained before another court. And *second*, where *ex facie* it can be demonstrated that sales of the impugned goods are taking place within a forum court, and an investigator merely provides evidence. For instance, if the defendant has readily supplied its goods within Delhi to various retailers, distributors and stockists, and the plaintiff's investigator buys these goods from these classes of persons, that report may not be discarded.

F. THE DOCTRINE OF FORUM NON-CONVENIENS

217. The conclusions rendered by this Court under this section curtail the options available to a plaintiff to institute a suit. The objection raised by counsel, against the reasoning adopted by this Court, is an alleged unbridled *right* that the plaintiff has to institute a suit, in the absence of an express bar contained in the statute. In doing so the counsel have conflated the

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availability of a forum before which a suit may lie, with an indefeasible vested *right* to bring the suit in that forum.

218. This right, perhaps may have existed, at a given point in time; the law, however, has travelled far ahead. Today, suits ought to be tested on the ground on *forum non conveniens.* The development in law was captured in eloquent words by Lord Denning MR in ***Smith Kline & French Laboratories Ltd. v. Block***,[135] the material portion of which reads as under:

> *"The law*
> *It often happens that a plaintiff is entitled to bring proceedings in two or more jurisdictions. Sometimes it is said that the choice is his. He can choose whichever of them suits him best. If he can get more damages in one than he can in the other, then good luck to him. Let him go there. If he will be met by a time bar in one and not in the other, let him go to the one where he is not barred. If it is more convenient for the plaintiff in one than it is for the defendant, then the plaintiff can choose. You need not spin a coin between the two contestants. It always comes down in favour of the plaintiff, so it is said, unless the defendant can prove that it would work an injustice to him. That was the way the English Court of Appeal approached the problem in St. Pierre v. South American Stores (Gath & Chaves) Ltd., (1936) 1 KB 382, [1935] All ER Rep 408 and the Supreme Court of Illinois approached it in James v. Grand Trunk Western Railroad Co., (1958) 152 NE 2d 858. ...*
> *The basis of all this reasoning has now been removed. In England by the House of Lords in MacShannon v. Rockware Glass Ltd., (1978) 1 All ER 625, [1978] AC 795. In the United States by the Supreme Court in Piper Aircraft Co. v. Reyno, (1981) 454 US 235. The plaintiff has no longer an inborn right to choose his own forum. He no longer wins the toss on every throw. The decision rests with the Courts. No matter which jurisdiction is invoked, the Court must hold the balance between the plaintiff and the defendant. It must take into account the relative advantages and disadvantages to each of them: not only the juridical advantages and disadvantages, but also the personal conveniences and inconveniences: not only the private interests of the parties but also the public interests involved. The Court decides according to which way the balance comes down. ..."*

[135] (19831) 1 WLR 730.

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219. The jurisdictional tension in suits filed before the Intellectual Property Division,[136] at its core, stems from archaic procedural laws being applied to modern, technology-driven, manifestation of substantive rights. Section 20 of the CPC, as a residuary jurisdictional rule, has been in existence ever since the Bengal Regulation III of 1793, under the Cornwallis Code. The essence of the provision has remained the same, throughout the procedural codes of 1882, 1877 and 1859. The options given to a plaintiff under these provisions did not take into account actions being founded on the use of internet. The concept of a 'pan-India' harm, injury, or effect, could not have been fathomed by the drafters of these provisions. A simple textual application of Section 20 to a *lis* concerning intellectual property rights, may result in unintended consequences as the jurisdictional rule, in most cases, is a misfit for the action it seeks to govern.

220. Section 20 of the CPC provides a dual umbrella of options to institute a suit. The first umbrella is defendant centric: a plaint can be presented within the local limits of a court where the defendant resides (actually or voluntarily), carries on business, or personally works for gain. This rule resonates with the Justinian dictum '*actor sequitur forum rei*' i.e., plaintiff follows the defendant's forum. It forces a plaintiff to leave his home-ground and go into the territory of the defendant.[137] On occasions this may be inconvenient. Thus, an option is given to the plaintiff to file where the cause of action, wholly or in part, has arisen. The first illustration to Section 20 exemplifies this scenario. It is reproduced as under:

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[136] "IPD".

[137] The dictum in *M/s RSPL Limited v. Mukesh Sharma and Anr.*, FAO (OS) No. 145/2016 and *Chandra Kishore Chaurasia v. R A Perfumery Works Pvt. Ltd.*, 2022:DHC:4454, similarly, also may not remain good law today.

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> "**(a)** A is a tradesman in Calcutta, B carries on business in Delhi. B, by his agent in Calcutta, buys goods of A and requests A to deliver them to the East Indian Railway Company. A delivers the goods accordingly in Calcutta. A may sue B for the price of the goods either in Calcutta, where the cause of action has arisen, or in Delhi, where B carries on business."

221. The person 'A' in the illustration has an option to sue the defendant at Calcutta, which is the place where the cause of action accrued. He need not go to the far off place *viz*. Delhi. The object and purpose of allowing a plaint to be presented before a Court where the cause of action partly accrues is to enable the plaintiff to sue nearer to himself, not to take the *lis* away from the place having a dominant and substantial connection with the case.

222. In ***Krishna Veni Nigam v. Harish Nigam***,[138] the Supreme Court was moved for the transfer of a case pending before the Family Court, Jabalpur, to the Family Court of Hyderabad, Andhra Pradesh. The Court held that the doctrine of *forum conveniens* is applicable in civil proceedings despite the plaintiff being the *dominus litis*. The Supreme Court, therefore, did not find the powers of transfer vested with it to be in conflict with the doctrine of *forum non conveniens*. Para. 13 of the said decision reads as under:

> **13.** We have considered the above suggestions. In this respect, we may also refer to the doctrine of forum non conveniens which can be applied in matrimonial proceedings for advancing interest of justice. Under the said doctrine, the court exercises its inherent jurisdiction to stay proceedings at a forum which is considered not to be convenient and there is any other forum which is considered to be more convenient for the interest of all the parties at the ends of justice. In *Modi Entertainment Network* v. *W.S.G. Cricket Pte. Ltd.* [*Modi Entertainment Network* v. *W.S.G. Cricket Pte. Ltd.*, (2003) 4 SCC 341] this Court observed : (SCC pp. 356-57, para 19)
>
> ****
>
> Though these observations have been made in the context of granting anti-suit injunction, the principle can be followed in regulating the exercise of jurisdiction of the court where proceedings are instituted. **<u>In a civil</u>**

[138] (2017) 4 SCC 150.

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proceeding, the plaintiff is the dominus litis but if more than one court has jurisdiction, court can determine which is the convenient forum and lay down conditions in the interest of justice subject to which its jurisdiction may be availed [*Kusum Ingots & Alloys Ltd.* v. *Union of India*, (2004) 6 SCC 254, para 30] .

(Emphasis supplied)

223. In ***Dashrath Rupsingh Rathod v. State of Maharashtra and Anr.***,[139] a Three-Judge Bench of the Supreme Court speaking through Vikramjit Sen J. laid down the judicial approach which is to be adopted on jurisdiction, and specifically for Section 20 of the CPC. The Court found that the doctrine of *forum conveniens* has application in civil suits. Para. 12 of the said decision reads as under:

"**JUDICIAL APPROACH ON JURISDICTION**

12. We shall take a short digression in terms of brief discussion of the approach preferred by this Court in the context of Section 20 of the Code of Civil Procedure, 1908 (hereinafter referred to as, 'CPC'), which inter alia, enjoins that a suit must be instituted in a court within the local limits of whose jurisdiction the Defendant actually and voluntarily resides, or carries on business, or personally works for gain, or where the cause of action wholly or in part arises. The Explanation to that Section is important; it prescribes that a corporation shall be deemed to carry on business at its sole or principal office, or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place. Since this provision primarily keeps the Defendant in perspective, the corporation spoken of in the Explanation, obviously refers to the Defendant. A plain reading of Section 20 of the CPC arguably allows the Plaintiff a multitude of choices in regard to where it may institute its lis, suit or action. Corporations and partnership firms, and even sole proprietorship concerns, could well be transacting business simultaneously in several cities. If sub-sections (a) and (b) of Section 20 are to be interpreted disjunctively from sub-section (c), as the use of the word 'or' appears to permit the Plaintiff to file the suit at any of the places where the cause of action may have arisen regardless of whether the Defendant has even a subordinate office at that place. **However, if the Defendants' location is to form the fulcrum of jurisdiction, and it has an office also at the place where the cause of action has occurred, it has been held**

[139] (2014) 9 SCC 129.

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> **that the Plaintiff is precluded from instituting the suit anywhere else. Obviously, this is also because every other place would constitute a forum non conveniens. This Court has harmonised the various hues of the conundrum of the place of suing in several cases and has gone to the extent of laying down that it should be courts endeavour to locate the place where the cause of action has substantially arisen and reject others where it may have incidentally arisen**. Patel Roadways Limited, Bombay v. Prasad Trading Company, AIR 1992 SC 1514 : (1991) 4 SCC 270 prescribes that if the Defendant-corporation has a subordinate office in the place where the cause of action arises, litigation must be instituted at that place alone, regardless of the amplitude of options postulated in Section 20 of the CPC. We need not dilate on this point beyond making a reference to ONGC v. Utpal Kumar Basu (1994) 4 SCC 711 and South East Asia Shipping Co. Ltd. v. Nav Bharat Enterprises Pvt. Ltd. (1996) 3 SCC 443."

224. In a similar vein this Court in ***Ansal Buildwell Ltd. v. North Eastern Indira Gandhi Institute of Health & Medical Science and Ors.***,[140] noted that the doctrine of *forum conveniens* applies in the context of civil proceedings and had held as under:

> "**25.** In the context of *forum conveniens* it may be noted that in an appropriate case, a court may refuse to exercise its discretionary jurisdiction by invoking the said doctrine. While invoking the doctrine of forum conveniens a court may refuse to exercise its discretionary jurisdiction notwithstanding that some part of cause of action has arisen within the territorial jurisdiction of the court."

225. The chartered High Courts of Bombay, Madras and Calcutta, having original ordinary jurisdiction, routinely apply the doctrine of *forum conveniens* to civil suits. For instance in ***Madanlal Jalan v. Madanlal***,[141] the Calcutta High Court held that leave to sue may be revoked by applying the doctrine of *forum conveniens*. The material portion of the decision reads as under:

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[140] 2005 SCC OnLine Del 268.
[141] 1945 SCC OnLine Cal 145.

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> "(g) that in giving or refusing leave or maintaining or revoking leave the Court will ordinarily take into consideration the balance of convenience and may, if the balance is definitely in favour of the defendant, apply the doctrine of forum conveniences;"

Relying on ***Madanlal Jalan***, in ***Union of India v. M. Kuppuswamy Naicker***,[142] the Calcutta High Court similarly observed:

> "6. It is well settled that in giving or refusing leave or maintaining or revoking leave the Court would ordinarily take into consideration the balance of convenience and may, if the balance is definitely in favour of the defendant, apply the doctrine of forum convenience, vide Madanlal Jalan v. Madanlal reported in AIR 1949 Cal 495."

226. In ***TN Seshan v. All India Anna Dravida Munnetra Kazhagam***,[143] the High Court of Andhra Pradesh decided a challenge to an order declining to revoke the leave for instituting four suits by plaintiff and granting leave for a fifth suit. At para. 12 the Court took note of the doctrine of *forum non conveniens*, it reads as under:

> "**12.** Before, however, we part with this judgment we propose to clarify that refusal to revoke the leave is not treated as an order to deny to the defendants the right to challenge the facts or traverse the facts which appear to give rise to the cause of action and in case the facts alleged in the plaint stand rebutted or disproved or not proved by the plaintiff in accordance with law, the Court may take the view that the Court's ordinary civil jurisdiction is not attracted and the suit should be filed somewhere else. One of the settled principles is, while examining whether, on the ground of a part of cause of action of the suit has arisen within the territorial limits of the ordinary civil jurisdiction of the court, leave should be granted or not, to test the locus conveniente i.e., whether it shall be convenient for the plaintiff and inconvenient for the defendant or whether it shall be convenient for the defendant and not for the plaintiff, or whether it shall be convenient for both, if the trial is held in the court and not anywhere else. The principle of balance of convenience of the parties in this regard is stated in a Bench decision of the Madras High Court by one of us in Turicorin Alkali Chemicals & Fertilisers Ltd. v. Cochin Silicate & Galss Industries (4) 1992 (1) LW 308. In the instant case, however such a plea is not required to be

[142] 1977 SCC OnLine Cal 235.
[143] 1995 SCC OnLine AP 546.

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> examined at all for it was a plea of inconvenience of the defendant which prevailed before the Supreme Court and the cases have been transferred from the Madras High Court to this Court."

227. In ***Arun Digambar Varangaonkar v. M/s Karpe Gruh Udyog and Ors.***,[144] a suit was filed before the Bombay High Court for trademark and copyright infringement along with a claim for passing off. It was contended that the defendants were using the plaintiff's protected artistic work and mark in relation to masala products and spice preparations so as to infringe upon protected works, and also pass off his goods as that of the plaintiffs. It was contended by the plaintiff therein that he resides at Amravati and also at Bombay. The products of the plaintiff were sold in Maharashtra, Karnataka, Andhra Pradesh, Madhya Pradesh and Gujarat. The plaintiff also caused an enquiry and purportedly found that the impugned preparations of the defendants were available in Bombay and caused purchases of them to be made. Two cash memos in respect of the test purchases made by the plaintiff from Messrs Amruta Traders had also been placed on record to demonstrate the preparations being the impugned trademark.

228. RM Lodha J. (as his Lordship then was), found that the plaintiff mainly resides at Amravati and carries on business also at Amravati. The goods were also manufactured at Amravati. The defendants reside and also manufacture the impugned goods at Amravati. It was found that two cash memos produced by the plaintiff, *prima facie*, showing sale of goods at Bombay was not sufficient to entertain a suit at Bombay. Invoking the doctrine of *forum conveniens*, the Court observed as under:

[144] 1997 SCC OnLine Bom 132.

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"**10.** From the perusal of the plaint itself, it transpires that plaintiff mainly resides at Amravati and he carries on business also at Amravati. The goods are also manufactured by Plaintiff at Amravati. The Defendants reside nt Amravati and they also manufacture the goods concerning the disputed trade mark and the device at Amravati. Except two cash memos produced by the Plaintiff along with the plaint there is no other material prima facie showing the sale of the disputed goods manufactured by the Defendants in Bombay or within the jurisdiction of this Court. Subsection (2) of section 62 of the Copy Right provides that the suit in respect of the infringement of the copy right or any right conferred under the Copy Right Act shall be instituted in the district court within local limits of whose jurisdiction the person instituting the suit actually and voluntarily resides or carries business or presently works for gain. Obviously sub-section (2) of section 62 enables the suitor to file the suit or initiate civil proceedings arising under Chapter XII of Copy Right Act in the District Court within whose jurisdiction he actually and voluntarily resides or carries on business or personally works for gain. This wholesome exceptional provision is intended to save suitor if he so desires for redressal of his grievance in respect of the infringement of copy right or any right conferred the Copy Right Act from suing at the place where defendant resides or carries on business. Section 62 of Copy Right Act, of course, cannot take away the jurisdiction of this Court which it has under Letters Patent but at the same time this Court shall not entertain and try a suit under Copy Right Act where whole of cause of action has not arisen within its jurisdiction or material part of cause of action has not arisen within its jurisdiction or where though some part of cause of action has arisen within its jurisdiction but balance of convenience strongly and definitely is in favour of suit being proceeded within some other Court. In applying the doctrine of forum convenience the court may consider place of residence or business of the parties, the place where transactions took place, the volume of evidence and convenience or inconvenience of producing it at a particular forum, expenses of trial and such other relevant considerations. As already observed earlier, plaintiff in his plaint has himself come out with the case that he resides at Amravati and also at Bombay. The principal residence of the plaintiff, therefore, appears to be at Amravati. The goods are also manufactured at Amravati. The Defendants, according to Plaintiff himself reside at Amravati and carry on business at Amravati. The volume of evidence that may be led by the parties can be conveniently produced at Amravati. The trial at Amravati shall save the parties from unnecessary expenses and, therefore, balance of convenience definitely would be if the suit is tried at Amravati."

229. The argument that the High Courts of Bombay, Calcutta and Madras could invoke the doctrine of *forum conveniens* only because of the wording of their respective Letters Patent is erroneous. The decisions of the Supreme

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Court in ***Dashrath*** and ***Harish Nigam*** were not in the context of Letters Patent. While ***Dashrath*** was concerned with the application of the CPC, ***Harish Nigam***'s dictum applies to all civil proceedings.

230. The doctrine of *forum conveniens* does not require an express statutory basis for its invocation in civil proceedings. A civil court has inherent power to decline to exercise jurisdiction on the ground that it is not the *forum conveniens*.

231. In ***Gulf Oil Corp. v. Gilbert***,[145] the Supreme Court of the USA decided on the issue "*whether the United States District Court has inherent power to dismiss a suit pursuant to the doctrine of forum non conveniens and, if so, whether that power was abused in this case*". Authoring for the majority, Justice Jackson opined that the doctrine of *forum conveniens* has application even for intra-state disputes.

> "It is conceded that the venue statutes of the United States permitted the plaintiff to commence his action in the Southern District of New York, and empower that court to entertain it. [Footnote 3] But that does not settle the question whether it must do so. Indeed, the doctrine of forum non conveniens can never apply if there is absence of jurisdiction or mistake of venue.
>
> ****
>
> **In all cases in which the doctrine of forum non conveniens comes into play, it presupposes at least two forums in which the defendant is amenable to process; the doctrine furnishes criteria for choice between them. The principle of forum non conveniens is simply that a court may resist imposition upon its jurisdiction even when jurisdiction is authorized by the letter of a general venue statute**. These statutes are drawn with a necessary generality, and usually give a plaintiff a choice of courts, so that he may be quite sure of some place in which to pursue his remedy. **But the open door may admit those who seek not simply justice, but perhaps justice blended with some harassment**. A plaintiff sometimes

[145] 330 US 501 (1947).

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> is under temptation to resort to a strategy of forcing the trial at a most inconvenient place for an adversary, even at some inconvenience to himself."

(Emphasis supplied)

232. Unequivocally, the Supreme Court of Illinois in ***Torres v. Walsh***,[146] held that the invocation of the doctrine of *forum non conveniens* does not require a statutory backing. It originates and lies in the common law. The lucid words of Justice Clark read as under:

> "While in Illinois we are without any statutory authorization, we find that such authority to transfer a case under the doctrine of forum non conveniens exists at common law, and, therefore, statutory authorization is unnecessary as it only recognizes and codifies a right that previously existed at common law. The doctrine of forum non conveniens originated in the common law of England which Illinois adopted as it existed "prior to the fourth year of James the First" (Ill. Rev. Stat. 1981, ch. 1, par. 801).""

233. There is, thus, no requirement for there to be a provision in the CPC, providing in explicit terms, that the doctrine of *forum conveniens* applies to civil suits. A careful analysis of the provisions of the CPC would also reveal that there is indeed scope to read this doctrine into the Code. A bar on the application of this doctrine simply cannot be found in the Code. To analyse this, a few provisions of the CPC, may be extracted as under:

Section 15 of the CPC reads as under:

> "**15. Court in which suits to be instituted.**
>
> Every suit shall be instituted in the Court of the lowest grade competent to try it."

Section 20 of the CPC reads as under:

> "**20. Other suits to be instituted where defendants reside or cause of action arises.**

[146] 456 N.E.2d 601, 98 Ill. 2d 338.

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> 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 works for gain, as aforesaid, acquiesce in such institution; or
>
> (c) the cause of action, wholly or in part, arises.
>
> Explanation.—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."

234. Sections 15 and 20 of the CPC contain the necessary conditions that ought to be satisfied by the plaintiff while instituting a suit. A plaint cannot be instituted before a forum which is not of the lowest grade competent to try it. A suit not governed by Sections 16 to 19, will have to be instituted in accordance with Section 20 and comply with the requirements of sub-sections (a) to (c). Satisfaction of Sections 15-20 of the Code determines whether a forum is *capable* of adjudicating a *lis*. The doctrine of *forum non-conveniens* is, however, concerned with whether a forum *ought* to adjudicate a given case. The doctrine of *forum conveniens*, it is trite law, is applicable only when a forum is found to possess jurisdiction. It is after that stage, the inquiry begins: whether it is *appropriate* to adjudicate that suit. No conflict, at all, can be found between the *doctrine of forum non-conveniens* and the provisions of the CPC.

235. A Code cannot be expected to contemplate every possible issue that may arise in civil proceedings. Section 151 of the CPC, which saves the

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inherent powers of the Court, is intended to redress those very situations, which are not effectively redressed by the remaining portion of the Code. Reliance may be placed on the decision of the Supreme Court in ***Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal***,[147] where Raghubar Dayal J. speaking for a Four Judge Bench, observed as under:

> "**18.** …the Courts have inherent jurisdiction to issue temporary injunctions in circumstances which are not covered by the provisions of Order 39 CPC. There is no such expression in Section 94 which expressly prohibits the issue of a temporary injunction in circumstances not covered by Order 39 or by any rules made under the Code. It is well settled that the provisions of the Code are not exhaustive, for the simple reason that the legislature is incapable of contemplating all the possible circumstances which may arise in future litigation and consequently for providing the procedure for them. The effect of the expression "if it is so prescribed" is only this that when the rules prescribe the circumstances in which the temporary injunction can be issued, ordinarily the Court is not to use its inherent powers to make the necessary orders in the interests of justice, but is merely to see whether the circumstances of the case bring it within the prescribed rule. If the provisions of Section 94 were not there in the Code, the Court could still issue temporary injunctions, but it could do that in the exercise of its inherent jurisdiction. No party has a right to insist on the Court's exercising that jurisdiction and the Court exercises its inherent jurisdiction only when it considers it absolutely necessary for the ends of justice to do so. It is in the incidence of the exercise of the power of the Court to issue temporary injunction that the provisions of Section 94 of the Code have their effect and not in taking away the right of the Court to exercise its inherent power.
>
> ****
>
> **20.** Further, the provisions of Section 151 of the Code make it clear that the inherent powers are not controlled by the provisions of the Code. Section 151 reads:
>
> "Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court."
>
> **21.** A similar question about the powers of the Court to issue a commission in the exercise of its powers under Section 151 of the Code in circumstances not covered by Section 75 and Order 26, arose in *Padam Sen* v. *State of Uttar Pradesh* [(1961) 1 SCR 884] and this Court held that the Court can issue a commission in such circumstances. It observed at p. 887 thus:

[147] 1961 SCC OnLine SC 17.

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> "The inherent powers of the Court are in addition to the powers specifically conferred on the Court by the Code. They are complementary to those powers and therefore it must be held that the Court is free to exercise them for the purposes mentioned in Section 151 of the Code when the exercise of those powers is not in any way in conflict with what has been expressly provided in the Code or against the intentions of the legislature."
>
> These observations clearly mean that the inherent powers are not in any way controlled by the provisions of the Code as has been specifically stated in Section 151 itself. But those powers are not to be exercised when their exercise may be in conflict with what had been expressly provided in the Code or against the intentions of the legislature. This restriction, for practical purposes, on the exercise of those powers is not because those powers are controlled by the provisions of the Code but because it should be persumed that the procedure specifically provided by the legislature for orders in certain circumstances is dictated by the interests of justice."

236. Justification for invoking the doctrine of *forum non-conveniens* can be adequately found in Section 151 of the Code. Additionally, the language of Order VII Rule 10 may also be examined. The words used are under:

> "**10. Return of plaint.**
>
> (1) Subject to the provisions of rule 10A, the plaint shall at any stage of the suit be returned to be presented to the Court in which the suit **should have been instituted**.
>
> Explanation.— For the removal of doubts, it is hereby declared that a Court of appeal or revision may direct after setting aside the decree passed in a suit, the return of the plaint under this sub-rule."

(Emphasis supplied)

237. The word "*should*" is defined in the following manner in various dictionaries:

> "**Should.** The past tense of shall; **ordinarily implying duty or obligation**; although usually no more than an obligation of propriety or expediency, or a moral obligation, thereby distinguishing it from "ought." It is not normally synonymous with "may," and although often interchangeable with the word

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"would," **it does not ordinarily express certainty as "will" sometimes does**."[148]

"Should. 1. used to say or suggest that something is the proper, reasonable, or best thing to do; used with have to say that something was the proper, reasonable, or best thing to do but was not done. 2. used to say that something is expected or correct."[149]

"Should vb the past tense of shall: used as an auxiliary verb to indicate that an action is considered by the speaker to be **obligatory** (you should go) or to form the subjunctive mood with I or we."[150]

"Should:— used to show what is right, **appropriate**, etc. …."[151]

(Emphasis supplied)

238. A plaint shall be returned if it is not filed in a forum where it "*should have been instituted*". This includes a case where it is presented before a Court having no jurisdiction at all, but may also, additionally, include a court which is *forum non-conveniens*. Suits *should* be instituted at a place which is *forum conveniens*. Order VII Rule 10 of the CPC, can, thus, additionally, be considered as containing sufficient leg-room to house the doctrine of *forum non-conveniens*.

239. The argument that the doctrine of *forum conveniens* is in the teeth of the transfer provisions contained in the Code is devoid of merit. The doctrine of *forum non conveniens* can only be invoked by a court before which a suit is *maintainable*. The availability of jurisdiction to decide the *lis* agitated before a court is, thus, essential for the doctrine to apply. When the Supreme Court acts under Section 25 of the CPC to transfer proceedings

[148] Blacks Law Dictionary, 5th Ed., 1979.
[149] Merriam-Webster's Collegiate Dictionary, 1160, 11th Ed., 2003.
[150] Collins English Dictionary 30th Anniversary Edition (10th Edn. in 2009).
[151] Oxford Advanced Learner's Dictionary, New 8th Edn.

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from a High Court or other Civil Court in one State to a High Court or other Civil Court in any other State, it does not apply *forum conveniens* as that *lis* which is being transferred could not be decided by the transferring-court. A civil suit which gets transferred from one High Court to another under Section 25 of the CPC could not have been decided by the Supreme Court. The doctrine, thus, is not in conflict with the powers of transfer exercisable under Section 25 of the CPC. Even otherwise in ***Harish Nigam***, the Supreme Court while exercising transfer jurisdiction noted the application of this doctrine to civil proceedings.

240. There may not be explicit statutory provisions, as there are today, in England and certain States of the USA, empowering a civil court to invoke principles of *forum non-conveniens* but that does not mean in appropriate cases the doctrine cannot be invoked. Our Code remains of 1908, as has been noted above, a portion of jurisdictional provisions in the CPC have not changed since the 1700s. It is on the basis of this legislative text that courts have to interpret modern internet based IP infringement cases. Merely because the bare letter of the Code is not keeping with the changing times, does not mean, that courts ought to be stuck at the bark of words. The doctrine of *forum non-conveniens* existed and flourished in both US and England prior to it gaining statutory recognition. There is no reason why it must not, in India.

241. What necessitates a suit being required to be filed at the appropriate and convenient forum? A requirement for certainty, predictability and fairness. A defendant that utilises internet for its business, does not sign up to get sued around the country. He also does not sign up to live in a constant

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state of uncertainty as to which part of the country he/she may get summons from. Yes indeed the right of the plaintiff may get infringed by internet activity of the defendant. That right needs to be redressed. Ordinarily the place that redresses that infraction is the place where that wrong occurred. This in itself was an indicator to the defendant as to where it may be sued. This is the rationale and idea, behind making forums competent to adjudicate on issues that take place within their territories. The underlying premise of this doctrine, however, changes when the cause of action is contended to be pan-India or susceptible to being created in any part of India depending upon the plaintiff's acts.

242. While in conventional suits it is the defendant's conduct, which, in an overwhelming number of cases, determines where the cause of action accrues; however, in cases filed before the IPD, it is the plaintiff who seems to have control over where cause of action can be generated. Jurisdictional rules have always been defendant-centric. The plaintiff must not have too many options to choose from, not merely because there is a possibility of him choosing a place that is the most inconvenient to the defendant, but also because his choice determines the legal infrastructure required to handle and manage the consequences of that choice.

243. Legal rules are intended to govern human affairs. They are to be framed and postulated in a manner that they are understandable to the everyday citizen of our country. Jurisdictional rules, similarly, intend to govern procedural law that determines, among other things, where a suit can be filed. Why should a person know where they could be possibly sued? At the outset because litigation is expensive, but also because that is the very

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purpose for which rules are framed. To give clarity to the citizens as to the manner in which they may conduct themselves and their business.

244. The plaintiff being *dominus litis* is a consideration. Similar to another consideration of the rule of law, certainty and construing provisions in a manner that they don't become susceptible to misuse. The issue boils down to which value is to be given a higher preference. In this Court's opinion the latter set of factors are to be given more importance. This is not, it may be noted, something completely novel which is being proposed. When the Supreme Court in ***Patel Roadways*** interpreted the explanation to Section 20(a), it restricted certain forums to which the plaintiff otherwise could have gone. When the Supreme Court in ***Sanjay Dalia*** incorporated Section 20(a) to Section 134(2) of the Trade Marks Act and 62(2) of the Copyright Act, it naturally foreclosed certain forums which otherwise would have been available to a given plaintiff.

245. Courts have, depending upon the situation that gets presented, restricted the right of the plaintiff and the options that are available to it for filing a given suit. Nobody has an inherent vested right to file a suit before a specific court. The plaintiff can validly insist that a violation of his right must be remedied. He cannot, however, insist that it must be remedied by a particular court.

246. The parliament while choosing to continue with the language of the residuary jurisdictional provision, originally enacted by the British in the form of the Code of 1908, did not intend to allow a plaintiff to file a suit before a forum where neither he, nor the defendant resides, carries on business, or personally works for gain, on the ground that cause of action

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had partially accrued within the jurisdiction of that forum, in a case where cause of action had also partially accrued at the place where the plaintiff or the defendant resides, carries on business or personally works for gain. There also does not appear to be, subject to pleadings being made to the contrary, any reason for a plaintiff to move away from his own territory and away from the territory of the defendant, when he very well could have instituted suits at those place.

247. The application of *forum conveniens* and an insistence on filing a suit before the appropriate forum shall also mean that the plaintiff no longer needs to go through the trouble to come to Delhi from far off places and institute an action before this Court on grounds that a slender part of cause of action has accrued within the "*local limits*" of this Court. He would file before the court that is *forum conveniens*. As noted above, this shall give the defendant the required predictability of knowing from which court he may be summoned. The menace of trade mark and copyright infringement indeed ought to, and must be, remedied by the court most closely connected with the *lis* and the parties. This is necessary in order to bring about convenience in litigation to the plaintiff as also the defendant.

248. Ease of litigation ought be the most foundational pillar of the litigation policy in a country. Interpretation of rules that burden the plaintiff or the defendant must be eschewed. In the context of IP disputes, each court within whose jurisdiction the parties reside, carry on business, or personally work for gain, or the material, integral and essential part of the cause of action has arisen, has jurisdiction to adjudicate such a suit. A court must in

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these cases unhesitatingly entertain a plaint without giving any impression of being incapacitated.

249. The common denominator in the present batch of matters dealt with in this judgment is an attempt by the plaintiff to disturb the natural flow of litigation. Through its own voluntary acts, jurisdiction is sought to be *created* at a place distant from its own place of residence or where it carries on business. An impression is given as though the convenient and more proximate forum is unable to adjudicate the *lis* or grant the reliefs prayed for. Such a notion deserves to be dispelled.

250. Further, text alone may not be conclusive of the construction which is to be given to a provision. For instance, the bare words of Sections 62(2) and 134(2) of the Copyright Act and Trade Marks Act, respectively, did not contain an explanation, *proviso*, caveat, or bar. Despite it, the Supreme Court in ***Sanjay Dalia*** narrowed the options available to the plaintiff, where a suit can be instituted. Arun Mishra J.'s observations in ***Sanjay Dalia*** details the motivation behind putting fetters to the discretion that the plaintiff had under the special legislations. The material portion of the judgement reads as under:

> "**24.** If the interpretation suggested by the appellant is accepted, several mischiefs may result, intention is that the plaintiff should not go to far-flung places than that of residence or where he carries on business or works for gain **in order to deprive the defendant a remedy and harass him by dragging to distant place**. It is settled proposition of law that the interpretation of the provisions has to be such which prevents mischief. …
>
> **25.** …The provisions [Sections 62 and 134(2) of the Copyright Act and Trade Marks Act respectively] enabled the plaintiff or any of them to file a suit at the aforesaid places. But if they were residing or carrying on business or personally worked for gain already at such place, where cause of action has

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arisen, wholly or in part, the said provisions have not provided additional remedy to them to file a suit at a different place. The said provisions never intended to operate in that field. The operation of the provisions was limited and their objective was clearly to enable the plaintiff to file a suit at the place where he is ordinarily residing or carrying on business, etc. as enumerated above, not to go away from such places. **The legislature has never intended that the plaintiff should not institute the suit where he ordinarily resides or at its head office or registered office or where he otherwise carries on business or personally works for gain where the cause of action too has arisen and should drag the defendant to a subordinate office or other place of business which is at a far distant place under the guise of the fact that the plaintiff corporation is carrying on business through branch or otherwise at such other place also. If such an interpretation is permitted, as rightly submitted on behalf of the respondents, the abuse of the provision will take place. Corporations and big conglomerates, etc. might be having several subordinate offices throughout the country. Interpretation otherwise would permit them to institute infringement proceedings at a far-flung place and at an unconnected place as compared to a place where the plaintiff is carrying on their business, and at such place, cause of action too has arisen**….

26. The avoidance of counter-mischief to the defendant is also necessary while giving the remedy to the plaintiff under the provisions in question. It was never visualised by the lawmakers that both the parties would be made to travel to a distant place in spite of the fact that the plaintiff has a remedy of suing at the place where the cause of action has arisen where he is having head office/carrying on business, etc. The provisions of the Copyright Act and the Trade Marks Act provide for the authors/trade mark holders to sue at their ordinary residence or where they carry on their business. The said provisions of law never intended to be oppressive to the defendant. The Parliamentary debate quoted above has to be understood in the manner that suit can be filed where the plaintiff ordinarily resides or carries on business or personally works for gain. **Discussion was to provide remedy to the plaintiff at convenient place; he is not to travel away**. **Debate was not to enable the plaintiff to take the defendant to farther place, leaving behind his place of residence/business, etc. The right to remedy given is not unbridled and is subject to the prevention of abuse of the aforesaid provisions, as discussed above. Parliament never intended that the subject provisions be abused by the plaintiff by instituting suit in wholly unconnected jurisdiction.** In the instant cases, as the principal place of business is at Mumbai the cause of action is also at Mumbai but still the place for suing has been chosen at Delhi. There may be a case where the plaintiff is carrying on the business at Mumbai and cause of action has arisen in Mumbai. **The plaintiff is having branch offices at Kanyakumari and also at Port Blair, if interpretation suggested by the appellants is acceptable, mischief may**

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> **be caused by such plaintiff to drag a defendant to Port Blair or Kanyakumari**. The provisions cannot be interpreted in the said manner devoid of the object of the Act."

(Emphasis supplied)

251. There has been some debate as to the exact import of ***Sanjay Dalia***. There is a divergence of opinion at the Bar on what is meant by the lines highlighted and quoted above. The question raised pertains to what may be called the "*Merger Doctrine*". It provides that if cause of action (wholly or in part) has arisen where the plaintiff resides, carries on business, or personally works for gain, he can sue at that place and at no other place. Whether the Supreme Court in ***Sanjay Dalia*** by making these observations intended to foreclose the avenues under Section 20 of the CPC or do they remain intact is the issue that has been agitated *ad nauseam*. This Court, is refraining from rendering any conclusive finding on this issue. It may only be noted that the most appropriate and relevant guidance that this Court could find on this issue was the decision of the Division Bench in ***Sanjay Dalia***,[152] which was subsequently approved by the Supreme Court. Vikrmajit Sen J. (as his Lordship then was), opining for the Bench, in unequivocal terms observed:

> "**13.** In this analysis, we find the Appeal to be devoid of merits. So far as the facts of the present case are concerned, the cause of action, as laid out in the Plaint, has arisen in Maharashtra only, where the Plaintiff's principal office is located. Had it allegedly arisen at a place where the Plaintiff does not have its principal or subordinate office, the suit could have been filed in any Court holding territorial jurisdiction over any of its offices. Thus, it is evident that we are, in no wise, whittling down the provisions of either the Copyright Act or the Trade Marks Act. **We hold that if the cause of action has arisen at a place where the Plaintiff actually and voluntarily resides or carries on business or personally works for gain, that place is not**

[152] 2008:DHC:3060-DB.

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only the appropriate but also the only place where a suit can be instituted ventilating a grievance of violation of copyright, (and since the provisions are similar) to an infringement of the trademark. In holding so we are not ignoring the provisions of either the Copyright Act or the Trade Marks Act; we are only imparting a pragmatic interpretation to them."

(Emphasis supplied)

252. The intent behind the words of the Supreme Court can be gathered from the decision which was affirmed by it. The words used by the Division Bench are categorical and unequivocal.

253. The argument of there being a bar in the application of the *Merger Doctrine* owing to each sub-clause of Section 20 being independent without any correlation with each other must be stated only to be rejected. There is no mention of the expression "*cause of action*" in the text of Section 20(a). This sub-clause which is defendant centric, gets narrowed down, as noted in ***Patel Roadways***, by the application of the explanation. This explanation, links the place where the defendant has its sub-ordinate office with "*cause of action*", which is an avenue mentioned in sub-clause (c) of Section 20. In other words, the explanation merges the presence of the defendant with the place where cause of action has arisen, and this results into an option available with the plaintiff being curtailed. The rationale for this being that the place where cause of action accrues is convenient to the plaintiff; where the defendant has a sub-ordinate office is similarly convenient to the defendant, and resultantly, in the context of the explanation, the appropriate forum becomes the only forum where a plaintiff could file in terms of the explanation.

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254. The very same underlying reasoning is being applied under Section 20 for the *Merger Doctrine*. The place where the plaintiff resides, carries on business, and personally works for gain is convenient to the plaintiff; since cause of action has also accrued there, it may not be inconvenient for the defendant to be sued at that place. The most appropriate forum both in terms of convenience, and predictability, becomes this place of merger. The underlying rationale of ***Patel Roadways*** thus assists in arriving at the conclusion under the *Merger Doctrine*.

255. Separate from the issue concerning the *Merger Doctrine*, the decision in ***Sanjay Dalia***, is being used in the present case, only to highlight that the absence of textual language may not be conclusive of the construction which is to be adopted.

256. ***Maxwell*** details when the language of a statute may be modified:[153]

> "Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence."

257. ***Bennion on Statutory Interpretation*** also mentions that a construction must not be preferred where owing to a remedy being construed too widely a counter-mischief would prevail. The court also has to be mindful of the consequences on public welfare. A counter-mischief unseen

[153] Maxwell, *On the Interpretation of Statutes* (P. St. J. Langan ed., 12th Edn, 1969), Ch. 11, Section 1, "Modification of the Language to Meet the Intention", "*Maxwell*".

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by the legislature ought to be mitigated by the Court.[154] The material portion of the commentary is:

> "Section 12.1: Presumption that 'absurd' result not intended
>
> 12.1
>
> (1) The court seeks to avoid a construction that produces an absurd result, since this is unlikely to have been intended by Parliament...
>
> Section 10.3: The mischief for which Parliament legislated
>
> 10.3
>
> (1) An Act may be concerned with several different mischiefs. Where the legal meaning of a particular enactment is in question, it is important to identify the precise mischief that the enactment was intended to remedy...
>
> Section 12.7: Avoiding a disproportionate counter-mischief
>
> ...Clearly it would be absurd to suppose that Parliament intended to abolish one mischief only at the cost of establishing another which is just as bad, or even worse. As a matter of common sense, rules whose disadvantages outweigh their benefits ought to be discarded.
>
> **EXAMPLE**
>
> Lord Bingham of Cornhill said:
>
> 'My Lords, s 4 of the Statute of Frauds was enacted in 1677 to address a mischief facilitated, it seems, by the procedural deficiencies of the day…It quickly became evident that if the seventeenth century solution addressed one mischief it was capable of giving rise to another…(*Actionstrength Ltd (t/a Vital Resources) v International Glass Engineering IN.GL.EN. SpA* [2003] UKHL 17).
>
> **Strict construction**
>
> Where another mischief would arise if the remedy provided by the Act were construed widely, the court may avoid or at least reduce it by limiting the remedy.
>
> It may appear to the court that one of the opposing constructions of the enactment, if adopted, would create a mischief of its own. The prospect of this would constitute a negative factor in weighing the applicability of the

[154] Diggory Bailey & Luke Norbury, *Bennion on Statutory Interpretation* (LexisNexis, 7th Edn, 2017), Ch. 12, Section 12.7, "Avoiding a disproportionate counter-mischief", "*Bennion*".

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construction in question. The court also has in mind the consequences for the public welfare.

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Often it is reasonable to assume that a particular consequence was quite unforeseen by Parliament. Enacted law suffers by comparison with unwritten law in that it involves laying down in advance an untried remedy…"

258. Further, ***Bennion*** on avoiding a disproportionate counter-mischief, has observed in Section 12.7:

"**12.7** The presumption against absurdity means that the courts will generally avoid adopting a construction that cures the mischief the enactment was designed to remedy only at the cost of establishing another mischief."

259. The learned author ***Justice G.P. Singh*** has further observed that regard must be had to the subject and object of the Act. The court's effort is to harmonise the words of the statute with the subject of enactment and the object the legislature has in view. When two interpretations are feasible, the court will prefer the one which advances the remedy and suppresses the mischief as envisioned. The relevant portion is extracted below:[155]

"As stated earlier (Chapter 1, title 2 "Intention of the Legislature", text and Notes 59 to 71, pp 15 to 17) and as approved by the Supreme Court: "The words of a statute, when there is doubt about their meaning, are to be understood in the sense in which they best harmonise with the subject of the enactment and the object which the legislature has in view. Their meaning is found not so much in a strictly grammatical or etymological propriety of language, nor even in its popular use, as in the subject or in the occasion on which they are used, and the object to be attained". (*Workmen of Dimakuchi Tea Estate v Management of Dimakuchi Tea Estate*, AIR 1958 SC 353, p 356). The courts have declined "to be bound by the letter, when it frustrates the patent purposes of the statute". (*Cabell v Markham*, 148 F 2d 737 (2d Cir 1945) (Learned Hand J)). In the words of Shah J, "It is a recognised rule of interpretation of statutes that the expressions used therein should

[155] G.P. Singh, *Principles of Statutory Interpretation*, "*Regard to Subject and Object - General*" (A.K. Patnaik rev., LexisNexis, 14th Edn, 2016), "*Justice G.P. Singh*".

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ordinarily be understood in a sense in which they best harmonise with the object of the statute and which effectuate the object of the legislature". (*New India Sugar Mills Ltd v Commissioner of Sales Tax, Bihar*, AIR 1963 SC 1207, p 1213). Therefore when two interpretations are feasible the court will prefer that which advances the remedy and suppresses the mischief as the legislature envisioned. (*Carew & Co Ltd v UOI*, AIR 1975 SC 2260, p 2270). The Court should adopt an object-oriented approach keeping in mind the principle that legislative futility is to be ruled out so long as interpretative possibility permits. (*Busching Schmitz Private Ltd v PT Menghani*, AIR 1977 SC 1569, pp 1575, 1576). The object-oriented approach, however, cannot be carried to the extent of doing violence to the plain language used by rewriting the section or substituting words in place of the actual words used by the legislature. (*CIT v Budhraja and Co.*, AIR 1993 SC 2529, p 2535).

Having regard to the object of the U.P. Bhoodan Yagna Act, 1953 to implement the Bhoodan movement, which aimed at distribution of land to landless labourers who were versed in agriculture and who had no other means of subsistence, it was held that the expression 'landless persons' in Section 14, which made provision for grant of land to landless persons, was limited to landless labourers as described above and did not include a landless businessman residing in a city. (*UP Bhoodan Yagna Samiti v Braj Kishore*, AIR 1993 SC 2529, p 2535)."

260. ***Justice G.P. Singh*** has also observed that it is the court's duty to avoid hardship, inconvenience, injustice, absurdity and anomaly while selecting out of different interpretations. The doctrine must be applied with great care and in case absurd inconvenience is to be caused that interpretation has to be avoided. The relevant discussion is extracted hereunder:

"(a) Hardship, inconvenience, injustice, absurdity and anomaly to be avoided

In selecting out of different interpretations "the court will adopt that which is just, reasonable and sensible rather than that which is none of those things' (*Holmes v Bradfield Rural District Council*, (1949) 1 All ER 381, p 384 (KBD) (Finnemore J)), as it may be presumed "that the Legislature should have used the word in that interpretation which least offends our sense of justice". (*Simms v Registrar of Probates*, (1900) AC 323, p 335 (PC) (Lord Hobhouse)). If the grammatical construction leads to some

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absurdity or some repugnance or inconsistency with the rest of the instrument, it may be departed from so as to avoid that absurdity and inconsistency. (*Grey v Pearson*, (1857) 6 HLC 61, p 106). Similarly, a construction giving rise to anomalies should be avoided. (*Veluswami Thevar v G Raja Nainar*, AIR 1959 SC 422, pp 427, 428). As approved by Venkatarama Aiyar, J.: Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence." (*Tirath Singh v Bachittar Singh*, AIR 1955 SC 830, p 833)."

****

"Consideration of hardship, injustice or absurdity as avoiding a particular construction is a rule which must be applied with great care. "The argument *ab inconvenient*", said Lord Moulton, "is one which requires to be used with great caution". (*Vacher & Sons v London Society of Compositors*, (1913) AC 107 : (1911-13) All ER Rep 241, p 252 (HL)). Explaining why great caution is necessary Lord Moulton further observed, "There is a danger that it may degenerate into mere judicial criticism of the propriety of the Acts of legislature. We have to interpret statutes according to the language used therein, and, though occasionally the respective consequences of two rival interpretations may guide us in our choice between them, it can only be where, taking the Act as a whole, and viewing it in connection with the existing state of the law at the time of the passing of the Act, we can satisfy ourselves that the words can have been used in the sense to which the argument points". (*Vacher & Sons v London Society of Compositors*, (1913) AC 107 : (1911-13) All ER Rep 241, pp 252, 253 (HL)). According to Brett, LJ, the inconvenience necessitating a departure from the ordinary sense of the words should not only be great but should also be what he calls an "absurd inconvenience". Moreover, individual cases of hardship or injustice have no bearing for rejecting the natural construction (*Young & Co v Royal Leamington Spa Corp*, (1883) 8 AC 517, p 527 (HL)), and it is only when the natural construction leads to some general hardship or injustice and some other construction is reasonably open that the natural construction may be departed from. It is often found that laws enacted for the general advantage do result in individual hardship; for example laws of Limitation, Registration, Attestation although enacted for the public benefit, may work injustice in particular cases but that is hardly any reason to depart from the normal rule to relieve the supposed hardship or injustice in such cases. (*Lucy v Henleys Telegraph Works*, (1969) 3 All ER 456, p 465 (CA)). "It is the duty of all courts of justice", said Lord Campbell, "to take care for the general good of the community, that hard cases do not make bad law". (*East*

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India Co v Odichurn Paul, 7 Moo (PC) 85: (1849) 5 Moo Ind App 43, p 69 (PC)). "Absurdity" according to Willes J, should be understood "in the same sense as repugnance that is to say something which would be so absurd with reference to the other words of the statute as to amount to a repugnance". (*Christopherson v Lotinga*, (1864) 33 LJ CP 121, p 123). "Absurdity", said Lord Greene MR, "like public policy, is a very unruly horse". (*Grundt v Great Boulder Pty Gold Mines Ltd*, (1948) 1 All ER 21, p 29 (CA)). He proceeded to add:

> There is one rule, I think which is clear … that, although the absurdity or the non-absurdity of one conclusion as compared with another may be, and very often is, of assistance to the court in choosing between two possible meanings of ambiguous words, it is a doctrine which has to be applied with great care, remembering that Judges may be fallible in this question of an absurdity and in any event it must not be applied so as to result in twisting language into a meaning which it cannot bear. It is a doctrine which must not be used to rewrite the language in a way different from that in which it was originally framed. (*Grundt v Great Boulder Pty Gold Mines Ltd*, (1948) 1 All ER 21, pp 29, 30 (CA)).
>
> The alternative construction contended for must be such which does not put an undue strain on the words used; (*Kanailal Sur v Paramnidhi Sadhukhan*, AIR 1957 SC 907, p 911) and does not require recasting of the Act or any part of it. It must be possible to spell the meaning contended for out of the words actually used. (*Shamrao V Parulekar v District Magistrate, Thane*, AIR 1952 SC 324, p 327).
>
> No doubt in cases of ambiguity that construction which better serves the ends of fairness and justice will be accepted, but otherwise it is for the legislature in forming its policy to consider these elements. (*IRC v Mutual Investment Co*, (1966) 3 All ER 265, p 268 (PC)).
>
> The courts should as far as possible avoid a construction which results in anomalies. (*NT Veluswami Thevar v G Raja Nainar*, AIR 1959 SC 422, pp 427, 428)."

261. In ***R v. Roberts***, the accused's front garden was treated at trial as a "*public place*" under Section 139 of the Criminal Justice Act, 1988, because harm could be inflicted from it upon persons in the adjacent street. This extension was rejected as it would also make the status of a garden depend upon its wall and could turn part of a room abutting the street into a public

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place. Para. 5 concludes that "*in our view such a construction could not possibly be correct.*"[156]

262. In ***Public Prosecutor v. Oie Hee Koi***, Section 57(1) of the Malayan Internal Security Act, 1960, prohibited "*any person*" from carrying arms without lawful authority. The Privy Council, while interpreting the provision, held that although "*any person*" appeared wide enough to include everybody, it excludes the soldiers. Words, it was highlighted, had to be understood in the context and purpose of the Act.[157]

263. A reference may also be made to the decision of the Supreme Court in ***Sonic Surgical v. National Insurance Co. Ltd.***[158] In this case, insured premises, the fire policy, and the claim were connected with Ambala, but the complaint was brought at Chandigarh on the basis of the insurer's branch office being there. The Supreme Court found that allowing a claim to be filed at a forum where no cause of action accrues but only a branch of the insurer is present, would amount to plain absurdity. It may also lead to the parties indulging in bench hunting. The Supreme Court categorically accepted that it is departing from the plain and literal words, but noted that such a departure sometimes is necessary. Para. 10 of the decision reads as under:

> "**10.** …**In our opinion, an interpretation has to be given to the amended Section 17(2)(b) of the Act, which does not lead to an absurd consequence. If the contention of the learned counsel for the appellant is accepted, it will mean that even if a cause of action has arisen in Ambala, then too the complainant can file a claim petition even in Tamil Nadu or Gauhati or anywhere in India where a branch office of**

[156] *R v. Roberts(Leroy Lloyd)*, [2003] EWCA Crim 2753, [2004] 1 WLR 181.
[157] *Public Prosecutor v. Oie Hee Koi*, [1968] AC 829 (Privy Council).
[158] (2010) 1 SCC 135.

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> **the Insurance Company is situated**. **We cannot agree with this contention. It will lead to absurd consequences and lead to bench-hunting.** In our opinion, the expression "branch office" in the amended Section 17(2) would mean the branch office where the cause of action has arisen. No doubt this would be departing from the plain and literal words of Section 17(2)(b) of the Act but such departure is sometimes necessary (as it is in this case) to avoid absurdity."

(Emphasis supplied)

264. The absurdity taken note of by the Supreme Court in ***Sonic Surgical*** gets presented before this Court through the route of Section 20 of the CPC and on occasions the special provisions. The same concerns of Bench and court hunting, luxury tourism, and forum shopping arise in connection with an unrestricted application of Section 20 of the CPC. On the basis of a remote and minuscule fraction of a cause of action, it is contended that a suit is to be maintained in Delhi. The interpretation expounded in this judgment is intended to tame this very unruly horse. But for this, in cases, where jurisdiction is sought to be established by the plaintiff on the basis that deliveries took place at a given forum, or that copyrighted material is accessed at a given place, the plaintiff, can virtually choose any place in India to sue the defendant at. Plainly, this is absurd and goes against the very purpose of having jurisdictional provisions.

265. In ***Horlicks Ltd. and Anr. v. Heinz India (Pvt.) Ltd.***,[159] a Division Bench of this Court held that the principles of *forum conveniens* do not apply to civil suits which are governed by the CPC. The decisions of the Supreme Court in ***Dashrath*** and ***Harish Nigam***, were rendered after the decision in ***Horlicks***. Both these judgments hold that the doctrine of *forum conveniens* applies to civil proceedings and civil suits.

[159] 2009 SCC OnLine Del 3342.

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266. The view expressed by a Coordinate Bench in ***Federal Express Corporation v. Fedex Securities Ltd. & Ors.***,[160] that the observations in para. 12 of ***Dashrath*** were not an application of *forum conveniens* to Section 20, was a passing *obiter* which does not form part of the *ratio decidendi*. At para. 29 of the said decision, the Court concluded that no part of cause of action had accrued within the jurisdiction of Delhi. The doctrine of *forum non conveniens* can only be applied once the court concludes that it does have jurisdiction but ought to relegate a party to a different forum. In ***Federal Express***, therefore, there was no occasion for the Court to render binding findings on the view of the Supreme Court in ***Dashrath***.

267. Importantly, in the celebrated commentary of Mulla on the Civil Procedure Code,[161] the decision of ***Dashrath*** is not treated as an exceptional case but rather is considered under the heading on the approach to be taken while interpreting Section 20 of the CPC.

268. Though the decisions in ***Dashrath*** and ***Harish Nigam*** in and of themselves are sufficient to depart away from the view taken in ***Horlicks***, to some extent the judgment of the Division Bench of this Court may be analysed.

269. At the outset, it may be noted that the decision in ***Horlicks*** does not refer to a previously decided Division Bench decision of our Court in ***Sanjay Dalia***, where our Court, in paras. 5 and 6, applies the doctrine of *forum non-conveniens* to civil suits. The judgment in ***Horlicks***, thus, may be termed as being rendered without adverting to a binding precedent of this

[160] 2017 SCC OnLine Del 7906.
[161] 21st Ed., 2026.

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Court. On this short ground, again, the decision in ***Horlicks*** may not be termed as a precedent. The material portion of the judgment in ***Sanjay Dalia*** reads as under:

> "**5.** A plain reading of Section 20 of the CPC apparently allows the Plaintiff a multitude of choices where it may institute its suit. Corporations and partnership firms, and even sole proprietorship concerns, could well be transacting business simultaneously in several cities. If sub-sections (a) and (b) of Section 20 are to be interpreted disjunctively from sub-section (c), as the use of the word "or" appears to allow, the Plaintiff could file a suit where the cause of action may have arisen, regardless of whether the Defendant has even a subordinate office at that place. However, if the Defendant's location is to form the fulcrum of jurisdiction, and it has an office also at the place where the cause of action has occurred, the Plaintiff is precluded from instituting the suit anywhere else. **Obviously, this is because at every other place would constitute a forum non conveniens**.
>
> **6. It is noteworthy that the Supreme Court has dwelt on the various hues of this problem of the place of suing in several cases and has gone to the extent of laying down that it should be court's endeavour to find out the place where the cause of action has substantially arisen and reject others where it may have incidentally arisen**. We need not delve further on this point beyond making a reference to Oil & Natural Gas Commission –vs- Utpal Kumar Basu, JT 1994 (5) SC1 and South East Asia Shipping Co. Ltd. –vs- Nav Bharat Enterprises Pvt. Ltd., (1996) 3 SCC 443…."

(Emphasis supplied)

270. Additionally, the reasoning in ***Horlicks*** may be considered. The Division Bench held that the principle of *forum non conveniens* does not apply to civil suits on the grounds that: *firstly*, invocation of Section 151 of the CPC to apply the doctrine of *forum conveniens* is impermissible as it is contrary to the substantive provisions of the CPC. *Secondly*, the doctrine of *forum non-conveniens* is purportedly the flip-side of the principle governing anti-suit injunctions. Since anti-suit injunctions cannot be issued by a

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domestic forum against a domestic forum, therefore, the doctrine of *forum non-conveniens* also cannot be invoked in the domestic sphere.[162]

271. Concerning the first reason noted above, the discussion made in paras. 234-237 of this judgment reveals that the provisions of the CPC are not in conflict with the doctrine of *forum conveniens*. Rather, the wording of the provisions allow for this principle to be housed in the Code. The second reason warrants a few observations being made.

272. In ***Horlicks*** the Division Bench also took note of the judgments passed by the Calcutta High Court applying the doctrine of *forum conveniens*. The Court, however, was of the opinion that post the decision of the Supreme Court in ***Cotton Corporation of India Ltd. v. United Industrial Bank Limited***,[163] the doctrine of *forum non-conveniens* cannot be applied in the domestic context. In ***Cotton Corporation of India***, the issue before the Supreme Court was whether in view of Section 41(b) of the Specific Relief Act, 1963, a court will have jurisdiction to grant an injunction restraining any person from instituting any proceeding in a court not subordinate to that from which the injunction is sought. The Supreme Court found that it is impermissible. The issue, however, being analysed in this judgment is slightly different. Anti-suit injunctions and *forum conveniens* may be two arms of the same body, but merely because one is cut, does not, *ipso facto*, mean that the other needs to be severed.

273. The fundamental rationale for preventing a domestic court to issue an injunction against another domestic court not subordinate to that from which

[162] 2009 SCC OnLine Del 3342, para. 65.
[163] (1983) 4 SCC 625.

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the injunction is sought, is hierarchy. The legislature did not find it appropriate that a court which does not have superintendence and jurisdiction over another court should be issuing injunction orders concerning it. This discomfiture of the parliament does not arise when the doctrine of *forum conveniens* is invoked. Under this doctrine, the court which has jurisdiction, and before which a suit is *maintainable* refuses to *entertain* the suit on grounds of appropriateness.

274. Additionally, conclusion (ii) noted in para. 92 of ***Horlicks***, declares that the doctrine of *forum conveniens* can be invoked by a writ court. A High Court exercising writ jurisdiction, however, cannot injunct a party from approaching another High Court. If the reasoning of ***Horlicks*** was taken to its logical conclusion, the doctrine of *forum non-conveniens* could also not be applied to writ proceedings. In any case, if this principle was restricted to being a flip side of anti-suit injunctions, proceedings under Article 226 of the Constitution of India, not being *suits*, could not have been susceptible to this doctrine. However, writ courts do use, and the Supreme Court has on numerous occasions, directed the courts to be mindful of the principle of *forum conveniens*.

275. The decision of this Court in ***ICICI Bank Ltd. v. Rathi Syntex Ltd. and Anr.***,[164] noting that the doctrine of *forum conveniens* does not apply to civil proceedings was rendered without adverting to the decision of the Supreme Court in ***Dashrath***. Even otherwise, the decision of ***Harish Nigam***, is a subsequent decision of the Supreme Court noting that *forum conveniens* applies to ordinary civil proceedings. Further, the issues highlighted in the

[164] 2015:DHC:9246.

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present judgment were not raised in ***ICICI Bank***. It is trite law that a judgment is a precedent only on what it decides and not what can be inferred from it.

276. Before delving further, an argument raised by counsel in a few matters may be considered. It is submitted by them that the use of the expression "*in part*" under Section 20(c) of the CPC, implies that the doctrine of *forum non-conveniens* cannot apply to civil suits. For two reasons this objection holds no force: the *first*, Article 226 of the Constitution of India also uses the expression "*in part*", and it is nobody's case that the invocation of *forum non-conveniens* in the context of writ proceedings is impermissible. The *second* concerns the purpose of this expression. As opposed to the earlier civil procedure codes, which used the language "*where cause of action arises*" for their residuary jurisdiction provision, the Code of 1908, used the words "*wholly or in part*" as well. This expression is merely to clarify that it is not necessary that the entire cause of action accrues within the jurisdiction of a given court, in order to clothe it with jurisdiction. It is not intended to require courts to entertain suits where a fraction of a cause of action has accrued before a given Court.

277. From the discussion above, it can be concluded that the doctrine of *forum non-conveniens* has application in civil suits. The Court can, therefore, in appropriate cases, where a small or slender part of cause of action has arisen within the jurisdiction of a given court and a substantial, material and integral part of the cause of action has arisen within the jurisdiction of another court, relegate a plaintiff to the latter court.

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278. The principle of *forum conveniens* was explained in ***Kusum Ingots & Alloys Ltd. v. Union of India and Anr.***,[165] in the following words:

> "**Forum Conveniens**
>
> We must, however, remind ourselves that even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merit. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens. (See Bhagar Singh Bagga v. Dewan Jagbir Sawhany, AIR 1941 Cal; Mandal Jalan v. Madanlal, (1945) 49 CWN 357; Bharat Coking Coal Limited v. M/s Jharia Talkies & Cold Storage Pvt. Ltd. (1997) CWN 122; S.S.Jain & Co. & Anr. v. Union of India & Ors. (1994) CHN 445; M/s. New Horizon Ltd. v. Union of India, AIR 1994 Delhi 126) "

279. This Court in ***The Indure Pvt. Ltd. v. Government of NCT of Delhi***,[166] noting the caution of this Court not becoming a pan-India superior court, opined as under:

> "**36.** A petitioner who approaches this Court to assail a decision of an authority situated in Delhi, when the underlying cause for the said decision lies elsewhere, effectively attempts to make this High Court a mini-pan India Superior Court exercising jurisdiction over all events which take place throughout this Country. There is no gainsaying with the proposition that every High Court is competent to adjudicate upon a lis which arises from events or actions taking place within its territory. Merely because the ultimate order, which is based on events taking place outside Delhi and takes cognizance of actions outside of Delhi, is passed within the jurisdiction of this Court, a writ petition ought not be entertained by this Court."

280. Ultimately, the Court concluded that the substance of a matter must be adjudged, and not the unchanging constant which is present in action to arrive at a conclusion on whether to entertain an action in the context of territorial jurisdiction and forum non conveniens. At para. 42 this Court observed:

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[165] (2004) 6 SCC 254.
[166] 2026:DHC:1605.

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> "**42.** It is the substance of the matter which the Court must consider in determining the connection with Delhi. An order being passed by an authority in Delhi is an unchanging constant. This static/uniform facet, which is unmoved by the nature of the *lis*, ought not to determine where territorial jurisdiction would lie."

281. Reference may also be made to the doctrine of the '*centre of interests*', applied in the European Union to determine jurisdiction over claims concerning, *inter alia*, the infringement of personality or publicity rights where harm occurs across multiple Member States. Although rooted in EU Regulations, the doctrine offers useful guidance on the approach to be taken *qua* jurisdiction in such disputes. In appropriate cases, the inquiry while applying the doctrine of *forum conveniens* may indeed be where the centre of interests of a given dispute lies.

282. The centre of interests doctrine holds that in cases particularly those involving publication over the internet and infringement of personality/publicity rights, the proper forum for instituting legal proceedings is the jurisdiction where the plaintiff's reputation is most significantly established and where the alleged publication is likely to cause the most substantial harm. The doctrine shifts focus from the place of mere publication to the place where the impact on reputation is the greatest.

283. The plaintiff's habitual residence, principal place of business, or the location of their strongest social and professional connections typically constitutes this "*centre of interests*". The doctrine aims to prevent artificial or opportunistic forum selection and ensures that claims are adjudicated at the appropriate forum.

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284. Reference can be made to the decision of ***eDate Advertising GmbH v. X***,[167] which interpreted Article 5(3) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. In the context of personality rights being infringed across multiple jurisdictions of the Europe, the Court of Justice of European[168] Union held as under:

> "48 The connecting criteria referred to in paragraph 42 of the present judgment must therefore be adapted in such a way that a person who has suffered an infringement of a personality right by means of the internet may bring an action in one forum in respect of all of the damage caused, depending on the place in which the damage caused in the European Union by that infringement occurred. Given that the impact which material placed online is liable to have on an individual's personality rights might best be assessed by the court of the place where the alleged victim has his centre of interests, the attribution of jurisdiction to that court corresponds to the objective of the sound administration of justice, referred to in paragraph 40 above.
>
> 49 The place where a person has the centre of his interests corresponds in general to his habitual residence. However, a person may also have the centre of his interests in a Member State in which he does not habitually reside, in so far as other factors, such as the pursuit of a professional activity, may establish the existence of a particularly close link with that State.
>
> 50 The jurisdiction of the court of the place where the alleged victim has the centre of his interests is in accordance with the aim of predictability of the rules governing jurisdiction (see Case C-144/10 BVG [2011] ECR I-0000, paragraph 33) also with regard to the defendant, given that the publisher of harmful content is, at the time at which that content is placed online, in a position to know the centres of interests of the persons who are the subject of that content. The view must therefore be taken that the centre-of-interests criterion allows both the applicant easily to identify the court in which he may sue and the defendant reasonably to foresee before which court he may be sued (see Case C-533/07 Falco Privatstiftung and Rabitsch [2009] ECR I-3327, paragraph 22 and the case-law cited)."

[167] Joined Cases C-509/09 & C-161/10 (CJEU, 2011) wherein the Grand Chamber.
[168] "CJEU".

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285. Further, in the case of ***Bolagsupplysningen OÜ v. Svensk Handel AB***,[169] as regards the identification of the centre of interests of a juristic or legal person, the CJEU held as under:

> "40 As to the identification of the centre of interests, the Court has stated that, with regard to a natural person, this generally corresponds to the Member State of his habitual residence. However, such a person may also have his centre of interests in a Member State in which he does not habitually reside, in so far as other factors, such as the pursuit of a professional activity, may establish the existence of a particularly close link with that State (judgment of 25 October 2011, eDate Advertising and Others, C-509/09 and C-161/10, EU:C:2011:685, paragraph 49).
>
> 41 As regards a legal person pursuing an economic activity, such as the applicant in the main proceedings, the centre of interests of such a person must reflect the place where its commercial reputation is most firmly established and must, therefore, be determined by reference to the place where it carries out the main part of its economic activities. While the centre of interests of a legal person may coincide with the place of its registered office when it carries out all or the main part of its activities in the Member State in which that office is situated and the reputation that it enjoys there is consequently greater than in any other Member State, the location of that office is, not, however, in itself, a conclusive criterion for the purposes of such an analysis.
>
> 42 Thus, when the relevant legal person carries out the main part of its activities in a Member State other than the one in which its registered office is located, as is the case in the main proceedings, it is necessary to assume that the commercial reputation of that legal person, which is liable to be affected by the publication at issue, is greater in that Member State than in any other and that, consequently, any injury to that reputation would be felt most keenly there. To that extent, the courts of that Member State are best placed to assess the existence and the potential scope of that alleged injury, particularly given that, in the present instance, the cause of the injury is the publication of information and comments that are allegedly incorrect or defamatory on a professional site managed in the Member State in which the relevant legal person carries out the main part of its activities and that are, bearing in mind the language in which they are written, intended, for the most part, to be understood by people living in that Member State."

[169] Case C-194/16 (CJEU, 2017).

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286. From the discussion above concerning *forum non-conveniens* the following conclusions may be drawn:

a. The doctrine of *forum non-conveniens* shall apply to civil suits. Once a plaint is found to be maintainable under the CPC or the special provisions, an inquiry may be undertaken as to whether the plaint is to be entertained.

b. The application of this doctrine shall take into account the entirety of avenues that are competent to adjudicate a *lis* and have jurisdiction to entertain a suit as per the applicable law. Specifically, in the context of Section 20(c) of the CPC, this doctrine shall determine whether "*part*" cause of action includes merely an incidental, minuscule, or slender part of the cause of action. The doctrine shall apply to determine whether the court before which a plaint is presented is the place where the material, integral and essential part of the cause of action has arisen.

c. In order to determine where the material, integral and essential part of the cause of action has arisen, the Court shall, unless an exceptional situation warrants otherwise, be confined to the pleaded facts themselves. It is on the basis of the facts pleaded by the plaintiff himself, the *lis* and infringement described by him, that such a conclusion needs to be arrived at.

G. DOCTRINE OF DEMURRER

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287. In the present batch of matters, the doctrine of demurrer has frequently been invoked to insulate a plaint from a deeper judicial scrutiny. An impression is sought to be created that at the initial pre-trial stage, a Court is but a silent audience in the theatre acted by the parties.

288. In ***Exphar SA v. Eupharma Laboratories Ltd.***,[170] the Supreme Court, *inter alia*, held that an averment made in the plaint that the plaintiff is carrying on business within the jurisdiction of a given court is sufficient to maintain a suit in that court. It was observed at para. 35 of ***Dhodha House*** that the questions raised in ***Dhodha House*** were not raised in ***Exphar SA***, and the decision in ***Exphar SA*** turned on its own facts. A holistic reading of ***Dhodha House*** and ***Exphar SA*** would reveal that the Supreme Court in ***Dhodha House*** sought to restrict the application of ***Exphar SA*** to its own facts. Similarly, in ***Pfizer Enterprises Sarl v. Cipla Ltd.***,[171] while adjudicating the ***PM Diesels appeal***[172] the Division Bench found an averment contained in the plaint that the defendant was selling its goods in Delhi to be sufficient to confer jurisdiction on this Court, on the basis of the demurrer doctrine.

289. The law has travelled far beyond accepting a bald pleading of a plaintiff that jurisdiction is made out. In today's day and age a mere statement that a court has jurisdiction, or that "*cause of action has arisen within the jurisdiction of this Court*", or any variation where a provision is attempted to be reproduced in the plaint, will not confer jurisdiction. The

[170] (2004) 3 SCC 688.
[171] 2009 (107) DRJ 735 (DB).
[172] Two separate appeals were decided *vide* a common order in *Pfizer Enterprises Sarl*. One of the appeals was the *PM Diesel* appeal (FAO (OS) 428/2008)), the facts of which were narrated by the Division Bench in para. 2 of the judgment.

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demurrer doctrine cannot be so interpreted so as to preclude a Court from discovering and acting upon, what appears to be, clever drafting by a plaintiff to forum shop and engage in luxury litigation.

290. In ***T. Arivandhandam v. TV Satyapal and Anr.***,[173] VR Krishna Iyer J. had observed:

> "The pathology of litigative addiction ruins the poor of this country and the Bar has a role to cure this deleterious tendency of parties to launch frivolous and vexatious cases.
>
> **2**…The long arm of the law must throttle such litigative caricatures if the confidence and creditibility of the community in the judicature is to survive…
>
> **5**. …The learned Munsif must remember that if on a meaningful — not formal — reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7, Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10, CPC. An activist Judge is the answer to irresponsible law suits. The trial courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Cr. XI) and must be triggered against them. In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi:
>
> > "It is dangerous to be too good.""

291. Similarly, in ***K. Akbar Ali v. K. Umar Khan & Ors.***,[174] the Supreme Court observed:

> **5.** It is well settled that while considering an application under Order 7 Rule 11 CPC, the question before the Court is whether the plaint discloses any cause of action or whether the suit is barred by any law, on the face of the averments contained in the plaint itself. While considering an application

[173] (1977) 4 SCC 467.
[174] (2021) 14 SCC 51.

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under Order 7 Rule 11 CPC, the Court is not to look into the strength or weakness of the case of the plaintiff or the defence raised by the defendant.

****

7. In any case, application under Order 7 Rule 11 CPC for rejection of the plaint requires a meaningful reading of the plaint as a whole. As held by this Court in ITC Ltd. v. Debts Recovery Appellate Tribunal2, clever drafting creating illusions of cause of action are not permitted in law and a clear right to sue should be shown in the plaint. **Similarly the Court must see that the bar in law of the suit is not camouflaged by devious and clever drafting of the plaint. Moreover, the provisions of Order 7 Rule 11 are not exhaustive and the Court has the inherent power to see that frivolous or vexatious litigations are not allowed to consume the time of the Court.**

****

8. In this case, a meaningful reading of the plaint as a whole makes it abundantly clear that the relief claimed in the suit is barred in view of the restricted scope of the power of attorney given by the first defendant to Mr Zahir Ali.

****

13. The Division Bench of the High Court has done substantial justice by nipping in the bud, a suit which is ex facie not maintainable for want of cause of action against the defendants or any of them, thereby saving precious judicial time as also inconvenience and expenditure to the parties to the suit."

(Emphasis supplied)

292. Reliance may be placed on the recent decision of the Supreme Court in ***Manjula and Ors. v. DA Srinivas***,[175] which held as under:

"**9.3.** Once the plaint is presented for institution, and before it is admitted, it is the duty of the trial Court to verify the contents of the plaint and ensure that all legal requirements are satisfied before admitting the plaint. A trial Court cannot mechanically admit the plaint and register the suit. Admission of the plaint cannot be a mechanical process by which the note of the Registry is merely endorsed by the Court. If, at the stage of admission of the plaint, the trial Court, upon a meaningful reading of the plaint, comes to the conclusion that the plaint is liable to be rejected, it shall reject the plaint. It

[175] 2026 INSC 465.

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is not necessary for the trial Court to wait for the defendant to enter appearance and seek rejection of the plaint. Once the Court finds that the suit is frivolous, without jurisdiction, instituted without compliance with prerequisites, fails to disclose a real cause of action, suppresses material facts, or is barred by law but couched in clever drafting to create an illusion of a cause of action, it must reject the plaint with costs. [See T.Arivandandam v. T.V. Satyapal (supra)]. In this context, it would be useful to refer to the following judgments of this Court and the observations made therein:

****

9.4. Every plaint must be presented along with the documents relied upon in the plaint as per Rule 14 of Order VII. A document is ordinarily relied upon in the plaint, and the narration in the bundle of facts contribute to the cause of action. Therefore, it is imperative upon the plaintiff to produce such document. It is trite law that the plaint can be rejected for failure to produce documents relied upon or referred to in the plaint. There can be no quarrel with the well settled position that while considering an application for rejection of plaint, only the averments in the plaint and the documents filed along with the plaint can be looked into. Though we agree with the learned Senior Counsel for the Respondent / Plaintiff on this proposition, the plaint cannot be read in an incomprehensive manner. What is implied in Order VII is a meaningful reading of the plaint, because the bar under law may be either express or by necessary implication. [See T.Arivandandam v. T.V. Satyapal (supra), Sopan Sukhdeo Sable and others v. Assistant Charity Commissioner and others25 and Madanuri Sri Rama Chandra Murthy v. Syed Jalal26].

9.5. Similarly, all material facts have to be stated in the plaint. Material facts are those facts which create a complete cause of action; those facts which directly bear upon the maintainability or sustainability of the suit; and those facts upon adjudication of which may bring an end to the *lis*. Any suppression of a material fact, which has the effect of creating an illusory cause of action and eclipsing the legal bar, ought to be dealt with firmly, and the plaint would be liable to be summarily rejected. It is also settled law that a person who has suppressed a material fact is not entitled to any relief. Suppression of a material fact within the knowledge of the party amounts to fraud upon the Court. The relevancy or otherwise of a fact is to be decided by the Court, and parties cannot contend that they omitted a material fact on the assumption that it was not relevant. It is not only the duty of the Court to summarily reject the claim of a party suppressing a material fact, but also to ensure that any benefit obtained by such party is undone and status quo ante restored in its fairness and equity. The consistent view of this Court, irrespective of whether it is a petition under Article 136 of the Constitution, a writ petition under Article 226 of the Constitution, or in any proceedings

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> before a civil, criminal, judicial or quasi-judicial forum is that the parties must disclose all material facts in their pleadings, and that a party, who suppresses any material fact is not entitled to any relief.
>
> ****
>
> **28.2.** At the same time, the power to reject a plaint at the threshold under Order VII Rule 11 CPC is a serious jurisdiction to be exercised with due circumspection. While genuine causes must not be shut out prematurely, courts are equally bound to prevent misuse of judicial process where the pleadings, on their own showing, disclose no enforceable right or reveal a claim barred by law. The provision thus serves as an important filter, balancing access to justice with the need to prevent frivolous, vexatious, or legally untenable claims from being carried to trial.
>
> ****
>
> **29.** The conspectus of our discussion and findings may be summarised thus:
>
> ****
>
> > (vii) Courts below must curtail frivolous suits which are barred by law, and cases where the cause of action disclosed is illusory, by piercing the veil of clever drafting and giving a meaningful and wholesome reading to the plaint and accompanying documents, preferably at the earliest stage of the suit."

293. The doctrine of demurrer also has to be balanced with the obligation of the Court to nip in the bud frivolous litigation. The Court is bound to meaningfully read the plaint and if found appropriate pierce through averments to identify the missing material facts, internal contradictions, or a legal bar, which have been cleverly omitted only to create an illusion of jurisdiction before this Court.

294. From the discussion above concerning the doctrine of demurrer the following conclusions may be drawn:

a. The doctrine of demurrer which required every averment in the plaint, whatever it may be, to be taken as truth at the pre-trial stage of a litigation, has been diluted.

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b. Today, the Court is fully empowered to pierce through clever drafting where pleadings have been made solely to take advantage of the demurrer doctrine and to create an illusion of jurisdiction before this Court.

c. Bald, unfounded, and empty narrations unsupported by any documents ought to be ignored while determining whether the Court has the requisite jurisdiction to entertain a suit.

III. CONCLUSIONS

295. The analysis made above would lead to the following conclusions:

A. THE PRAYERS TO BE TESTED

(i) A suit for infringement is different from that of passing off. In a given case jurisdiction may be established for infringement but not for passing off. If a composite suit is filed seeking reliefs for both infringement and passing off, it must be established that jurisdiction is made out for each relief. If it is found that a court does not have jurisdiction to proceed with any of the reliefs, the suit cannot proceed.

B. MEANING OF THE EXPRESSION "CARRIES ON BUSINESS"

(i) The meaning and import of the expression "*carries on business*" as it appears in Sections 20(a) and (b) of the CPC, Sections 134(2) and 62(2) of the Trade Marks Act and Copyright Act, respectively, is governed by the pronouncements of the Supreme Court in, *inter alia*, ***Patel Roadways***, ***Dhodha House*** and ***Sanjay Dalia***, as also the dictum of this Court in ***Ultra Home***.

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(ii) If a corporation has a sole office, it shall be deemed to carry on business at that place of its sole office. If, however, there is more than one office, it must be deciphered where the principal place of business of that corporation is. This principal office shall ordinarily be the place of its registered office. Once the principal office is discovered, the other offices shall be the sub-ordinate offices/branch offices.

(iii) A corporation shall be deemed to carry on business at its sub-ordinate office if the cause of action for a given suit accrues at that place. In such a scenario it shall not be open for the company to sue a defendant at the place of its principal office, where no cause of action has accrued.

C. CAUSE OF ACTION (WHOLLY OR IN PART) FOR A QUIA TIMET ACTION

(i) The cause of action for a *quia timet* action accrues when the defendant expresses a deliberate intention to engage in activity the result of which would raise a strong possibility of infringement.

(ii) The activity to be engaged in must be imminent, and of such a character that if the defendant were to engage in the activity, the plaintiff would suffer substantial, if not irreparable, prejudice.

(iii) For goods and services that are subject to regulatory control, in determining whether a *quia timet* action is maintainable, it is essential to consider whether the defendant holds the required licences or permissions, statutory or otherwise, required for their sale, use or any other commercial exploitation. For instance, for the commercial sale of liquor, an excise license under the State's specific Excise Act is required; for manufacturing a

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pharmaceutical product, a license under the Drugs and Cosmetics Act, 1940 may be required; and for the sale of insecticides a license under the Insecticides Act, 1968 may be required.

D. CAUSE OF ACTION (WHOLLY OR IN PART) FOR A PASSING OFF ACTION

(i) Cause of action (wholly or in part) can be said to have arisen within the territorial jurisdiction of a court only if the defendant has made sales of the goods carrying the impugned trademark within the jurisdiction of a given Court. Direct sales are made by the defendant not to an individual consumer but to a distributor, wholesaler or a retailer. Such sales are at a commercial scale. Mere availability of goods within the jurisdiction of a forum Court does not confer jurisdiction.

(ii) Sale of goods within the territorial jurisdiction of the forum court by a firm which does not act as a distributor, wholesaler, retailer, or agent of the defendant, does not confer jurisdiction. Where goods are procured by a firm from another firm that is outside the jurisdiction of the forum court and in turn sold within the territory of the forum court, jurisdiction shall not be conferred.

(iii) Additionally, delivery of goods to the agent/carrier of the plaintiff or its investigator, for onward transmission, is deemed delivery upon the plaintiff or its investigator. This conclusion is not restricted to suits for passing off, but is a general conclusion arrived at by the application of Section 39 of the Sale of Goods Act.

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E. CAUSE OF ACTION (WHOLLY OR IN PART) FOR AN ACTION FOR INFRINGEMENT IN THE OFFLINE WORLD

(i) Cause of action (wholly or in part) can be said to have arisen within the territorial jurisdiction of a court when the defendant, in the course of trade, *uses* a mark which is identical with or deceptively similar to the trade mark, in relation to goods or services in respect of which the trade mark is registered, within the jurisdiction of the forum court.

(ii) Registration of a mark within the jurisdiction of a given court does not constitute part of the cause of action.

F. CAUSE OF ACTION (WHOLLY OR IN PART) FOR AN ACTION FOR INFRINGEMENT IN THE ONLINE WORLD

(i) To establish that cause of action (wholly or in part) has arisen through the means of website activity, the plaintiff must demonstrate that the defendant has purposefully availed itself of the jurisdiction of the forum court by specifically targeting persons within its territory and it resulting in an injury or harm to the plaintiff within the forum state.

(ii) Additionally, the plaintiff must also demonstrate the conclusion of commercially concluded transactions between the defendant and persons within the forum court's jurisdiction through the website in question.

(iii) The requirement of *prima facie* demonstrating commercially concluded transactions taking place can be relaxed in a case where the plaintiff cannot invoke the provisions of Section 134(2) of the Trade Marks

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Act and Section 62(2) of the Copyright Act, and the defendant has no presence in India at all.

G. "DYNAMIC EFFECT" AND WHETHER IT CAN CONFER JURISDICTION

(i) If the principle of *dynamic effect* is applied to cases of infringement, the amendment to the Trade Marks Act and the Copyright Act shall be rendered otiose. Jurisdiction, therefore, cannot be established on the basis of this principle.

(ii) An attempt to find jurisdiction under Section 20(c) of the CPC on the basis that the effect of the infringement is felt at the place where the plaintiff has its presence, also, goes against the spirit of the specialised provisions. It also renders the amendments nugatory. Such an interpretation, thus, ordinarily ought to be avoided.

H. WHETHER THE USE OF AN "INVESTIGATOR" IS PERMISSIBLE

(i) As a rule, the use of an investigator or any other person set up by the plaintiff to find jurisdiction before a forum court amounts to concocting jurisdiction. The findings of such an investigator, thus, ordinarily, cannot be relied upon.

(ii) The two exceptions to this rule are: *first*, where the plaintiff can *prima facie* demonstrate, on the basis of his plaint and the documents attached with it, that but for such an "*investigator*" being hired to plead jurisdiction, cause of action under Section 20(c) of the CPC could not be maintained before

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another court. And *second*, where *ex facie* it can be demonstrated that sales of the impugned goods are taking place within a forum court, and an investigator merely provides evidence. For instance, if the defendant has readily supplied its goods within Delhi to various retailers, distributors and stockists, and the plaintiff's investigator buys these goods from these classes of persons, that report may not be discarded.

I. THE DOCTRINE OF FORUM NON-CONVENIENS

(i) The doctrine of *forum non-conveniens* shall apply to civil suits. Once a plaint is found to be maintainable under the CPC or the special provisions, an inquiry may be undertaken as to whether the plaint is to be entertained.

(ii) The application of this doctrine shall take into account the entirety of avenues that are competent to adjudicate a *lis* and have jurisdiction to entertain a suit as per the applicable law. Specifically, in the context of Section 20(c) of the CPC, this doctrine shall determine whether "*part*" cause of action includes merely an incidental, minuscule, or slender part of the cause of action. The doctrine shall apply to determine whether the court before which a plaint is presented is the place where the material, integral and essential part of the cause of action has arisen.

(iii) In order to determine where the material, integral and essential part of the cause of action has arisen, the Court shall, unless an exceptional situation otherwise warrants, be confined to the pleaded facts themselves. It is on the basis of the facts pleaded by the plaintiff himself, the *lis* and infringement described by him, that such a conclusion needs to be arrived at.

J. DOCTRINE OF DEMURRER

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(i) The doctrine of demurrer which required every averment in the plaint, whatever it may be, to be taken as truth at the pre-trial stage of a litigation, has been diluted. Today, the Court is fully empowered to pierce through clever drafting where pleadings have been made solely to take advantage of the demurrer doctrine and to create an illusion of jurisdiction before this Court. Bald, unfounded, and empty narrations unsupported by any documents ought to be ignored while determining whether the Court has the requisite jurisdiction to entertain a suit.

IV. ADJUDICATING THE ISSUE OF TERRITORIAL JURISDICTION

296. Considering the prolonged discussion above, and the number of conclusions reached, it is found appropriate to briefly discuss in a methodological manner, the inquiry which a Court is to undertake while deciding on the issue of territoriality. Though an exhaustive and straight-jacketed elucidation of cases which may arise before this Court is not possible, an endeavour is being made, to at least lay down some basic tests to be applied in the cases of copyright or trademark infringement and passing off:

TABLE 1

S. No.	Plaintiff's Principal Office	Plaintiff's Sub-Ordinate Office	Defendant's Principal Office	Defendant's Sub-Ordinate Office	Cause of Action has arisen at	Whether suit is Maintainable at Delhi

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SUIT FOR INFRINGEMENT OF TRADE MARK OR COPYRIGHT						
1.	Delhi	At any place	At any place	At any place	At any place including at Delhi.	Yes. Under Section 62(2) and 134(2) of the Copyright and Trade Marks Act respectively.
2.	Outside Delhi	Delhi	At any place	At any place	At any place including at Delhi.	Yes. Under Section 62(2) and 134(2) of the Copyright and Trade Marks Act respectively.
SUIT FOR INFRINGEMENT OF TRADE MARK OR COPYRIGHT ALONE OR ALONG WITH PASSING OFF						
3.	Outside Delhi	Outside Delhi	Delhi	At any place	At any place including at Delhi.	Yes. Under Section 20(a) of the CPC.
4.	Mumbai	Outside	Delhi	Mumbai	At any	No. In such a

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		Delhi			place including Mumbai.	circumstance a suit can only be filed at the place where the sub-ordinate office is and the cause of action has also accrued i.e., at Mumbai.
5.	Outside Delhi	Outside Delhi	At any place	Delhi	At any place including at Delhi.	Yes. Under Section 20(a) of the CPC.
6.	Outside Delhi	Outside Delhi	Outside Delhi	Outside Delhi	At any place including at Delhi.	Yes. Under Section 20(c) of the CPC.

297. In terms of actual fact based examples, the following table may indicatively provide guidance as to the manner in which the above-noted provisions, and the caselaw discussed in this judgment may be applied:

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TABLE 2

S. No.	Facts pleaded	Approach to be adopted
1.	A defendant-restaurant situated outside Delhi accepts enquiries or bookings from Delhi through its website or a third-party platform. The restaurant is claimed to be carrying on business at Delhi and part cause of action to also have arisen at Delhi. Section 20(a) and 20(c) of the CPC are invoked.	No cause of action can be said to have accrued within the jurisdiction of this Court. The conclusion of transactions in this factual matrix requires actual dining by visiting the restaurant which is situated outside Delhi. Allowing inquiries or bookings from Delhi also does not mean that the restaurant in question is carrying on business at Delhi.
2.	Social-media analytics show substantial traffic, followers or engagement from Delhi. This is contended to be part of the cause entitling a plaintiff to sue at Delhi under Section 20(c) of the CPC.	No cause of action can be said to have accrued within the jurisdiction of this Court. Social media analytics showing Delhi traffic may be a result of a wide variety of factors including population. This in itself would not be sufficient to confer jurisdiction on this Court.
3.	A suit is filed against multiple defendants. One of them is a Delhi-based marketplace, intermediary, domain registrar or	It is the contesting defendant and not pro-forma/formal parties that determine whether jurisdiction of a Court is made out. If presence is sought to be established

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	web host. This defendant is contended to be carrying on business at Delhi and Section 20(a) of the CPC is invoked to establish jurisdiction.	only by relying upon the addresses of the pro-forma parties, jurisdiction of Delhi is not made out.
4.	A GST registration describes Delhi as the defendant's "*principal place of business*" while its registered office and relevant operations are elsewhere. Jurisdiction is claimed under Section 20(a) of the CPC on the ground that the defendant is carrying on business at Delhi.	Under the GST Act, "*principal place of business*" is a defined term, distinct from the expression used under Section 20(a) of the CPC. In every State/UT in which a company operates and has a GST registration, a "*principal place of business*" in that State/Union Territory is formed. A suit against a defendant under Section 20(a) of the CPC can only be filed at the sole office, principal office or at the sub-ordinate office, when cause of action also accrues at that place. On the basis of a bare averment made in the plaint that the defendant has its "*principal place of business*" at Delhi owing to its registration under the GST Act, jurisdiction of Delhi shall not be established.
5.	An impugned controlled product	The requirements of a *quia timet* action to

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	expressly restricted to sale in another State. A suit is filed as a *quia timet* action claiming that the defendant is about to expand to Delhi.	file a suit at Delhi do not, ordinarily, get fulfilled if the defendant does not have the requisite license/permission for the concerned controlled goods/service in question.
6.	The plaintiff makes an averment that the impugned products are freely being sold in Delhi at various places and to a number of persons including dealers, distributors or stockists. No documents are attached in support of this averment. Jurisdiction is sought to be invoked under Section 62(2) of the Copyright Act and 134(2) of the Trade Marks Act.	Such an empty averment without supporting documents may amount to a hollow statement pleaded merely to concoct jurisdiction. It shall amount to clever drafting and creating an illusion of a cause of action at Delhi when there exists none. Simply on the basis of the pleading, jurisdiction of Delhi cannot be made out.

298. Once a plaint is found to be *maintainable* under the CPC or the special provisions, in an appropriate case, the Court may decline to *entertain* a plaint on grounds of *forum non-conveniens*. Therefore, notwithstanding the finding rendered on whether a suit is *maintainable* under Section 20, or the special provisions, the Court may, in an appropriate case relegate a party to another forum by invoking the doctrine of *forum non-conveniens*.

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299. While analyzing a case on the touchstone of this doctrine, the Court must take notice of all jurisdictional avenues open to a plaintiff given the facts pleaded in the plaint. Thus, if jurisdiction of this Court is invoked under Section 20(a) of the CPC, but on the pleaded facts, jurisdiction of Mumbai can also be invoked under Section 20(c) of the CPC, a scrutiny must be made of the plaint as to why Delhi is being approached and whether another forum is *forum conveniens*.

300. Illustratively, the following non-exhaustive examples are being given, to elucidate the circumstances in which the Court may exercise the doctrine of *forum conveniens*.

TABLE 3

S. No.	**Grounds pleaded to invoke jurisdiction of Delhi.**	**Application of *forum non-conveniens***
1.	Defendant has had a conference in Delhi that it is about to release its products in Delhi. A suit is filed in Delhi as a *quia timet* action on grounds that an immediate injunction restraining the defendant's actions is	Such a suit ordinarily ought to be entertained. The Court must, however, satisfy itself by meaningfully reading the plaint and supporting documents that the threat at Delhi is *prima facie* real and imminent. For this, the Court may also, in an appropriate case, invoke powers under Section 168 of the BSA and question the parties.

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	required.	
2.	A suit for trademark or copyright infringement is filed at Delhi on the sole grounds that the goods of the defendant are being sold pan-India including at Delhi.	Delhi may not be the *forum conveniens* to entertain such a suit. Goods of the defendant are also being sold at the place where the defendant or the plaintiff have its presence. The manufacturing of the impugned product, its subsequent packaging and labelling by using the plaintiff's mark or copyrighted work constitute a significantly more important part of the cause of action than the fraction available at Delhi.
3.	Both the plaintiff and the defendant are outside Delhi and a suit for trademark or copyright infringement is filed before this Court claiming that the goods of the defendant are being sold pan-India including at Delhi.	The plaintiff in such a case leaves his territory, does not exercise its statutory rights under the special provisions to sue at his own place, neither institutes a suit where the defendant has its presence, but rather approaches this Court. In addition to the inquiry noted at serial number 2, the court engages in an additional inquiry. Despite the availability of the same kind and proportion of the cause of action existing at the plaintiff's place, when the plaintiff approaches another Court, an obvious question arises *qua* plaintiff's *bona fides* and as to whether it is intending to institute a suit before a court that is not *forum conveniens*. He remains answerable for

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		choosing a court which, subject to pleadings to the contrary, *prima facie* is *forum non conveniens*.
4.	The goods of the defendant were purchased from Flipkart or Amazon with a Delhi address, or were purchased from the defendant who delivered it at Delhi.	Delhi may not be *forum conveniens* to entertain such a suit. Goods of the defendant can also be delivered to the place where either the plaintiff or the defendant has its presence. The acts of the plaintiff which were consciously and strategically targeted to cause certain acts to happen within the local limits of this Court, arguably may constitute a part of a cause of action, but that ought not to make Delhi the *forum conveniens*. This purported cause of action is capable of being created in any part of the country, if a plaintiff's voluntary acts were to obligate a court to entertain a *lis*, the concept of the "*local limits*" of a court shall be thrown to the winds.
5.	A film or content is accessible at Delhi.	Access to a film or content, particularly under the Copyright Act may amount to publication. But this sole fact occurring at Delhi may not be sufficient to *entertain* a suit. The access to a content is merely the incidental result of uploading/uprooting which may occur at another forum. It is the place from where uprooting is taking place, which is the *forum*

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		conveniens. There may be cases where the place of uprooting is not discernible despite reasonable efforts, in such a case, *prima facie*, subject to pleadings to the contrary, the court within whose "*local limits*" the plaintiff resides, carries on business, or personally works for gain, is the *forum conveniens*.

V. APPLICATION TO FACTS

301. Turning now to the facts of each case.

ABD Maestro Private Limited v. Great Galleon Ventures Ltd.

[CS(COMM)-987/2026]

302. The plaintiff has filed the suit for copyright, trade mark, and trade dress/label infringement, along with an action for passing off, and other consequential reliefs thereto. The plaintiff-company is engaged in the business of, *inter alia*, manufacturing, marketing, sale and distribution of alcoholic beverages. The plaintiff claims to be the proprietor and exclusive user of the 'YELLO' trade dress, mark and label, which encompasses a vibrant yellow colour, a specific arrangement of the label, and a distinctive overall presentation. It is contended that the defendant by its product 'V21' vodka is infringing upon the intellectual property rights of the plaintiff. It is claimed that the defendant's product has a deceptively similar yellow-and-black bottle design, label and overall trade dress, thereby misappropriating the plaintiff's goodwill and causing a likelihood of consumer confusion.

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303. Paras. 50 and 51 of the plaint contains the grounds on the basis of which jurisdiction of this Court is sought to be invoked, it reads as under:

> "50. This Hon'ble Court has the necessary jurisdiction to try and entertain the present suit as per Section 20 of Code of Civil Procedure, 1908, on account of the following factors:
>
> a. The Defendant is actively engaged in the commercial distribution and sale of its products, which are found all over the markets of New Delhi.
>
> b. The Defendant's website is accessible from any location within New Delhi and the National Capital Region (NCR) and provides an interactive platform through which the Defendant advertises, markets the impugned products and further, prospective customers can contact the Defendant by submitting enquiries and communicating with the Defendant for commercial purposes. The website is directed at consumers across India, including within the territorial jurisdiction of this Hon'ble Court. The Defendant's various social media accounts are also accessible within the jurisdiction of this Hon'ble Court and advertise the products of the Defendant.
>
> c. The Defendant is also registered in Delhi, bearing GSTIN No. 07AABCK1743N1ZE, with its Principal Place of Business situated at A-33, Ground Floor, Naraina Industrial area, Phase l, New Delhi, South West Delhi, Delhi, 110028, which falls within the territorial jurisdiction of this Hon'ble Court. The said GST registration evidences the Defendant's commercial presence and business activities within the territorial jurisdiction of this Hon'ble Court.
>
> 51. This Hon'ble Court has the necessary jurisdiction to try and entertain the present matter as per Section 134 (2) of the Trademarks Act, 1999 read with Section 62(2) of the Copyright Act, 1957, the present suit being one inter alia for infringement of the Plaintiffs copyright in the original artistic work comprising the 'YELLO' label, as the Plaintiff, is carrying on business within the jurisdiction of this Hon'ble Court. The Plaintiff is carrying out its business within the territorial limits of this Hon'ble Court in a variety of ways such as (but not limited to) sale of its products under the 'YELLO' trade dress. Thus, the Hon'ble Court has the necessary territorial jurisdiction to try and entertain the present suit. Furthermore, and independently, the Plaintiff, being the owner of the copyright subsisting in the original artistic work comprising the 'YELLO' label and carrying on business for gain

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within the territorial limits of this Hon'ble Court, is entitled to institute the present suit before this Hon'ble Court under Section 62(2) of the Copyright Act, 1957."

304. The plaintiff admits that its principal place of business and registered office is at Mumbai, Maharashtra and outside the jurisdiction of this Court. The defendant, also, has its registered office outside the jurisdiction of this Court, at Indore, Madhya Pradesh. For the plaintiff to invoke the jurisdiction of this Court under Section 20(a) of the CPC, the defendant must "*carry on business*" within Delhi. The explanation to the said section provides that in order for Section 20(a) of the CPC to apply, a corporation shall be considered to "*carry on business*" at its sub-ordinate office, only when cause of action also accrues within the territorial jurisdiction of the Court where the sub-ordinate office is located.

305. In the instant case the impugned product of the defendant is not sold within the territorial jurisdiction of this Court. The picture of the defendant's product attached with the plaint also notes in bold letters "FOR SALE IN MADHYA PRADESH ONLY". No cause of action, therefore, can accrue within the territorial jurisdiction of this Court.

306. Additionally, applying ***Sanjay Dalia*** and ***Ultra Home***, since the explanation is deemed to have been incorporated in Sections 62 and 134 of the Copyright Act and Trade Marks Act, respectively, the option of Delhi is also not available to the plaintiff under the specialised statutes.

307. The defendant's GST registration showing its "*principal place of business*" to be at Delhi also does not change the aforenoted finding. As noted in paras. 115-117 of this judgement, the "*principal place of business*"

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under the Goods and Services Tax Act is a defined term, having its distinct meaning. It does not have any bearing to determine as to whether the defendant carries on business for the purposes of Section 20(a) of the CPC.

308. Insofar as the argument concerning the invocation of jurisdiction on the basis of the defendant's website is concerned, the ***Banyan Tree*** standard has not been satisfied. There is no commercially concluded transaction between the defendant and persons within the forum court's jurisdiction through the website in question.

309. Lastly, it may also be noted that the plaintiff has cleverly omitted to plead as to whether the defendant has an excise license in Delhi concerning the impugned product. As noticed in ***Shree Nath Heritage***, liquor is an excisable commodity. The sale of such a product, which arguably gives rise to a cause of action, can only take place when a given corporation has an excise license. It was essential, therefore, for the plaintiff to plead about facts concerning a defendant's excise license.

310. In view of the foregoing reasons, territorial jurisdiction of this Court is not made out under Section 20(a) or Section 20(c) of CPC and under Section 134(2) of the Trade Marks Act or Section 62(2) of the Copyright Act. Accordingly, the plaint deserves to be returned to the plaintiff, which may be presented before the Court having the requisite territorial jurisdiction, if so advised.

Beiersdorf AG & Anr. v. Duvac Cosmedics & Ors.

[CS(COMM)-1081/2026]

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311. Neither the plaintiffs nor the defendants are located within the territorial jurisdiction of this Court. Plaintiff no. 1 is Beiersdorf AG, a German company, plaintiff no. 2 is Nivea India Pvt. Ltd., having its registered office at Mumbai. Defendant no. 1 is Duvac Cosmedics, defendant no. 2 is Glexon Healthcare Pvt. Ltd., and defendant no. 3 is M/s Jahnavi Medical Store, all of them are located at Gujarat. The suit is instituted, primarily, for trademark infringement and passing off of the plaintiff's registered "*EUCERIN*" trademark, used in relation to skincare and dermatological products, including face washes. It is alleged that the defendants are manufacturing, marketing, distributing and selling skincare products bearing the identical mark "*EUCERIN*" without authorisation.

312. Para. 77 of the plaint contains the grounds on the basis of which jurisdiction of this Court is sought to be invoked, it reads as under:

> "**77.** This Hon'ble Court has jurisdiction to try and entertain the present suit due to the following reasons:
>
> Under Section 20 (c) of the Code of Civil Procedure 1908:
>
> (a) The infringing products of the Defendants who are inextricably interrelated are being made available within the jurisdiction of this Hon'ble Court. Therefore, the Defendants have purposefully availed of the jurisdiction of this Hon'ble Court and are specifically targeting customers based in Delhi.
>
> (b) Furthermore, since the Defendants have supplied the infringing products in Delhi thereby exists a reasonable and credible apprehension that the Defendants will expand its commercial operations within the jurisdiction of this Hon'ble Court."

313. In ***Banyan Tree***, Mr. Anand had argued before the Division Bench that purposeful availment must be replaced with purposeful avoidance i.e., merely because a defendant has not avoided a jurisdiction would show that it

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has availed the jurisdiction of a given Court. This argument was, however, rejected by the Division Bench. The requirement of ***Banyan Tree*** i.e., of purposefully availing the jurisdiction of a forum Court by specifically targeting customers at Delhi as also commercially concluding transactions have not been proven. The ground pleaded in para. 77(a), at least in the context of online availability, thus deserves to be rejected.

314. The second ground taken by the plaintiff to invoke jurisdiction under Section 20(c) is the findings of an investigator engaged by the plaintiff. It is pleaded that the investigator visited the premises of defendant no. 1 at Vadodara, Gujarat and found that a multi-storey building, located in a commercial area, was erected. Upon inquiring from individuals at that place in Vadodara, Gujarat, it was found that business of the impugned product was being conducted. At the premises of defendant no. 3 at Vadodara, Gujarat, the investigator is stated to have purchased three units of the impugned product. It was discovered by the investigator that defendant no. 3 had been selling the impugned product approximately from the past one to one-and-a-half years. A visit is also stated to have been made at defendant no. 2's premises at Bakrol, Gujarat, where it was found that the impugned product is manufactured at that place for defendant no. 1, who is at Vadodara, Gujarat. One Prisha Pharmacy, again located at Vadodara, Gujarat is also stated to have sold the impugned product to the investigator of the plaintiff.

315. It is the pleadings made from para. 58 to 60 of the plaint that bring Delhi into the picture. It is contended that on 30.07.2026, the investigator contacted defendant no. 3 to purchase the impugned products and get them

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delivered at Delhi. It is stated that defendant no. 3 dispatched the products to Delhi on a cash-on-delivery basis to the investigator in Delhi. On 03.08.2026, the products are stated to have been received at the Delhi address of the investigator and payments are claimed to have been made. It is claimed that no invoice or rough bill was raised.

316. To support these pleadings, the plaintiff has filed the affidavit of the purported investigator one Mr. Nripendra Kashyap. This investigator, as the affidavit records, works with an investigative agency called "E-Cluewise" located at Noida. However, despite the ordinary residence, it appears that the investigator while making the affidavit was at Delhi. The averment made in the affidavit is "*presently in New Delhi*".

317. The affidavit makes mention of certain "*associates*" that helped Mr. Kashyap during the course of the investigation. They are unnamed and not identified. To support the pleadings made concerning the activities at Gujarat, the following has been stated in the affidavit:

> **9.** On 13th July 2026, my associate visited the premises of Defendant No. 1 situated at B/403, Samanvay Silicon, Opp. Kalyan Hotel, Sayajigunj, Vadodara. My associate noticed that the said address was a multi-storey building, located in a commercial area and no signage of the subject entity was displayed around the premises. It was occupying approximately 40-50 square yards of floor area and around 3 people were seen working inside the premises.
>
> **10.** During the course of the visit, my associate met one Mr. Vivek Vasani, Territory Manager of Defendant No. 1. Mr. Vasani stated that Defendant No. 1 is engaged in the business of skincare products, including facewash and sunscreen products, and stated that the entity markets products under various brands including EUCERIN. He further stated that the said entity is a partnership firm which is owned and managed by Mr. Kamlesh Joshi, Ms. Alkaben Kamlesh Joshi, and Mr. Bhavinkumar Yogeshkumar Joshi.

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11. Mr. Vasani informed my associate that Defendant No. 1 has been selling facewash products under the EUCERIN mark for approximately one to one-and-a-half years. Upon being questioned regarding the adoption of the mark, Mr. Vasani stated that the decision had been taken by the partners of the firm and that he was not aware of the reason behind such adoption.

12. Mr. Vasani further informed my associate that the present premises is their office, and they do not have any other office located anywhere else.

13. He further added that they get their products manufactured by a few third-party skincare manufacturing companies, however he did not disclose the details of any third-party manufacturer to the investigator.

14. Mr. Vasani further informed my associate that Defendant No. 1 does not directly sell its products to end consumers and instead supplies its products through dealers. In this regard, he directed my associate to M/s Jahnavi Medical Store, Defendant No. 3 herein, for the purchase of products sold under the impugned mark.

****

19. Pursuant to the information furnished by the representative of Defendant No. 1, my associate visited the premises of Defendant No. 3, M/s Jahnavi Medical Store, at the address SF 216, Siddharth Crest, Opposite Nizampura Bus Stand, Vadodara – 390024, Gujarat on 13th July 2026.

20. My associate met with a staff member working at the said premises who informed him that they are engaged in the business of dealing in medical and cosmetic products.

21. At the said premises, my associate purchased three units of the impugned EUCERIN product against Invoice No. CA-BS/6069 dated 13th July 2026 for a total amount of INR 891/- paid in cash. The purchased products prominently bore the trademark EUCERIN and specifically identified Defendant No. 1 as the marketer and Defendant No. 2 as the manufacturer. Furthermore, the details on the packaging reflect further details on Defendant No.1, including its phone number being 9825096755.

22. Upon enquiries, the staff member at Defendant No. 3's premises stated that they had been selling impugned EUCERIN branded products for approximately one to one-and-a-half years. My associate further observed that around 7-8 units of the infringing products were stocked and offered for sale at the premises. Defendant No. 3 also supplied to the investigator a brochure of Defendant No. 1 wherein the impugned mark EUCERIN was prominently used as a brand name for facewash products.

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24. On 17th July 2026, my associate visited the premises of Defendant No. 2 situated at Shyam Industrial Hub, Bakrol, Gujarat. During the visit, my associate met Mr. Ritesh Chauhan, a representative of Defendant No. 2, who confirmed that Defendant No. 2 is engaged in the manufacture of cosmetic and skincare products for third parties.

25. Mr. Chauhan stated that Defendant No. 2 manufactures skincare products for Defendant No. 1 under the brand names EUCERIN and DERMCAL."

318. Specifically to support the pleadings made in paras. 58 to 60 of the plaint, which provide the Delhi connection, the affidavit has stated the following:

"**34.** During the course of the conversation, **I and/or my associate** expressed interest in purchasing products under the EUCERIN brand and enquired whether the same could be supplied to a Delhi address. Mr. Joshi readily agreed to dispatch the products and thereafter the investigator shared his requirement and delivery address with him on WhatsApp. Thereafter, the infringing products were dispatched by the Defendants on a cash-on-delivery basis to me and/or my associate in Delhi.

35. Thereafter, on 3rd August 2026, **I and/or my associate** received four units of EUCERIN Foaming Face Wash at his Delhi address and made payment of INR 1,188/- through a QR code provided by Mr. Bhavinkumar Joshi over WhatsApp. However, no invoice or rough bill was raised against the said purchase."

(Emphasis supplied)

319. The verification appended to the affidavit reads as under:

"**VERITICATION:**
Verified at New Delhi on this the __ day of September, 2026 that the contents of my above affidavit are **true to my knowledge** and nothing **material** or **relevant** has been **concealed therefrom**."

(Emphasis supplied)

320. Order XIX of the CPC deals with '*Affidavits*'. Rule 3 deals with matters to which an affidavit shall be confined and reads as under:

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> "**3. Matters to which affidavits shall be confined.**
> (1) Affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory applications, on which statements of his belief may be admitted: provided that the grounds thereof are stated.
>
> (2) The costs of every affidavit which shall unnecessarily set forth matters of hearsay or argumentative matter, or copies of or extracts from documents, shall (unless the Court otherwise directs) be paid by the party filing the same."

321. Further, the Delhi High Court (Original Side) Rules, 2018 under Chapter XIX deals with '*Affidavits*'. While sub-rule 4 deals with the form of the affidavit, sub-rule 5 deal with the contents of the affidavit, they read as under:

> "**4. Form.**
> Every affidavit shall be drawn up in the first person, and shall be divided into paragraphs to be numbered consecutively, and shall state the description, occupation if any, and the true place of abode of the deponent.
>
> **5. Contents of affidavit.**
> Affidavits shall be confined to such facts as the deponent is able, of his own knowledge to prove, except on interlocutory applications, on which statements of his belief may be admitted, provided that the grounds thereof are stated."

322. A Constitution Bench in ***A.K.K. Nambiar v. Union of India***,[176] noted the importance of a verification in an affidavit. It was opined by the Supreme Court that a verification tests the genuineness and authenticity of the allegations and also makes the deponent responsible for the allegations. A genuine verification, most importantly, enables the Court to find out whether it will be safe to act on such an affidavit. Para. 8 of the said decision is extracted as under:

[176] (1969) 3 SCC 864.

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> "**8.** …The reasons for verification of affidavits are to enable the Court to find out which facts can be said to be proved on the affidavit evidence of rival parties. Allegations may be true to knowledge or allegations may be true to information received from persons or allegations may be based on records. The importance of verification is to test the genuineness and authenticity of allegations and also to make the deponent responsible for allegations. In essence verification is required to enable the Court to find out as to whether it will be safe to act on such affidavit evidence. In the present case, the affidavits of all the parties suffer from the mischief of lack of proper verification **with the result that the affidavits should not be admissible in evidence**."

(Emphasis supplied)

323. A perusal of the affidavit would reveal that the visit made to Gujarat, and the investigation undertaken there, was not made by the deponent of the affidavit. Rather it was an associate of Mr. Kashyap who had travelled to Gujarat. This associate is unnamed and unknown. The statements made in the affidavit are stated to be true to the knowledge of the deponent. Unless the deponent can be at two places at once, or can see events taking place hundreds of kilometres away, it seems impossible that Mr. Kashyap could have personal knowledge about the events which took place at Gujarat.

324. What is even more concerning is the use of the expression "*I and/or my associate*" at para. 34 and 35 of the affidavit which are intended to support the pleadings which state that the delivery of the impugned product took place at Delhi. "*I and/or my associate*" is not a fact. Only facts can be stated in an affidavit. This expression as found in the affidavit has no meaning or weight in law. It has to be discarded.

325. The affidavit and verification are, thus, found to be non-compliant with the CPC, the Original Side Rules of this Court, and the decision of the Supreme Court in ***A.K.K. Nambiar***. Resultantly, both are discarded *in toto*.

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326. The plaintiff has, along with the plaint, tendered pictures showing a parcel purportedly from "*Duvac Cosmedic Vadodara*" being sent to "*RK Verma c/o DC Sharma, 29, 1st Floor, Masjid Road, Bhogal, New Delhi - 110014*". Who this "*RK Verma*" is, to whom is he related, what is the association with the plaintiff, appears to be unknown. There is no pleading regarding "*RK Verma*" in the entire plaint. The plaint had narrated that the investigator had contacted the defendants through WhatsApp and received the goods. Para. 28 of the plaint notes that the affidavit of the investigator is tendered with the plaint. This affidavit is of Mr. Kashyap not Mr. Verma.

327. Is Mr. Verma the associate of Mr. Kashyap? The plaint has no answers. The affidavit of the investigator mentions, at variance with the plaint, that an associate had engaged with the defendants and gotten the delivery of the impugned product at Delhi. That affidavit, as has been noted above, is being discarded. Effectively, therefore, the pictures are without any supporting pleadings and cannot, at all, be looked at by this Court.

328. Arguably, the defect highlighted above may be a curable defect. Even if cured, as the discussion below shall reveal, jurisdiction cannot be made out at Delhi.

329. Notwithstanding this, even if the WhatsApp chats are looked at, they demonstrate that Mr. Verma had sought the price of the impugned products inclusive of courier charges. The courier/delivery partner, thus, was an agent of the plaintiff. As noted in ***Glen*** and para. 305 of this judgment, by application of Section 39 of the Sale of Goods Act, the delivery upon the delivery agent at Gujarat shall be deemed to be delivery upon the buyer. The transaction, thus, concluded at Gujarat only.

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330. Even otherwise, such trap transactions, even in the offline world, as noted at paras. 208 and 216 of this judgement, have been prohibited by the decision in ***Banyan Tree***. No reliance can, therefore, be placed upon such transactions to concoct jurisdiction before Delhi Courts. The requirements of Section 20(c) of the CPC are, thus, not satisfied.

331. Assuming that an investigator, in law, has some role to play, he cannot, under the guise of purported investigation, be permitted to selectively *create* jurisdiction, and compel a court to *entertain* a suit which otherwise lies within the "*local limits*" of another court, which is *forum conveniens*. If at all such an investigator was to get from a distributor, retailer or stockist from Delhi, impugned products, which *ex facie* were sold in Delhi, the situation perhaps may have been different.

332. In the instant case, the plaintiff no. 1 is at Germany, plaintiff no. 2 is at Mumbai, all three of the defendants are at Gujarat. The defendants at Gujarat include the manufacturer, distributor as also the retailer. The material, essential and integral part of the cause of action, has, therefore, arisen outside the jurisdiction of this Court. Merely because an investigator hired by the plaintiff selectively purchased the impugned product at Delhi the jurisdiction of this Court is invoked. If this exercise is allowed, in law, the plaintiffs will be capable of filing a suit in any nook and corner of the country through engaging an investigator who gets the product delivered at that place. Such a recourse cannot be countenanced in law. Even if it is assumed that the delivery did constitute a part of the cause of action, this minuscule part of cause of action, which is capable of being generated by the plaintiff in any part of the country, ought not to be the reason to

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entertain a suit in Delhi. This, thus, would be a fit case to refuse to exercise jurisdiction on grounds of *forum non conveniens*.

333. Cumulatively, no cause of action can be said to have arisen within the jurisdiction of this Court under Section 20(c) of CPC. Even if it is assumed that a part cause of action has accrued within Delhi, on grounds of *forum conveniens*, the suit ought not to be entertained. Accordingly, the plaint deserves to be returned to the plaintiff, which may be presented before the Court having the requisite territorial jurisdiction, if so advised.

Amber Nutrition Private Limited v. Mr. Manish Chandak & Anr.

[CS(COMM)-996/2026]

334. None of the parties are at Delhi. The plaintiff is at Madhya Pradesh, defendant no. 1 and 2 are at Rajasthan. The plaintiff's suit in this case is for, *inter alia*, trademark and copyright infringement along with a claim for passing off. Reliefs are sought for permanent and mandatory injunctions, damages, delivery up, rendition of accounts. The plaintiff claims to be the owner of the registered trademark "*AMBER KREAM TOFFEE*". It is averred that defendant no. 1 has been marketing and selling "*PANKAJ CREAM TOFFEE*" using deceptively similar packaging and artwork. Defendant no. 2, Mr. Jai Kishan Boob trading as M/s Poona Sweet Products, is stated to have participated in the distribution of the impugned product.

335. Paras. 88 to 92 of the plaint contains the grounds on the basis of which jurisdiction of this Court is sought to be invoked, it reads as under:

> "**88.** That, this Hon'ble Court has territorial jurisdiction to entertain, try and adjudicate upon the present suit on the following, amongst other, grounds:

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89. That, pursuant to an order placed with Defendant No. 2, the Impugned Product/infringing product were, in fact, delivered at Delhi, within the territorial jurisdiction of this Hon'ble Court, as is evident from the Kacchi Invoice and delivery receipt filed herewith, which shows that Defendants' infringing products are available in Delhi. Accordingly, a substantial and material part of the cause of action qua the present suit has arisen within the territorial jurisdiction of this Hon'ble Court. It is further submitted that Defendants' goods are also available at various retail and wholesale shops in Delhi specifically by various confectionary wholesalers and retailers.

90. The Defendant No. 1, despite being fully conscious of the infringing nature of the Impugned Product, has deliberately and prominently displayed the Impugned Product, bearing artwork that is deceptively similar to, and infringing of, the Plaintiffs Trademarks and Copyrights, on its official website, namely https://gdigitalindia.in/sites/Pankaj-Confectionary, with the express object of promoting and soliciting the sale thereof. The said display continues to remain available and accessible to the public in Delhi on Defendant No. 1's interactive website even as on the date of institution of the present suit. The aforesaid conduct unequivocally demonstrates the wilful, deliberate and brazen disregard, despite service and receipt of Cease and Desist Notice, of Defendant No. 1 for the Plaintiff's statutory and common law rights, and establishes that the infringement is neither innocent nor inadvertent, but is calculated and contumacious in nature.

91. The Impugned Product is, in addition, presently listed, displayed, advertised and offered for sale on multiple major e-commerce platforms and online business directories which are widely accessible and operational within the territorial jurisdiction of this Hon'ble Court, including but not limited to Google.com, Justdial.com, Indiamart.com and Tradeindia.com. These listings directly target, and are designed to solicit orders from, merchants, retailers, wholesalers and consumers located in Delhi and the National Capital Region. Through each such listing, the Impugned Product bearing the Plaintiff's infringing artwork is presented to Delhi-based users as available for bulk purchase, distribution and retail supply, thereby multiplying the reach, visibility and commercial exploitation of the infringing gel-up within the territorial jurisdiction of this Hon'ble Court. The presence of the Impugned Product on these high-traffic platforms accessible to Delhi consumers constitutes a continuation and amplification of Defendant No. 1's calculated infringement, and occasions direct and measurable injury to the Plaintiff's Trademarks, Copyrights, goodwill and commercial interests within this jurisdiction. The aforesaid conduct substantially reinforces that Defendant No. 1 has not merely made the infringing Impugned Product available, but has actively targeted and solicited the Delhi consumer market, thereby rendering this Hon'ble Court the appropriate forum for adjudication of the Plaintiff's claims.

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> **92.** That, the Plaintiffs goods are also sold and marketed within the territorial jurisdiction of this Hon'ble Court at Delhi, and that the Plaintiff has substantial goodwill and reputation amongst the consumers situated within the territorial jurisdiction of this Hon'ble Court, which goodwill and reputation is being damaged by the Defendants' infringing activities, and accordingly, the Plaintiff is suffering injury within the territorial jurisdiction of this Hon'ble Court."

336. The plaintiff has its registered office at Indore, Madhya Pradesh. Both the defendants have their offices at Jodhpur, Rajasthan. Jurisdiction of this Court is sought to be invoked on grounds that the website of the defendant and third parties, purportedly having the impugned product, is accessible in Delhi. This falls foul of the ***Banyan Tree*** standard. There is no *indicia* of the defendant purposefully availing itself of the jurisdiction of this Court by specifically targeting customers within Delhi. Nor are there commercially concluded transactions between the defendant and persons within the forum court's jurisdiction through the website in question. Jurisdiction, therefore, on the basis of websites cannot be claimed.

337. Next, it is pleaded that the plaintiff's goods are sold and marketed within the territorial jurisdiction of this Court. Though not pleaded, perhaps the plaintiff wishes to invoke the provisions of the specialised statutes under Sections 62(2) and 134(2) of the Copyright and Trade Marks Act, respectively. At the outset it may be noted that in order to entertain a plaint, a Court must have jurisdiction *qua* each of the prayers made in the suit. In the instant case, since there is also a prayer for passing off, reference cannot be made to the specialised provisions for this given prayer. Even otherwise, as held in ***Dhodha House***, paras. 47 and 51, the plaintiff cannot be claimed

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to be "*carrying on business*" in Delhi for the purposes of the specialised statute merely because its goods are sold in Delhi.

338. The plaintiff has also claimed that the "*defendants goods are available at various retail and wholesale shops in Delhi specifically by various confectionary wholesalers and retailers*". Not a single such reference has been given in the plaint, and no document at all, has been annexed with the plaint to make good this pleading. Upon being inquired about the basis of this pleading, the plaintiff roars '*demurrer doctrine*'.

339. This is a classic case of clever drafting where jurisdiction is sought to be pleaded by hoodwinking the court and abusing the doctrine of demurrer. The plaintiff has asked this Court to be a mute spectator and look only at the averments without asking more. This is a fit case where the pleading can be considered to be clever drafting, engaged in, only for the purposes of concocting territorial jurisdiction. As held by the Supreme Court in ***Manjula***, the Court needs to pierce through such averments. Thus, on this ground as well, jurisdiction cannot be invoked.

340. Lastly, it has also been claimed that an order was placed with defendant no. 2, and the impugned product was delivered at Delhi. In para. 50 of the plaint, the plaintiff has made his averments concerning this transaction with defendant no. 2; the paragraph reads:

> "**50.** That, upon further investigation, and to narrow down upon the further infringing channels of Defendant No. 1, Plaintiffs representatives came across further infringers and got to know that Defendant No. 2 has also been selling well. Thereafter , the Plaintiff, through its representative , placed an order for the Impugned Product through WhatsApp of the mobile number of the Defendant No. 2 obtained by Plaintiff through its dealer network. Pursuant thereto , the Impugned Product were duly delivered the infringing

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product as to the Plaintiffs representative in Delhi along with the Kacchi Invoice bearing particulars and details of the Impugned Product…."

341. The plaintiff has also attached pictures of a carton containing the impugned products, a parcel having an A4 sheet cello-taped over it, bearing the following text typed out:

"To,
B-222, 3rd floor, Layak Ram complex Badarpur
South Delhi – 110044
Near deepa medicos.
Contact – 9560930499
Bhanu Gupta
From = SURAJ BHAI JODHPUR
889092758"

There is another "*Kacchi Invoice*" appended with the plaint and also a delivery invoice showing the consignor to be one Mr. Suraj Bhai and the consignee to be Bhanu Gupta, Delhi.

342. For quite a few reasons, this narration as well would not confer jurisdiction on this Court. ***First***, the Court is truly unsure, even on a *prima facie* basis, who 'Suraj Bhai Jodhpur' is. The memo of parties shows defendant no. 2 to be Mr. Jai Kishan Boob trading as M/s Poona Sweet Products. The documents, however, show that goods were sent by one Suraj Bhai Jodhpur. There is no pleading that connects Suraj Bhai with Jai Kishan Boob. In the absence of it, the averments seem to be foundationally hollow. ***Second***, the plaintiff cannot set up an individual at Delhi, who enters into a transaction with the defendant, and gets goods purportedly delivered at Delhi, and then claim jurisdiction of this Court. Trap transactions of this nature are prohibited by ***Banyan Tree***. As analysed in this judgement, the dictum of ***Banyan Tree*** on trap sales was not restricted to online

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transactions. Gaming of jurisdictional rules through setting up individuals simply cannot be tolerated. Thus, on this ground as well, jurisdiction cannot be invoked.

343. ***Third***, the "*Kacchi invoice*" demonstrates that the courier charges were included in the cost of goods. *Prima facie*, therefore, the delivery charges appear to have been paid by the plaintiff. This being the case, the delivery partner/courier shall, as was held in ***Glen***, be deemed to be the agent of the plaintiff. As per Section 39 of the Sale of Goods Act, 1930, the procurement of the impugned goods at Rajasthan, by the agent, is deemed delivery upon the plaintiff. The plaintiff is at Madhya Pradesh. No delivery thus, takes place, at Delhi.

344. Even if the trap transaction in question was considered to be a genuine sale for reasons stated in the analysis for CS(COMM) 1081/2026, this suit ought not to be entertained on grounds of *forum conveniens*.

345. In view of the foregoing reasons, territorial jurisdiction of this Court is not made out under Section 20(a) or Section 20(c) of CPC. The plaintiff's sale of goods in Delhi also does not establish jurisdiction under Section 134(2) of the Trade Marks Act or Section 62(2) of the Copyright Act. Even if it is assumed that a part cause of action has accrued within Delhi, on grounds of *forum conveniens*, the suit ought not to be entertained. Accordingly, the plaint deserves to be returned to the plaintiff, which may be presented before the Court having the requisite territorial jurisdiction, if so advised.

Amritsar Haveli Cuisines Private Ltd. and Anr. v. Amarbir Singh and Ors.

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346. The suit in CS(COMM)-611/2026 has been instituted seeking, primarily, reliefs of permanent injunction and damages for the alleged infringement and passing off of their registered trademarks "*AMRITSAR HAVELI*"/"*AMRITSARI HAVELI*", used in relation to restaurants, food and hospitality services. Plaintiff no. 1 is a company having its registered office at Amritsar, Punjab, and branch outlet at Delhi. Plaintiff no. 2 is claimed to be the founder and managing director of plaintiff no. 1, and as per the memo of parties, also resides at Amritsar. Defendant nos. 1 to 4 are partners of the firm 'Café Green Brew' which was constituted on 05.02.2026. The said firm is stated to be engaged in the restaurant business and is using the trademarks "The Amritsar Haveli" and "Amritsari Haveli" in the course of its trade and business.

347. Paras. 23 and 24 of the plaint reveal that previously, defendant no. 1 along with plaintiff no. 2 had formed a partnership firm under the name and style of M/s Café Green on 24.06.2013. During the subsistence of the partnership, plaintiff no. 2 is stated to have coined the term '*Amritsar Haveli/Amritsari Haveli*', and procured trademarks for the said term. It is clarified in the plaint that the said mark was not made part of the partnership. Cause of action, primarily, is pleaded to have arisen owing to the defendant applying for registration of trademarks which are deceptively similar to the plaintiff's mark.

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348. Paras. 60 and 61 of the plaint contains the grounds on the basis of which jurisdiction of this Court is sought to be invoked, it reads as under:

> "**60.** This Hon'ble Court has the territorial jurisdiction to try and adjudicate the instant suit under Section 134(2) of the Trademarks Act, 1999 and Section 62 of Copyright Act, 1957 as the Plaintiff has a branch office/restaurant/outlet in Delhi. It is also submitted that the Plaintiff is a copyright owner of the label whereof is part of the cause of action of the present suit. Therefore, this Hon'ble Court has jurisdiction to adjudicate the present suit under section 134(2) of the Trademarks Act, 1999, Section 62 of Copyright Act, 1957.
>
> **61.** That this Hon'ble Court has the territorial jurisdiction to try and adjudicate the present suit as the Plaintiffs carry their business within jurisdiction of this Court and Defendants are soliciting and networking, through their website and social media handles all of which are accessible within territorial limits of this Hon'ble Court, for giving franchises and opening restaurants under the impugned trademark/trade name in Delhi and have all intention to sell, offer for sale, their impugned services under the impugned trademark within the jurisdiction of this Hon'ble Court. Defendants are committing act of infringement of Plaintiffs' said trade mark and passing-off within the territorial jurisdiction of this Hon'ble Court. Defendant infringing activities are likely to have a dynamic effect on the Plaintiff's business, both current and upcoming, within the jurisdiction of this Hon'ble Court. It is evident that the dynamic effect of the defendant's activities is being felt in Delhi and there exists an undeniable nexus between the cause of action in the present suit and the territory of Delhi. The Plaintiffs' above said proprietary rights are being prejudicially affected or likely to be so affected in Delhi due to the defendant's impugned activities. Plaintiffs thereafter made inquiry in the market and trade which revealed that the Defendants are soliciting trade and business in Delhi with the proposal/promise of extending franchise of the impugned trademarks. The carrying on of business by the Defendant as well as whole or part of cause of action for filing the suit has arisen within the territorial jurisdiction of this Hon'ble Court within the meaning of Section 20 of Code of Civil Procedure, 1908. Further the Plaintiffs are working for gain and also carrying on its business & services under its said trade mark in Delhi which is being tarnished or likely to be tarnished within the jurisdiction of this Hon'ble Court by the impugned activities of Defendant. The Defendant website, social media website and promotions are targeting consumers in Delhi. Therefore, this Hon'ble court has jurisdiction to try and entertain the present suit."

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349. The suit in CS(COMM)-980/2026 is instituted by Haveli Restaurant and Resorts Ltd., against the defendant-Shubham Food Enterprises. It is contended that the defendant is running a restaurant called "*Dharampur Haveli*" at Himachal Pradesh. In doing so, submits the plaintiff, the defendant has adopted the impugned mark together with deceptively similar branding, architecture, trade dress, menu cards, creating a false association with the plaintiff's establishments. It is contended that the defendant's business at Dharampur, District Solan, Himachal Pradesh, infringes the plaintiff's trademark and copyright. Owing to customers at Delhi purportedly identifying the defendant's establishment as that of the plaintiff, a claim for passing off is also made. Reliefs for, *inter alia*, permanent injunction and damages have been sought.

350. Paras. 104 to 108 of the plaint contains the grounds on the basis of which jurisdiction of this Court is sought to be invoked, it reads as under:

> "**104.** That this Hon'ble Court has the necessary territorial jurisdiction to entertain and adjudicate the present suit, by virtue of the Plaintiff's carrying on business within the territorial limits of this Hon'ble Court and by reason of the Defendant's infringing activities having a direct, substantial, and continuing impact within this jurisdiction. The present suit has been instituted under Section 134(2) of the Trade Marks Act, 1999, to be read with Section 62(2) of the Copyright Act, 1957. Section 134(2) of the Trade Marks Act to be read with Section 62(2) of the Copyright Act, 1957, confers jurisdiction on a Court within the local limits of whose jurisdiction, at the time of the institution of the suit, the Plaintiff actually and voluntarily resides or carries on business or personally works for gain. The Plaintiff herein carries on business within the territorial jurisdiction of this Hon'ble Court. The Plaintiff is carrying on business through its office located within the jurisdiction of this Hon'ble Court.
>
> **105.** It is further submitted that the Plaintiff is also advertising their services on the interactive third-party website www.tripadvisor.com, which is accessible within the jurisdiction of this Hon'ble Court and allows any consumer across India, including within NCT of Delhi, to view content, post

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and read reviews, make enquiries, interact with the business, and form consumer perceptions based on the representations made by the Plaintiff. Therefore, by operation of law, the Plaintiff is entitled to institute the present action for Trade Mark infringement and passing off before this Hon'ble Court. The Defendant is engaged in the business of rendering hospitality and restaurant services under the impugned mark/label/trade name "*Dharampur Haveli*" and is actively marketing, promoting, soliciting, and advertising their infringing services through various online platforms and social media, which are interactive in nature and accessible within the jurisdiction of this Hon'ble Court. The relevant digital platforms being used by the Defendant include:

Domain Name: https://havelidharampur.com/
Instagram: www.instagram.com/havelidharampur/
Facebook:
www.facebook.com/people/HaveliDharampur/61579838786917/#

106. These platforms are not merely passive but allow consumers across India, including within NCT Delhi, to view content, post and read reviews, make enquiries, interact with the business, and form consumer perceptions based on the representations made by the Defendant. The interactive nature of such platforms brings the infringing activity directly within the jurisdiction of this Hon'ble Court.

107. Furthermore, the Defendant is promoting, advertising, offering for sale, and soliciting bookings in respect of its impugned services under the impugned mark on the interactive e-commerce platform, i.e., www.tripadvisor.com. The said interactive website is accessible to consumers within the territorial jurisdiction of this Hon'ble Court, and enables prospective customers, including those within the jurisdiction of this Hon'ble Court, to access information regarding the Defendant's services, make enquiries, and avail bookings.

108. Accordingly, the Defendant is carrying on commercial activities and purposefully targeting consumers within the jurisdiction of this Hon'ble Court. The presence and accessibility of infringing material online, combined with its commercial intent and interactive features, are sufficient to confer jurisdiction in the forum where such material is viewed and has a deleterious impact, which also gives rise to a part of the cause of action in the present suit. The infringing activities of the Defendant are not geographically limited but are borderless and accessible from anywhere, including New Delhi, in view of the online activities being conducted through various online platforms. The Defendant's unauthorized adoption and use of a deceptively similar trade name, label, trade dress, and brand identity, identical setup and ambience coupled with their promotional

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> activities targeting consumers across India through digital means, has resulted in actual deception and confusion amongst the public, particularly in the minds of consumers who are familiar with the Plaintiff's well-known brand "HAVELI", which enjoys considerable goodwill and reputation in and around the jurisdiction of this Hon'ble Court. The Plaintiff has legitimate apprehension that consumers, traders, and members of the public located within the jurisdiction of this Hon'ble Court are being misled into believing an association between the Plaintiff and the Defendant owing to the latter's unauthorized use of the impugned mark/label/trade name. Accordingly, in view of the Plaintiff's place of business being located within the jurisdiction of this Hon'ble Court, the accessibility of infringing material within this jurisdiction, and the continuing nature of the harm caused to the Plaintiff's brand within the territorial limits of this Court, this Hon'ble Court has the necessary jurisdiction to entertain and try the present suit."

351. The plaintiffs in both of the aforenoted suits, have their registered office at Punjab. As per the decision of the Supreme Court in ***Sanjay Dalia***, specifically the observations in para. 16, the registered office shall be treated to be the principal place of business. Applying the dictum of ***Ultra Home***, the plaintiffs can be considered to be "*carrying on business*" at Delhi, only if cause of action also accrues at Delhi. In this connection, *firstly*, it may be iterated that similar to the decision in ***Impressario***, mere viewing of content, posting/reading of reviews, making of enquiries, or even making of bookings will not confer jurisdiction as the transactions get concluded after visiting and dining at the restaurant/café, which lies outside the jurisdiction of this Court.

352. ***Secondly***, the social media handles and websites of the defendant, or listings on third party websites, do not satisfy the ***Banyan Tree*** standard. Commercially concluded transactions between the defendant and persons within the forum court's jurisdiction through the website in question have not been shown, nor is there any *indicia* of the defendants in the said cases,

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purposefully availing the jurisdiction of Delhi by specifically targeting customers here. Instagram or Facebook data indicating that Delhi users are the most active is immaterial to the defendant's objective intention to target customers at Delhi. A statistic showing most traffic from Delhi may be a result of population disparity or a wide variety of other factors. Traffic, in and of itself, does not indicate targeting of a given forum. Cause of action, thus, cannot be said to have accrued at Delhi. Resultantly, neither under Section 20(c) of the CPC nor under the specialised statutes, jurisdiction can be established.

353. Separate from jurisdictional grounds concerning the online activity of the defendants, there is another claim made by the plaintiff that the defendants are purportedly soliciting trade and business through proposals of franchise, which if accepted by the public in Delhi, may infringe the plaintiff's rights. This is yet again a desperate and unsuccessful attempt at cleverly pleading jurisdiction; on the one hand, this is a bald averment without any supporting document and attracts the ruling in ***Manjula***, on the other hand, it is inadequate to satisfy the requirements of a *quia timet* action as noted at para. 140 of this judgement.

354. In view of the foregoing reasons, territorial jurisdiction of this Court is not made out under Section 20(a) or Section 20(c) of CPC. The plaintiff's sale of goods in Delhi also does not establish jurisdiction under Section 134(2) of the Trade Marks Act or Section 62(2) of the Copyright Act. Accordingly, the plaint deserves to be returned to the plaintiff, which may be presented before the Court having the requisite territorial jurisdiction, if so advised.

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355. Neither the plaintiff nor the defendants are in Delhi. While the plaintiff has its registered office at West Bengal, the defendants are at Gujarat and Karnataka. The suit is for trademark and copyright infringement, copying of trade dress, and passing off. The plaintiff claims to be the registered proprietor of the mark "PHITKU" and alleges that defendant no. 1 is offering personal-care products under the deceptively similar marks "PITTCU" and "PHITKARI" through the Amazon platform operated by defendant no. 2.

356. Para. 50 of the plaint contains the grounds on the basis of which jurisdiction of this Court is sought to be invoked, it reads as under:

> "**50.** This Hon'ble Court has territorial jurisdiction to entertain and try the present suit under Section 134(2) of the Trade Marks Act, 1999 and Section 62(2) of the Copyright Act, 1957, as the Plaintiff carries on business within the jurisdiction of this Hon'ble Court through its official website accessible across Delhi, and Defendant No. 1 offers its infringing products for sale to consumers located in Delhi via Defendant No. 2's platform. This is further evidenced by a test purchase order placed by the Plaintiff on 12.08.2026 for the Infringing Product "PHITKARI" sold by Defendant No. 1, which was delivered on 20.08.2026 at D-377, Basement, Defence Colony, New Delhi – 110024, thereby confirming that Defendant No. 1's infringing goods are offered for sale to, and delivered within, the territorial jurisdiction of this Hon'ble Court; therefore, the Commercial Division of this Hon'ble Court has the requisite pecuniary jurisdiction as a Commercial Division of this Hon'ble High Court."

357. Merely because the plaintiff's official website is accessible in Delhi would not amount to the plaintiff carrying on business in Delhi. Reliance on the decision of this Court in ***WWE*** is misplaced. As noted in para. 87 of this judgement, the decision in ***WWE*** no longer governs the field on this issue.

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358. Mere accessibility of the defendant's website also does not confer jurisdiction; what is required is the purposeful availment of the jurisdiction of a given Court by specifically targeting customers within that territory. Additionally, commercially concluded transactions are required. A sole transaction cannot form the basis for conferring jurisdiction as has been noted in ***Banyan Tree***.

359. Even otherwise, the sole transaction mentioned by the plaintiff was by a person set up by the plaintiff. The same is impermissible as was held in ***Banyan Tree***. Even assuming that the sale in question is treated to be a genuine order by the plaintiff and a consequent supply by the defendant at Delhi, a mere delivery or sale in Delhi, an act capable of occurring at any place the plaintiff desires, ought not to obligate this Court to *entertain* this suit. If this is allowed and a slender part of the cause of action makes a court *entertain* a suit on the anvil of Section 20(c), specifically a part cause of action, the entire jurisdictional jurisprudence shall become a nullity. The plaintiffs will become capable of creating, concocting and establishing jurisdiction in any part of the country, howsoever remote it may be.

360. At its highest, therefore, the sale may be part of a fraction/slender part of the cause of action. The material, integral and essential part of the cause of action has arisen outside the jurisdiction of this Court. This would, therefore, be a fit case to invoke the doctrine of *forum non-conveniens* and refuse to entertain the plaint.

361. Importantly, the Court may also note that the sole transaction was entered into by the advocate who has filed the instant suit. The address given for the delivery in the Amazon invoice is the same as the address of the

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advocate as is found in their Vakalatnama. Rule 13, Section II, Chapter II, Part VI of the Bar Council of India Rules prohibit an advocate from accepting a brief in which he has reason to believe that he will be a witness. The rule reads as under:

> "**13.** An advocate should not accept a brief or appear in a case in which he has reason to believe that he will be a witness, and if being engaged in a case, it becomes apparent that he is a witness on a material question of fact, he should not continue to appear as an Advocate if he can retire without jeopardising his client's interests."

362. It is, but obvious, that the advocate would be called as a witness to prove the transaction entered into. It would be for the good of the Bar if the advocates do not indulge, at least themselves, in such trap transactions.

363. In view of the foregoing reasons, territorial jurisdiction of this Court is not made out under Section 20(c) of CPC, and Section 134(2) of the Trade Marks Act or Section 62(2) of the Copyright Act. Even if it is assumed that a part cause of action has accrued within Delhi, on grounds of *forum conveniens*, the suit ought not to be entertained. Accordingly, the plaint deserves to be returned to the plaintiff, which may be presented before the Court having the requisite territorial jurisdiction, if so advised.

JSW MG Motor India Pvt. Ltd. and Anr. v. Tristar Auto Agencies (Vizag) Pvt. Ltd.

[CS(COMM)-917/2026]

364. Yet again, none of the parties are at Delhi. Plaintiff no. 1 is at Gurugram, Haryana, plaintiff no. 2 is at China, and the sole defendant is at Visakhapatnam. The suit is filed for infringement of trade mark and passing off. The plaintiffs claim to be the registered proprietors of the "*MG*" trade-

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marks. The defendant is stated to be the dealer of plaintiff no. 1 in Visakhapatnam until its dealership was terminated on 29.11.2024. It is alleged that despite the determination of the contract, the defendant continues to use the MG Marks and dealership branding at its showroom, online listings and in official communications, thereby falsely representing itself as an authorised MG dealer.

365. Para. 50 of the plaint contains the grounds on the basis of which jurisdiction of this Court is sought to be invoked, it reads as under:

> "**50.** This Hon'ble Court has the jurisdiction to entertain and try the present suit as stated below:
>
> a. As per Clause 64.2 of the Dealership Agreement, disputes between the parties are subject to the exclusive jurisdiction of the Courts of New Delhi. It is settled law that where a jurisdiction clause employs words such as "alone", "only", "exclusive" or the like, an intention to oust the jurisdiction of all other competent courts stands squarely established. Clause 64, operates as a distinct covenant conferring exclusive jurisdiction upon the Courts at New Delhi over all disputes, including the present suit, arising out of or in relation to the Dealership Agreement.
>
> b. Plaintiff No. 1 carries on business within the territorial jurisdiction of this Hon'ble Court through its network of authorised dealers and showrooms operating within Delhi. Plaintiff No. 1's authorised dealerships within Delhi include, inter alia, dealerships located at Prashant Vihar, Karol Bagh, Lajpat Nagar, Dwarka and Safdarjung. Plaintiff No. 1 therefore carries on business within the jurisdiction of this Hon'ble Court within the meaning of Section 134(2) of the Trade Marks Act, 1999 and this Court has jurisdiction to entertain the present suit.
>
> c. The Defendant's acts of unauthorised use of the MG Marks, passing off, and misrepresentation are not confined to Visakhapatnam alone but have a direct, continuing, and injurious effect on the Plaintiffs' goodwill, reputation, and trade within Delhi, where the Plaintiffs transact substantial business, where consumers and trade are exposed to and influenced by the Defendant's wrongful conduct, and where the Plaintiffs suffers loss of reputation, dilution, and tarnishment of its marks. An integral and material part of the cause of action has therefore arisen within the jurisdiction of this Hon'ble Court. The unlawful acts of the Defendant are causing loss

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and injury to the Plaintiffs within Delhi and within the jurisdiction of this Hon'ble Court where a large part of the Plaintiffs' business and goodwill is based which is being severely affected due to the acts of the Defendant, and thus, this Court has territorial jurisdiction under Section 19 of the Code of Civil Procedure, 1908.

d. The Defendant's activities have a nexus with the territory of this Hon'ble Court. The Defendants are tarnishing the Plaintiffs' reputation and diluting the exclusivity associated with Plaintiffs' trademark and this has a dynamic effect on the Plaintiffs' reputation under the MG trademark within the territory of this Hon'ble Court. Therefore, it is humbly submitted that an integral and substantial part of the cause of action has arisen within the jurisdiction of this Hon'ble Court and this court has territorial jurisdiction under Section 20(c) of the Code of Civil Procedure, 1908. In a suit for infringement and passing off, injury or damage suffered by the Plaintiffs are an essential part of the cause of action. Where the Plaintiffs carries on business within the jurisdiction of this Hon'ble Court, any harm caused to its business, goodwill, or reputation by the Defendant's wrongful acts gives rise to a cause of action within this jurisdiction, regardless of where the infringing act took place.

e. The Defendants' online listings on Just Dial and IndiaMart are intended to generate commercial enquiries and business from members of the public across India, including consumers within Delhi, thereby causing injury to the Plaintiffs' statutory and common law rights within the jurisdiction of this Hon'ble Court and giving rise to a part of the cause of action herein."

366. Jurisdiction cannot be conferred on a Court that has none. An exclusive jurisdiction clause merely curtails jurisdiction to a given place and does not create it.[177] It is, essential therefore, for the plaintiff to establish that jurisdiction of Delhi is in fact made out.

367. Since the plaintiffs have also made prayers for passing off, reliance on Section 134(2) of the Trade Marks Act is impermissible. Notwithstanding that, as per ***Sanjay Dalia*** and ***Ultra Home***, a place separate from the plaintiff's principal place of business[178] can be considered as the place

[177] *Swastik Gases (P) Ltd. v. Indian Oil Corpn.*, (2013) 9 SCC 32 and *ABC Laminart (P) Ltd. v. AP Agencies Salem*, (1989) 2 SCC 163.
[178] Which as per para. 16 of *Sanjay Dalia*, is the place of registered office of a corporation.

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where a corporation "*carries on business*" only when cause of action also accrues at that place. Mere sale of goods, also, does not constitute carrying on of business.[179]

368. The defendant's website and online listing on third-party websites do not confer jurisdiction as they fall foul of the ***Banyan Tree*** standard. There is nothing to demonstrate that the defendant purposefully availed itself of the jurisdiction of a forum Court by specifically targeting customers at Delhi. Commercially concluded transactions have also not been proven.

369. Reliance has been placed on Section 19 of the CPC to claim that the wrong has occurred in Delhi, as its effects are being felt in Delhi. The underlying premise of this argument is that wherever be the wrong committed, at all such places where the plaintiff has its presence, effects are being felt which constitute "*wrong*" under Section 19 of the CPC. If this is the case, the dictum of this Court in ***Sameer Dnyandev Wankhede v. Red Chillies Entertainments Pvt. Ltd.***,[180] shall have full force. The *Merger Rule* as expounded in the said decision shall apply, and the common place where the wrong has occurred and the defendant also resides/carries on business, shall be the only place where a suit could be instituted.

370. In view of the foregoing reasons, territorial jurisdiction of this Court is not made out under Section 19 and Section 20(c) of CPC, and Section 134(2) of the Trade Marks Act. The exclusive jurisdiction clause does not independently confer jurisdiction upon this Court. Accordingly, the plaint

[179] *Dhodha House*, para. 47 and 51.
[180] 2026:DHC:701.

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deserves to be returned to the plaintiff, which may be presented before the Court having the requisite territorial jurisdiction, if so advised.

KBB Nuts Pvt. Ltd. v. Mr. Suresh Chand and Ors.

[CS(COMM)-444/2026]

371. The plaintiff has its registered office at Amritsar, Punjab and a sub-ordinate office at Delhi. Each of the defendants is at Rajasthan. The plaintiff has filed this suit for trade mark infringement and passing off. The plaintiff claims to be the registered owner of the trade mark "*TULSI*" for dry fruits and other food products. The suit alleges that the defendants are selling dry fruits under the deceptively similar marks "*SHRINATH JI TULSI*" and "*RAGHUNATHJI TULSHI*" which infringe the plaintiff's IP rights.

372. Para. 27 of the plaint contains the grounds on the basis of which jurisdiction of this Court is sought to be invoked, it reads as under:

> "**27.** It is submitted that the Defendants are selling their impugned products in Delhi. Thus, a part of cause of action has arisen within the territorial jurisdiction of this Hon'ble Court. Furthermore, the Defendants have filed their impugned trademark applications without any restriction to any specific territory or other geographical boundaries. Thus, the impugned trademark applications have been filed by the Defendants with an all-India effect i.e. the said application has a dynamic effect, operating throughout the territory of India, including Delhi. Moreover, since the Plaintiff carries on its business in Delhi, based out of its office in Delhi itself, the sales by the Defendants of infringing products in Delhi is causing great harm to the business of the Plaintiff in Delhi. Thus, a part of the cause of action has arisen in Delhi. Therefore, this Hon'ble Court has jurisdiction to try and entertain the present suit under Section 20 (a) and (c) of the Code of Civil Procedure, 1908. Moreover, since the Plaintiff is carrying on business in Delhi through its office in Delhi, this Hon'ble Court also has the jurisdiction to try and entertain the present suit under the provisions of Section 134(2) of the Trademarks Act, 1999."

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373. In the application bearing IA 15483/2026 it has been pleaded by defendant nos. 3-5 that the registered office of the plaintiff is at Amritsar, Punjab. Learned counsel for the plaintiff upon being inquired as to the same, does not deny that the registered office of the plaintiff is at Amritsar, Punjab. As per the decisions of ***Sanjay Dalia*** and ***Ultra Home***, under Section 134(2) of the Trade Marks Act, the suit ought to have been brought before the courts at Amritsar, Punjab, unless it could be shown that cause of action has also accrued at the place of the sub-ordinate office. Since the plaintiff had invoked Section 134(2) of the Trade Marks Act in its plaint, it was incumbent upon it to disclose where its registered office is. A suppression *qua* this aspect is material to the *lis*, and warrants the suit being thrown out *in limine*, without hearing the plaintiff on merits.

374. Notwithstanding the same, jurisdiction on merits may be tested. As noted above, in order to claim the benefit of Section 134(2) the plaintiff must demonstrate that cause of action (wholly or in part) has also accrued within the territorial jurisdiction of this Court. The plaintiff has pleaded that the defendant's goods are sold in Delhi. There is no document at all to support this plea. The dictum of ***Manjula***, thus, applies with full force. The Court is not to be a mute spectator and digest averments made by a claimant without any basis.

375. The bald statement that the defendants' goods are sold in Delhi needs to be looked through. Additionally, it may also be highlighted that in ***Indovax***, while rejecting the plaint, the Court had observed that "*the plaintiff only states that the goods of the defendants are available for sale in Delhi but this averment is not supported by any documentary evidence*". Thus,

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jurisdiction on the basis of the empty statement of the plaintiff that the defendants' goods are sold in Delhi, cannot be established.

376. The filing of a trademark application by the defendant neither gives rise to a cause of action for a conventional suit, nor for a *quia timet* action. Reliance may be placed on ***Dhodha House*** and paras. 124, 127 and 129-130 of this judgment. An application may be accepted or rejected. It may be decided one way or the other. Its mere filing does not give rise to a cause of action.

377. In view of the foregoing reasons, territorial jurisdiction of this Court is not made out under Section 20(a) or Section 20(c) of CPC, and Section 134(2) of the Trade Marks Act. Accordingly, the plaint deserves to be returned to the plaintiff, which may be presented before the Court having the requisite territorial jurisdiction, if so advised.

Marico Ltd. v. Shree Uday Oil and Food Industries LLP

[CS(COMM)-1115/2026]

378. Neither the plaintiff nor the defendant is from Delhi. While the plaintiff is from Mumbai, the defendant is from Gujarat. The plaintiff's suit is for trade mark and copyright infringement along with passing off. The plaintiff claims to be the registered proprietor and prior user of the well-known "*PARACHUTE*" trademark and the copyright owner of its original artistic works, specifically its distinctive blue packaging, "*Flag Device*" and "*Broken Coconut Device*". The suit alleges that the defendant is infringing upon the plaintiff's statutory and common law rights by manufacturing, marketing, and selling a competing product named "*UDAY COCORICH*

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COCONUT OIL" by means of adopting a deceptively similar trade dress, deceptively similar bottle and packaging, and substantially copied layout to ride upon the plaintiff's established goodwill.

379. Para. 60 of the plaint contains the grounds on the basis of which jurisdiction of this Court is sought to be invoked, it reads as under:

> "**60.** That this Hon'ble Court has the territorial jurisdiction to entertain and try the present suit under Section 20 (c) of the Code of Civil Procedure, 1908 as the infringing goods of the Defendant are available for sale in Delhi as well as being delivered in Delhi i.e. within the jurisdiction of this Hon'ble Court and therefore part of the cause of action has arisen within the jurisdiction of this Hon'ble Court. The same is also evident from the fact that the reviews on the Defendant's own website are from customers based in Delhi. Further, the impugned product is also available for purchase within the jurisdiction of this Hon'ble Court through various interactive websites such as www.indiamart.com and also through the Defendant's website www.udayoilindia.com and for this reason also this Hon'ble Court has the territorial jurisdiction to entertain and try the present suit.
> That even otherwise the Defendant has agents, stockiest, distributors, etc. who are responsible for marketing and selling the said impugned product of the Defendant within the jurisdiction of this Hon'ble Court and for this reason also, this Hon'ble Court has the territorial jurisdiction to entertain and try the present suit.

380. Yet again it may be considered that mere accessibility of websites which list the impugned products either on the defendant's website or on third parties' does not give rise to a cause of action under Section 20(c). The standard of ***Banyan Tree*** has not been satisfied. The plaintiff has made a bald averment without any substantiation that the defendant has "*agents, stockiest, distributors, etc.*" at Delhi who are responsible for selling the impugned products in Delhi. No document has been annexed in support of this plea.

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381. The affidavit of the "*investigator*" annexed with the plaint cannot be relied upon for more than one reason: ***first***, there is no pleading concerning the appointment and use of an investigator; ***second***, the verification appended to the affidavit is faulty insofar as it conjointly avers that facts are both true to the deponent's personal knowledge as also belief; ***third***, the investigator being a person set up by the plaintiff cannot, at the threshold, be used to concoct jurisdiction;[181] ***fourth***, the delivery appears to have taken place through an agent, who *prima facie* is an agent of the buyer. The delivery as per ***Glen*** and Section 39 of the Sale of Goods Act took place at Gujarat.

382. Even if the defects in the affidavit were to be cured, and the transaction in question was to be considered as a genuine sale, for similar reasons noted in the analysis of CS(COMM) 1081/2026 and CS(COMM) 1010/2026 this Court ought not to entertain the suit on grounds of *forum conveniens*.

383. In view of the foregoing reasons, no part of the cause of action has arisen in Delhi so as to confer territorial jurisdiction of this Court under Section 20(c) of CPC. Even if it is assumed that a part cause of action has accrued within Delhi, on grounds of *forum conveniens*, the suit ought not to be entertained. Accordingly, the plaint deserves to be returned to the plaintiff, which may be presented before the Court having the requisite territorial jurisdiction, if so advised.

Zydus Wellness Products Ltd. v. Tushar Chimanlal Chitalia and Ors.

[181] See paras. 208-212 and 216 of this judgement. The said portions also note that the dictum of *Banyan Tree* being confined to online sales is incorrect and it also applies to offline transactions.

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384. The plaintiff and the principal contesting defendants are situated outside Delhi. However, defendant nos. 4 and 5, IndiaMART Intermesh Ltd. and Infocom Network Pvt. Ltd., respectively, have addresses in Delhi and have been impleaded as intermediaries. The suit is filed for trademark and copyright infringement along with passing off. The plaintiff claims to be the registered proprietor of the "*Glucon-D*" family of trademarks and its associated green packaging/trade dress for glucose-based beverage premixes.

385. The suit alleges that defendant no. 1 is unlawfully manufacturing and selling an identical product under the deceptively similar mark "*Glucose-D*" while copying the plaintiff's distinctive packaging, including the "*Instant Energy*" tagline, color scheme, and the "*Happy Family*" motif. Defendant no. 2 is stated to be the distributor, defendant no. 3 is the domain registrar for the infringing website (www.glucosed.com, https://www.glucosed.com), and defendant nos. 4 (IndiaMART) and 5 (TradeIndia) are interactive e-commerce platforms actively promoting and selling the impugned products.

386. Para. 142 of the plaint contains the grounds on the basis of which jurisdiction of this Court is sought to be invoked, it reads as under:

> "**142.** This Hon'ble Court has the necessary territorial jurisdiction to entertain and try the present Suit under Section 20 of the Code of Civil Procedure, 1908 for the following reasons –
> a. The products of Defendant Nos. 1 & 2 bearing the impugned marks and trade dress are being advertised, promoted, offered for sale and made available to consumers throughout India, including within the territorial jurisdiction of this Hon'ble Court without any caveat of "not available in Delhi", via the website operated by Defendant Nos. 4 & 5;

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b. The availability and offer for sale of the infringing products within the territorial jurisdiction of this Hon'ble Court constitute infringement of ZWPL's trademark;

c. Pertinently, the impugned products are being sold and are available for purchase in New Delhi since Plaintiff has obtained delivery of a sample of the impugned products at D66 A, 1st floor, Chhabra Complex, Munirka, New Delhi - 110067, within the territorial jurisdiction of this Hon'ble Court. Courier receipt of the said sample is filed with the Plaint.

d. Defendant No. 3 is the domain registrar of https://glucosed.com/ and carries out its business within the jurisdiction of this Hon'ble Court. Its website is also accessible within the territorial jurisdiction of this Court. It is the entity responsible for maintaining and transferring the domain name services of https://glucosed.com/ which enables Defendant No. 1 to engage in his infringing activities."

387. The mere availability or offer of sale of the impugned good *via* websites is not sufficient to constitute cause of action for the purposes of Section 20(c). The requirements of ***Banyan Tree*** have not been satisfied. Similarly, the purchase of the impugned product by the plaintiff itself within Delhi is not sufficient to confer jurisdiction. The "*field personnel*" of the plaintiff who purchased the product was a person set up by the plaintiff, for cause of action to be established under Section 20(c), ***Banyan Tree*** requires commercially concluded transactions through the defendant's websites by persons unconnected with the plaintiff. Defendant nos. 3-5 being the pro-forma defendants, their residence/situs shall not determine whether a given Court has territorial jurisdiction.[182]

388. Even if the transaction by the "*field personnel*" is assumed to be a genuine transaction for reasons noted in the analysis of CS(COMM)

[182] *Sector Twenty-one Owners Welfare Association v. Air Force Naval Housing Board*, 1996 SCC OnLine Del 42.

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1081/2026 this Court ought not to entertain this suit on grounds of *forum conveniens*.

389. In view of the foregoing reasons, territorial jurisdiction of this Court is not made out under Section 20(c) of CPC. Even if it is assumed that a part cause of action has accrued within Delhi, on grounds of *forum conveniens*, the suit ought not to be entertained. Accordingly, the plaint deserves to be returned to the plaintiff, which may be presented before the Court having the requisite territorial jurisdiction, if so advised.

Laborate Pharmaceuticals India Limited v. M/s JMBS Healthcare

[CS(COMM)-1120/2026]

390. The plaintiff, having its office at Delhi, has filed the present suit for trademark and copyright infringement along with a claim for passing off. The plaintiff claims to be the registered proprietor and prior user, since 1996, of the trade mark "*LABOCOF*" for cough and cold tablets, and the copyright owner of the yellow-and-white packaging of its export variant. The suit alleges that the defendant is manufacturing and exporting identical tablets under the deceptively similar mark "*LAPNACOF*" suffixed with "*JM*", in near-identical packaging.

391. Paras. 63 to 64 of the plaint contains the grounds on the basis of which jurisdiction of this Court is sought to be invoked, it reads as under:

> "**63.** The present suit is a commercial suit as described in Section 2(c)(xvii) of the Commercial Courts Act, 2015, hence this Hon'ble Court has the pecuniary and subject matter jurisdiction to try, entertain and adjudicate the present suit. Additionally, the present suit is liable to be heard and disposed of by the Commercial Court in view of provisions of Section 6 of the Commercial Courts Act, 2015. Additionally, this Hon'ble Court also has the territorial jurisdiction to try, entertain and adjudicate the present suit under

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Section 134 of the Trade Marks Act, 1999 and Section 62 of the Copyright Act, 1957, as the Plaintiff's corporate office is situated at Plot K -17, Second Floor, Udyog Nagar, Industrial Area, Rohtak Road, Nagloi, New Delhi-110041 and the Plaintiff is carrying on its business in Delhi.

64. The Defendant also maintains an IndiaMart listing and an interactive website with a 'Contact Us' tab, through which it is promoting and soliciting its goods and business and targeting the customers in Delhi. In the said listings, Defendant has also provided its contact numbers, email IDs and a detailed form on its website through which potential customers can reach out to it. Furthermore, Defendant is exporting its counterfeit pharmaceutical products through the logistic channels operating from Delhi, including the ports and export facilities in Delhi, within the jurisdiction of this Hon'ble Court, which is also corroborated from the publicly available data on the popular platform- Eximpedia. Furthermore, Plaintiff also gained knowledge that Defendant is also approaching the market sources in Delhi, being a major export market, to export its impugned counterfeit products. Hence, there is an imminent and credible apprehension that Defendant is likely to expand its export activities and dealings with traders in Delhi in regard to the counterfeit products. Therefore, owing to Defendant's acts, the Plaintiff's goodwill and reputation are being diluted in Delhi and there is a potential loss of business for the Plaintiff in Delhi. Therefore, the cause of action has partly arisen in Delhi, and this Hon'ble Court has the territorial jurisdiction under Section 20(c) of Code of Civil Procedure, 1908."

392. The plaintiff has its registered office outside the jurisdiction of this Court. Resultantly, as per ***Sanjay Dalia***, specifically para. 16, the principal place of business shall be considered to be the place of registered office. Resultantly, the option under Sections 62(2) and 134(2) of the Copyright and Trade Marks Act, respectively, shall be made available at Delhi only if cause of action h the place of its registered office as also accrued within the jurisdiction of this Court. To establish cause of action, the plaintiff has pleaded that the defendant is exporting its counterfeit pharmaceutical products through the logistic channels operating from Delhi, including the export facilities at Delhi. To support this pleading, the plaintiff has annexed with the plaint a page from "*Eximpedia*" which states that the export

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shipments are routed through "*Panchi Gujaran (Sonepat ICD followed DELHI AIR CARGO and NHAVA SHEVA SEA*".

393. While it may indeed be the case that the products of the defendant are being routed through Delhi, there is nothing to even *prima facie* demonstrate that the impugned infringing goods are being routed through the Delhi air cargo. A general supply of goods does not constitute cause of action; the movement must be of the infringing goods. Even the plaintiff appears to be unsure if actual exports are taking place. That is why, in the same paragraph, it has pleaded that there is an imminent and credible apprehension that the defendant is *likely* to expand its export activities to Delhi. Both the pleadings cannot simultaneously be made. It is either the case that exports *are* taking place in Delhi or that there is an imminent threat that they *are to* take place. The plaintiff and its plaint are conflicted.

394. Even if the plaint is to be tested on the apprehension to export ground, the requirements for a *quia timet* action, as noted in para. 140 of this judgement, are not made out. There is nothing on record to demonstrate that the defendant has expressed a deliberate intention to engage in an activity the result of which would raise a strong possibility of infringement. By no stretch of imagination can the activity be considered to be imminent, and of such a character that if the defendant were to engage in the activity, the plaintiff would suffer substantial, if not irreparable, prejudice.

395. In view of the foregoing reasons, territorial jurisdiction of this Court is not made out under Section 20(c) of CPC, and Section 134(2) of the Trade Marks Act, or Section 62(2) of the Copyright Act. Accordingly, the plaint

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deserves to be returned to the plaintiff, which may be presented before the Court having the requisite territorial jurisdiction, if so advised.

Jangeer Singh v. Yogesh Jangid

[CS(COMM)-598/2022]

396. The plaintiff in CS(COMM)-598-2022, as per the amended memo of parties, has filed the suit against the defendant for infringement of trademark and a claim for passing off. Both the plaintiff and the defendant are outside the jurisdiction of this Court.

397. Paras. 36 to 37 of the plaint contains the grounds on the basis of which jurisdiction of this Court is sought to be invoked, it reads as under:

> "**36.** That this Hon'ble Court has the territorial jurisdiction to try and adjudicate the present suit. The Defendants are offering to sell and are distributing and supplying their impugned goods bearing the impugned mark to the dealers, distributors and customers in the markets of inter alia in New Delhi. The Defendants are carrying out their impugned activities under the impugned mark by inter alia selling, soliciting the impugned products through e-commerce websites namely www.indiamart.com, ie. Defendant no. 2 and www.tradeindia.com within the jurisdiction of the Hon'ble Court. Products of the Defendants are available on the aforesaid interactive websites which are accessible to the consumers within the jurisdiction of this Hon'ble Court. The consumers can ask queries about the price and products and can place order and purchase the impugned products. The Defendant no. 1's product is also advertised and sold through social media platform www.facebook.com. The Defendant no. 1 has given email id and mobile no. through which the Defendant no. 1 sells the impugned products. The goods of the Defendants are also made available to the places situated within the jurisdiction of this Hon'ble Court. By their impugned activities, the Defendants are passing off their goods as that of the Plaintiff within the territorial jurisdiction of this Hon'ble Court. The Defendants are carrying out the impugned activities within the jurisdiction of the Hon'ble Court thereby committing the impugned acts of passing off within the jurisdiction of this Hon'ble Court by selling and soliciting trade, distribution and marketing networks in relation to the impugned goods under the impugned trade mark in Delhi market. Hence, a part of cause of action arose within the territorial jurisdiction of this Hon'ble Court thereby this Hon'ble Court has

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> jurisdiction to entertain and try and adjudicate the present suit under Section 20 of the Code of Civil Procedure. The Defendants offer, advertise, and sell their impugned products within the jurisdiction of this Hon'ble Court and the wrong is done within the local limits of this Hon'ble Court and therefore, this Hon'ble Court also has jurisdiction to entertain and try the suit under the provision of Section 19 of the Code of Civil Procedure. This Hon'ble Court thus has the jurisdiction to try and adjudicate the suit. Further, the goods of the Plaintiff are also sold through various ecommerce websites including www.indiamart.com and www.tradeindia.com. The Plaintiff also conduct business through their interactive website www.jangeer.com. The Plaintiff business are being done inter alia in Delhi which is within the jurisdiction of this Hon'ble Court. The Plaintiff has tremendous goodwill and reputation in its said trademark within the jurisdiction of this Hon'ble Court on account of voluminous sales and distribution. The Plaintiff actually and voluntarily resides and carries on business and works for gain within the jurisdiction of this Hon'ble Court and therefore the Hon'ble Court has a jurisdiction to try and adjudicate the present suit by virtue of Section 134 of the Trademarks Act, 1999.
>
> Thus, this Hon'ble Court has jurisdiction to entertain and try the present suit under Sections 19, 20 of the Code of Civil Procedure and under Section 134 of Trade Marks Act, 1999 as the Plaintiff is carrying on the business within the jurisdiction of this Hon'ble Court. This Hon'ble Court thus has the jurisdiction to try and adjudicate the suit.
>
> **37.** Thus, this Hon'ble Court has jurisdiction to entertain and try the present suit under Sections 19 and 20 of the Code of Civil Procedure as the Defendants are carrying on the business within the jurisdiction of this Hon'ble Court. This Hon'ble Court thus has the jurisdiction to try and adjudicate the suit."

398. There is no document on record to support the averment that the defendant is distributing and supplying the impugned goods to its dealers, distributors and customers in the markets of New Delhi. This empty averment is required to be looked through as per the dictum of the Supreme Court in ***Manjula***. In ***Indovax*** as well, such an averment without supporting documents has not been given any weight by this Court. The averment is an attempt at clever drafting and hoodwinking the Court.

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399. Mere availability of the defendant's products on IndiaMart or other websites, including the website of the defendant does not attract Section 20(c) of the CPC as the ***Banyan Tree*** standard has not been complied with.

400. The plaintiff's website being accessible in Delhi also does not constitute it carrying on business in Delhi. The decision of ***WWE*** is, as has been analysed in this judgment, does not govern the field on this issue. Insofar as the pleading on Section 19 is concerned, it may be noted that even if under Section 19 jurisdiction is made out, since the plaint is not maintainable *qua* the suit cannot be instituted before this Court. The plaint cannot, therefore, be entertained.

401. In view of the foregoing reasons, territorial jurisdiction of this Court is not made out under Section 20(a) or Section 20(c) of CPC, and Section 134(2) of the Trade Marks Act. Accordingly, the plaint deserves to be returned to the plaintiff, which may be presented before the Court having the requisite territorial jurisdiction, if so advised.

Kajaria Ceramics Ltd. v. Yomesh Vijaya

[CS(COMM)-111/2026]

402. The plaintiff has filed a suit for trademark and copyright infringement along with a claim for passing off. The plaintiff claims to be the proprietor of the registered trademark "KAJARIA", used in relation to its ceramic/vitrified tile business, and the "KEROVIT" family of trademarks, used in relation to faucets, bathware and sanitaryware products. The plaintiff alleges that the defendant, trading as M/s Western Drymix, adopted the mark "KEROVIT" in relation to adhesives and construction-related products and

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filed trademark applications in Classes 1 and 2 in 2024 and 2025. Despite receiving a cease-and-desist notice dated 27.10.2025, the defendant allegedly continued using the impugned mark, advertising and offering its products through online platforms, thereby causing infringement, consumer confusion and dilution of the plaintiff's goodwill.

403. Para. 47 of the plaint contains the grounds on the basis of which jurisdiction of this Court is sought to be invoked, it reads as under:

> "**47.** The Plaintiff is the registered proprietor of the trademark "KEROVIT" and variations thereof in India, which are duly registered with the Trademarks Registry, Delhi. The Plaintiff has its Corporate Office at J-1/B-1 (Extension), Mohan Cooperative Industrial Estate, Mathura Road, New Delhi- 110044, and carries out its business in Delhi. Further, the Plaintiff's official website www.kerovit.com is an interactive website, which is accessible to consumers all over India, including Delhi. It is also pertinent to note that the Defendant has filed caveats against the Plaintiff in this Hon'ble Court and as such has admitted its jurisdiction for this suit. Therefore, this Hon'ble Court has the jurisdiction to try, entertain and adjudicate the present suit under Section 134 of the Trade Marks Act 1999. Furthermore, the Defendant in its Reply to Examination Report has stated that its impugned mark is also available online on ecommerce platforms such as India Mart, and on social media platform Instagram, and against said submission it has also filed snapshots of its product listings on Social Media platforms wherein the said Defendant is soliciting business from customers across the country, which includes Delhi. The Defendant's trademark applications are also filed without any disclaimer as to any region of India. Hence, this Hon'ble Court has jurisdiction under Section 20(a) and (c) of CPC as well."

404. The registered office of the plaintiff is outside the jurisdiction of this Court. As per the decisions of ***Sanjay Dalia*** and ***Ultra Home***, the plaintiff under the specialised statutes, and the defendant under Section 20(a) of the CPC, can be considered as "*carrying on business*" at Delhi only if cause of action also accrues at Delhi. Mere accessibility of the plaintiff's website at Delhi does not constitute carrying on of business. The decision of ***WWE***

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supporting such a view no longer governs the field on this issue. The listing of the impugned products on websites alone also does not satisfy the ***Banyan Tree*** standard. Resultantly, under Section 20(c) as well, jurisdiction is not made out.

405. In view of the foregoing reasons, territorial jurisdiction of this Court is not made out under Section 20(a) or Section 20(c) of CPC, and Section 134(2) of the Trade Marks Act. Accordingly, the plaint deserves to be returned to the plaintiff, which may be presented before the Court having the requisite territorial jurisdiction, if so advised.

Pharmed Ltd. v. Best Biotech and Ors.

[CS (COMM)-874/2026]

Society for Human Resource Management v. Strategic HRM

[CS(COMM)-128/2026]

406. In CS (COMM)-874/2026, the plaintiff's suit is for trademark and copyright infringement, along with a claim for passing off. The plaintiff claims to be the prior adopter, user, and registered proprietor of the "*MGD3*" family of trademarks (including "*MGD3*", "*MGD3 10K*", and "*MGD3 60K*") and holds the copyright in its artistic product labels for its pharmaceutical and nutraceutical products. The suit alleges that defendant no. 1 is marketing, and defendant no. 2 is manufacturing, identical pharmaceutical products under the deceptively similar mark "*CALCIMATE MGD3*", deliberately incorporating the plaintiff's coined trademark in its entirety and copying its trade dress. Defendant no. 3 is impleaded as a *pro forma* defendant, acting as an online listing platform/intermediary through which the impugned products are actively promoted.

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407. Paras. 103 and 104 of the plaint contains the grounds on the basis of which jurisdiction of this Court is sought to be invoked, it reads as under:

> "**103.** This Hon'ble Court has the necessary jurisdiction to try and entertain the present suit under Section 134(2) of the Trademarks Act, 1999 and Section 62 of the Copyrights Act, 1957 as the Plaintiff is carrying on their business in their corporate office at Delhi and the products, under the Plaintiff's trademarks which are the subject matter of the suit, are extensively marketed and sold in Delhi through various distributors and dealers, within the jurisdiction of this Hon'ble Court.
>
> **104.** This Hon'ble Court also has jurisdiction to try and entertain the present suit under Sections 20 (a) and (c) of the Code of Civil Procedure, 1908:
>
> b. Defendant No.1 and Defendant No.2 are conducting their infringing activities and are soliciting business through their interactive websites, www.bestbiotechindia.com, https://www.savyapharma.com/about-us/ such which are accessible in New Delhi. The accessibility of these websites from within the jurisdiction of this Hon'ble Court results in detrimental harm to the Plaintiff being felt in Delhi as a part of Plaintiff's business is getting adversely affected. Defendant No.3 is also operating its website https://www.justdial.com/ which are accessible in New Delhi. These websites enable users in New Delhi to interact with the Defendants, reach out to them for business related queries, or avail themselves of their services online. Thus, these Defendants have purposefully availed themselves of the jurisdiction of this Hon'ble Court by targeting consumers to conclude commercial transactions within the jurisdiction of this Hon'ble Court.
>
> c. Defendant No.1 conducts and solicits business within the territorial jurisdiction of this Hon'ble Court through their Facebook page and Instagram account which are accessible and target consumers within the jurisdiction of this Hon'ble Court. People can leave comments on videos, posts and stories, and even interact with the creators of the videos, posts and stories on any topic or subject of their choosing. As a result, the platform on which these infringing videos/posts/stories are hosted are interactive in nature, and a part of the cause of action qua Defendant No.1 has arisen in New Delhi.
>
> d. As the Defendants does not have any territorial limitation and can be used to infringe the distinct MGD3 Trademarks of the Plaintiff within the territorial jurisdiction of this Hon'ble Court, if the same is not already done. Further, the dynamic effect of violation of the Plaintiff's rights by the Defendants is felt within the territorial limits of the Hon'ble Court. On account of the aforesaid, it is abundantly clear that a substantial and integral

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part of the cause of action has also arisen within the territorial jurisdiction of this Hon'ble Court.

e. In accordance with the findings of the Hon'ble Division Bench of the Delhi High Court in the case of Tata Sons Pvt. Ltd. v. Hakunamatata Tata Founders, FAO(OS) (COMM) 62/2022 dated 19th September, 2022 the fact that third party interactive websites are unlawfully displaying the impugned mark are accessible to customers in Delhi, and the fact the Defendants have a looming presence on the virtual world in India, including the territorial jurisdiction of this Hon'ble court, gives this court the necessary territorial jurisdiction, since this has the potentiality to cause deception and confusion amongst consumers in Delhi."

408. In CS (COMM)-128/2026, the plaintiff, a US-based professional association for human resource practitioners, has instituted the suit for trade mark and copyright infringement along with a claim for passing off, in respect of its "*SHRM*" brand and the domain name "*www.shrm.org*". The plaintiff claims to be the registered proprietor of the marks "*SHRM*", "*SHRM INDIA*" and "*SOCIETY FOR HUMAN RESOURCE MANAGEMENT*" (device), together with copyright in the artistic work on its website. The plaint alleges that defendant no. 1 has adopted the deceptively similar domain name "*www.shrm.in*", offering identical HR consultancy and training services, thereby misappropriating the plaintiff's goodwill and causing a likelihood of confusion. Defendant nos. 2 and 3, the domain name registrar and the web host, have been impleaded as intermediaries.

409. Paras. 43 to 44 of the plaint contains the grounds on the basis of which jurisdiction of this Court is sought to be invoked, it reads as under:

"**43.** That this Hon'ble Court has the territorial jurisdiction to try and adjudicate the present suit. The Defendant No. 1 is making false offerings for the impugned services, displaying, and soliciting, have intention to offer/solicit their impugned services and business under the impugned Trademarks/Trade Name/Domain Names in New Delhi area through the impugned website. In the era of virtualization and in light of the interactive

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nature of the impugned websites being accessible and operational everywhere, the impugned services under the impugned Trademarks/Trade Name/Domain Name can be accessible within the jurisdiction of this Hon'ble Court. Thus, the Defendant No. 1 is committing the impugned acts of infringement and passing-off in the New Delhi area through its impugned website within the jurisdiction of this Hon'ble Court by, soliciting, trading, offering, and marketing in relation to the impugned services under the impugned Trademark/Trade Name/Domain Name of the Plaintiff. Further this Hon'ble Court has the territorial jurisdiction to entertain and adjudicate the present suit by virtue of Section 20(c) of the Code of Civil Procedure, 1908, as the cause of action has arisen within the territorial jurisdiction of this Court. The impugned website/domain name adopted by Defendant No. 1, being www.shrm.in is accessible within the jurisdiction of this Hon'ble Court and the Defendant is soliciting business, offering services, and causing confusion to consumers and stakeholders within the jurisdiction of this Hon'ble Court. Accordingly, the Plaintiff submits that this Hon'ble Court is vested with the requisite jurisdiction to try and decide the present proceedings. Further, The Plaintiff also works for gain within the jurisdiction of this Hon'ble Court by organising its Annual Conferences in New Delhi since 2011 and this year also the conference was held in New Delhi on 13th and 14th November, 2025. The said event, being a significant commercial and professional activity of the Plaintiff within the jurisdiction of this Hon'ble Court, confers jurisdiction upon this Court under Section 134 of the Trade Marks Act, 1999 as well as Section 62 of the Copyright Act, 1957. The Plaintiff, therefore, has the right to institute and maintain the present proceedings before this Hon'ble Court, in addition to the jurisdiction arising under Section 20(c) of the Code of Civil Procedure, 1908 and Section 134 of the Trade Marks Act, 1999 as well as Section 62 of the Copyright Act, 1957.

44. That due to the Defendant No.l's impugned activities and adoption of such impugned domain name/website, the Plaintiff are suffering huge losses both in business and in reputation and such losses are incapable of being assessed in monetary terms. Unwary purchasers and consumers are being deceived as to the origin of the said goods and business of the Plaintiff. The Defendant No.1's gains are Plaintiff losses. The Plaintiff have no access to the Defendant No. 1's accounts and the Defendant No. 1 is therefore liable to render its accounts to the Plaintiff and to make good to the Plaintiff, the profits and business earned by them. Without prejudice to the rendition of accounts and in alternative thereto, the Defendant No. 1 is liable to pay damages to the Plaintiff, which the Plaintiff conservatively and in a restricted manner claims to the tune of Rs. 2,00,00,000/- (Rupees Two crores only) even though the Plaintiff is entitled to much more."

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410. In both CS (COMM)-874/2026 and CS (COMM)-128/2026 jurisdiction of this Court is sought to be invoked on grounds that the defendant's websites, third party websites having the defendant's products are accessible from Delhi, and the social media pages of the defendant can also be accessed from Delhi. The test of ***Banyan Tree*** has not been satisfied by the plaintiff.

411. The act of holding conferences and events in Delhi is also not an essential part of the business; it cannot constitute carrying on of business. The test laid down in ***Dhodha House*** is not satisfied. The plaintiff in (COMM)-128/2026, thus, is also not carrying on business in Delhi.

412. In view of the foregoing reasons, in CS(COMM) 874/2026, territorial jurisdiction of this Court is not made out under Section 20(a) or Section 20(c) of CPC, and Section 134(2) of the Trade Marks Act or Section 62(2) of the Copyright Act. Similarly, in CS(COMM) 128/2026, the territorial jurisdiction is not made out under Section 20(c) of CPC, and Section 134(2) of the Trade Marks Act or Section 62(2) of the Copyright Act. Accordingly, the plaints deserve to be returned to the plaintiffs, which may be presented before the Court having the requisite territorial jurisdiction, if so advised.

Shiromani Gurudwara Prabandhak Committee & Anr. v. Galactic TV & Communications Pvt. Ltd.

[CS(COMM)-883/2026]

413. Plaintiff no. 1 claims to be the authority managing and overseeing the management and affairs of Sri Harmandir Sahib (Golden Temple). Plaintiff no. 2 is stated to have the exclusive broadcasting rights to the Gurbani Kirtan which takes place at the Golden Temple. The present suit is for

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copyright infringement and unauthorised broadcast of the live and recorded video stream of Gurbani Kirtan from the Golden Temple. It is alleged that the defendants, without any licence, have re-transmitted the stream on their channel "*GTC Punjabi*" and on third-party platforms after adding their own logo.

414. Paras. 65 to 67 of the plaint contains the grounds on the basis of which jurisdiction of this Court is sought to be invoked, it reads as under:

> "65. This Hon'ble Court has the territorial jurisdiction to try and adjudicate the present suit. The Code of the suit is 50000.01.
>
> 66. The Corporate Office (headquarters) of the Defendant No. 1 company, from where the day-to-day business operations, executives, and management actually work, is situated in Okhla Industrial Estate, Delhi.
>
> 67. Additionally, the unauthorised broadcasting and re-transmission of the video stream (with the Defendants' logo) on third-party platforms (non-exhaustive) such as JioTV, YuppTV, KableOne, etc., which is the infringing material, is accessible in Delhi - which has a big Sikh and Punjabi community. Since the infringing content is accessible to the consumers within the jurisdiction of this Hon'ble Court, and additionally because the damage is being caused to the Plaintiffs in Delhi as well, this Hon'ble Court would necessarily have the jurisdiction to try and adjudicate the present suit under Section 62 of the Copyright Act read with Section 20 of the Code of Civil Procedure."

415. The plaintiff has sought to invoke Section 20(a) of the CPC in order to claim jurisdiction of this Court. It is undisputed that the defendant has a sub-ordinate office at Delhi. It is also undisputed that a fraction of a cause of action has accrued in Delhi owing to the impugned broadcasting of the Gurbani Kirtan being accessible from Delhi. Cause of action has been claimed to be the access by the public of the unauthorised broadcasting and

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re-transmission of the video stream on third-party platforms such as JioTV, YuppTV, KableOne etc.

416. As per the memo of parties plaintiff no. 1 is at Amritsar, Punjab. Plaintiff no. 2 is at Mohali, Punjab. Defendant no. 1 has its registered office at Mohali, Punjab. Defendant no. 2 has its registered office in London. The plaintiff's own notice concerning the alleged infringement was addressed to Defendant No. 1 at its Mohali office and the reply thereto was also issued from the Mohali office. The dispute originates from the defendants purportedly **t**aking the live feed of the Gurbani from the plaintiff no. 1's YouTube channel and broadcasting it on their channels.

417. The gravamen of this *lis* lies in the live feed emanating from the Golden Temple and the Gurbani Kirtan that takes place at Amritsar, Punjab. The cause of action available at Delhi, namely access to the broadcast, is also available at Amritsar Punjab. It is indeed available in most if not all parts of India. The material, integral, and essential part of the cause of action, however, has arisen in Amritsar. The mere fact that access to the infringing material is taking place in Delhi and the defendant has a sub-ordinate office at Delhi[183] does not make Delhi the *forum conveniens*. The courts at Amritsar are *ex facie* the *forum conveniens* to entertain this *lis*.

418. Accordingly, the plaint deserves to be returned to the plaintiff, which may be presented before the Court having the requisite territorial jurisdiction, if so advised.

[183] As per ***Sanjay Dalia***, para. 16, the principal office is to be registered office.

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419. Both the plaintiffs are in Rajasthan. Defendant nos. 1, 2 and 4 are in Rajasthan. Defendant no. 3 is in Punjab. Defendant no. 5, IndiaMart, is in Delhi. Thus, all of the contesting defendants except one are in Rajasthan.

420. The suit has been filed for trademark and copyright infringement along with a claim for passing off. It is contended that the plaintiffs are the registered owners of several trademarks including "ACHAL CHANCHAL", "ACHAL", "TEJ PRAKASH", "RADHA PRAKASH", "KACHAL" and other ACHAL formative marks. The plaint narrates that the defendants allegedly have dishonestly adopted and commenced use of the marks "CHANCHAL" and "TEJ PRAKASH" in relation to Ayurvedic medicinal preparations.

421. Paras. 71 to 77 of the plaint contains the grounds on the basis of which jurisdiction of this Court is sought to be invoked, it reads as under:

> "**71.** That the Defendants are actively offering for sale, advertising and promoting their infringing products bearing the impugned marks through various online platforms and social media, including their Instagram page, which are accessible across India, including within the territorial jurisdiction of this Hon'ble Court. The said infringing products are available for purchase by consumers through such online platforms and can be delivered to customers within the territorial jurisdiction of this Hon'ble Court. The Defendants are therefore purposefully targeting consumers within the jurisdiction of this Hon'ble Court, and the impugned goods are being marketed and offered for sale to consumers in Delhi. Consequently, a part of the cause of action has arisen within the territorial jurisdiction of this Hon'ble Court, and this Hon'ble Court has the jurisdiction to entertain and try the present suit.
>
> **72.** The Defendants are engaged in systematic and purposeful commercial activities directed towards consumers located within Delhi. The Defendants

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have advertised, offered for sale and sold the impugned products through e-commerce platforms including Defendant No. 5, IndiaMART Intermesh Ltd. which facilitates transactions, listings, communications of the infringing products to purchasers located within the territorial jurisdiction of this Hon'ble Court.

73. Defendant No. 4, Ramesh Belt House & Mayur Puja Bhandar, in active collusion with Defendant Nos. 1 to 3, has been fulfilling orders of the impugned goods has caused delivery of the infringing products to Delhi courier. The evidence of delivery of the infringing goods to addresses located within Delhi gives rise to a direct commercial effect within the territorial jurisdiction of this Hon'ble Court.

74. The Defendants' online listings and advertisements are interactive in nature, inviting orders from and enabling direct transactions with consumers in Delhi. Accordingly, a part of the cause of action has clearly arisen within this Hon'ble Court's jurisdiction.

75. That this Hon'ble Court has the territorial jurisdiction to entertain and try the present suit under the provisions of Section 134 of the Trade Marks Act, 1999 and Section 62 of the Copyright Act, 1957, as well as under the provisions of the Code of Civil Procedure, 1908.

76. That the Plaintiffs carry on business and have commercial presence within the territorial jurisdiction of this Hon'ble Court through their distribution network, sale of products through dealers, stockists, chemists, pharmacies and online platforms. The Plaintiff's products bearing the Plaintiff's Marks are widely sold and available to consumers within the jurisdiction of this Hon'ble Court.

77. That the Defendants are actively offering for sale, advertising and promoting their infringing products bearing the impugned marks "CHANCHAL" and "TEJ PRAKASH" through online platforms and social media, including their Instagram page, which are accessible across India including within the territorial jurisdiction of this Hon'ble Court. The said products can be purchased by consumers within the jurisdiction of this Hon'ble Court and are capable of being delivered within Delhi."

422. Through the mere listing, which is contended to be an offer for sale, advertisement and promotion of the impugned product on websites, jurisdiction cannot be established as it falls foul of the requirements of ***Banyan Tree***. It is pleaded that certain goods were delivered in Delhi. No

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document in support of the averment has been attached in the plaint. In the absence of supporting documents, the averment remains an empty and hollow statement made to confer jurisdiction where there is none. In any case, *in arguendo*, if it is assumed that there is a fraction of cause of action which has accrued within the jurisdiction of this Court, that, in itself ought not to be the reason to entertain the present suit. A purported delivery at Delhi could well have happened at Rajasthan or for instance at Jhumri Telaiya. This fact which is dependent upon the wilful conduct of the plaintiff, ought not to make this Court the *forum conveniens* to adjudicate this suit. Thus for reasons further elaborated in the analysis of CS(COMM) 1081/2026, this court is not *forum conveniens* to entertain this *lis*.

VI. ORDER

423. Each of the plaints discussed above, deserve to be returned on grounds of territorial jurisdiction. Consequently, the plaints in CS (COMM)-987/2026, CS (COMM)-996/2026, CS (COMM)-611/2026, CS (COMM)-980/2026, CS (COMM)-1081/2026, CS (COMM)-1010/2026, CS (COMM)-917/2026, CS (COMM)-444/2026, CS (COMM)-1115/2026, CS (COMM)-1041/2026, CS (COMM)-1120/2026, CS (COMM)-598/2022, CS (COMM)-111/2026, CS (COMM)-874/2026, CS (COMM)-128/2026, CS (COMM)-883/2026 and CS (COMM)-746/2026, are returned to the plaintiff under Order VII Rule 10 read with Section 151 of the CPC, to be presented before an appropriate court, if so advised. Pending applications if any stand disposed of.

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424. Liberty is, however, granted to each of the plaintiffs in the above-mentioned suits to make an application, and avail appropriate directions, under Order VII Rule 10A of the CPC.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

NOVEMBER 03, 2026
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