

2017 (3) GLR 2490 : AIR 2017 Guj 127

GUJARAT HIGH COURT

Hon'ble Judges:M.R.Shah and B.N.Karia JJ.

Vimal Dairy Limited Versus Kaira District Co Operative Milk Producers Union Limited

APPEAL FROM ORDER No. 83 of 2017 ;

CIVIL APPLICATION No. 3771 of 2017 ; *J.Date :- MARCH 20, 2017

- COMMERCIAL COURTS, COMMERCIAL APPELLATE COURTS, COMMERCIAL DIVISION AND COMMERCIAL APPELLATE DIVISION OF HIGH COURTS ACT, 2015 Section - 13
- [CODE OF CIVIL PROCEDURE, 1908](#) Section - [20](#), Order - [43R.1\(r\)](#), [7R.10](#), [7R.11](#)
- COPYRIGHT ACT, 1957 Section - 55, 62
- TRADE MARKS ACT, 1999 Section - 134, 135

Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 - S. 13 - Code of Civil Procedure, 1908 - S. 20, Or. 43 R. 1(r), Or. 7 R. 10, 11 - Copyright Act, 1957 - S. 55, 62 - Trade Marks Act, 1999 - S. 134, 135 - infringement of copyright and passing off - suit for permanent injunction - territorial jurisdiction - appellant contending that as suit for reliefs sought in plaint, Court at Ahmedabad (Rural) shall not have any jurisdiction and considering S. 134 of Trade Marks Act and S. 62 of Copyright Act, and that suit before Anand Court only shall be maintainable - Commercial Court, however, rejecting the application - validity of - held, in S. 62 of Copyright Act and S. 134 of Trade Marks Act, additional forum provided by including a District Court within whose limits plaintiff actually and voluntarily resides or carries on business or personally works for gain and that it does not oust applicability of provisions of S. 20 CPC - thus, it can be said that cause of action also arose within the local territorial jurisdiction of Ahmedabad (Rural), as defendants have their registered office within local territorial jurisdiction of Ahmedabad (Rural) - therefore, no error in impugned order of Commercial Court in rejecting application and in not rejecting plaint as prayed by respondent-defendants.

Copyright Act, 1957 - S. 55, 62 - Trade Marks Act, 1999 - S. 134, 135 - infringement of Trade Mark - infringement of Copyright and passing off - composite suit - maintainability of - held, suit is maintainable - all three reliefs suit in District Court, Ahmedabad (Rural) and even subsequently suit transferred to Commercial Court, Ahmedabad, composite suit maintainable - appeal dismissed.

Imp.Para: [[6](#)] [[7](#)]

Cases Referred To :

1. Dabur India Ltd V/s. K.R. Industries, AIR 2008 SC 3123

2. Exphar Sa And Anr V/s. Eupharma Laboratories Ltd And Anr., AIR 2004 SC 1682
3. Indian Performing Rights Society Ltd V/s. Sanjay Dalia And Anr., AIR 2015 SC 3479
4. [Lark Laboratories Ltd V/s. Nabros Pharma Pvt Ltd, 2009 2 GLH 761 : 2009 \(2\) GLR 1376 : 2009 \(3\) GCD 1962 : 2009 \(20\) GHJ 455 : 2009 \(41\) PTC 675](#)

Equivalent Citation(s):

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JUDGMENT :-

M.R.SHAH, J.

1 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the learned Commercial Court, Ahmedabad dated 21.02.2017 passed below Exh.13 in Commercial Civil Suit No.314 of 2016, by which, the Commercial Court has dismissed the said application submitted by the original defendants which was submitted to reject the plaint in exercise of powers under Order 7 Rule 10 and Order 7 Rule 11 of the Code of Civil Procedure, 1908, the original defendants have preferred the present appeal under Section 13 of the Commercial Court Act r/w Order 43 Rule 1(r) of the Code of Civil Procedure.

2 The facts leading to the present Appeal From Order in nutshell are as under:

2.1. That the respondents no.1 and 2 herein - original plaintiffs (hereinafter referred to as the "original plaintiffs") initially instituted the Civil Suit in the Court of learned District Judge at Ahmedabad (Rural) being Civil Suit No. 6of 2012 for declaration of infringement of Trade Mark; infringement of Copyright and passing off seeking permanent injunction against the defendants. At the outset, it is required to be noted that the plaintiffs have their registered office at Anand and original defendants have their registered office within the territorial jurisdiction of Ahmedabad (Rural). That having been served with the summons / notice of civil suit, the defendants submitted the application below Exh.13 requesting to reject the plaint under Order 7 Rule 10 and 11 of the Code of Civil Procedure, contending inter alia that the suit filed by the plaintiffs for the reliefs sought in the plaint, the Court at Ahmedabad (Rural) shall not have any jurisdiction and considering Section 134 of the Trade Marks Act and Section 62 of the Copyright Act, the suit before the Anand Court only shall be maintainable. Before the application Exh.13 could be heard, on establishment of Commercial Court at Ahmedabad, the suit which was pending before the Court at Ahmedabad (Rural) came to be transferred to the Commercial Court, Ahmedabad, which is numbered Commercial Civil Suit No. 314 of 2016. That by impugned order, the learned Judge, Commercial Court at Ahmedabad has rejected the said application by holding that even for the reliefs of infringement of Trade Mark and / or Copyright the suit filed by the original plaintiffs at the relevant time before the Ahmedabad Rural Court shall be maintainable.

2.2. Feeling aggrieved and dissatisfied with the impugned order passed by the learned Judge, Commercial Court at Ahmedabad passed below Exh.13 dated 21.02.2017 in Commercial Civil Suit No.314 of 2016, the original defendants have preferred present Appeal From Order.

3 Shri R.R. Shah, learned advocate for the original defendants has vehemently submitted that in the facts and circumstances of the case learned Commercial Court has materially erred in rejecting the

application below Exh.13 and has materially erred in holding that the suit for the reliefs prayed in the suit, more particularly, for infringement of the Trade Mark and the infringement of Copyright before the District Court, Ahmedabad (Rural) shall be maintainable .

3.1. It is further submitted by Shri R.R. Shah, learned advocate for the original defendants that as such a composite suit for infringement of Trade Mark, infringement of Copyright and passing off action shall not be maintainable.

3.2. It is further submitted by Shri R.R. Shah, learned advocate for the original defendants that it is an admitted position that the plaintiffs are having their registered office at Anand within the local territorial jurisdiction of of the Anand Court. It is submitted that therefore, considering Section 134 of the Trade Marks Act and Section 62 of the Copyright Act, the suit shall be maintainable where the plaintiffs carry on business and / or is having its principal office or even the subordinate office. It is submitted that therefore, more particularly, composite suit for the aforesaid reliefs shall not be maintainable before the District Court other than District Court, Anand. In support of his above submission, he has heavily relied upon para 19, 20 and 47 of the decision of the Hon'ble Supreme Court in the case of Indian Performing Rights Society Ltd vs. Sanjay Dalia and Anr reported in AIR 2015 SC 3479. Shri Shah, learned advocate for the original defendants has also heavily relied upon the decision of the Hon'ble Supreme Court in the case of Dabur India Ltd vs. K.R. Industries reported in AIR 2008 SC 3123. Making above submissions and relying upon the above decisions, it is requested to allow the present Appeal From Order.

4 Present Appeal From Order is vehemently opposed by Shri K.S. Nanavati, learned Senior Advocate appearing for the original plaintiffs. It is submitted that in the facts and circumstances of the case and more particularly, considering the fact that defendants are also having their registered office within the territorial jurisdiction of the District Court, Ahmedabad (Rural) and therefore, considering Section 20 of the Code of Civil Procedure, no error has been committed by the learned Commercial Court in rejecting the application Exh.13.

4.1. It is further submitted that as observed and held by the Hon'ble Supreme Court in the case of Indian Performing Rights Society Ltd (supra) and in the case of Exphar SA and Anr vs. Eupharma Laboratories Ltd and Anr reported in AIR 2004 SC 1682 and the learned Single Judge of this Court in the case of Lark Laboratories Ltd vs. Nabros Pharma Pvt Ltd reported in 2009(2) GLH 761, the jurisdiction which is conferred under Section 134 of the Trade Marks Act and Section 62 of the Copyright Act will be additional forum made available to the person in whose favour the Trade Mark under the Copyright is registered and it does not oust the forum available under Section 20 of the Code of Civil Procedure. It is submitted that therefore, considering Section 20 of the Code of Civil Procedure where the defendants are having their registered office, suit within the territorial jurisdiction of the District Court shall be maintained and therefore, no error has been committed by the learned Commercial Court in rejecting the application Exh.13. Making above submissions and relying upon the above decisions, it is requested to dismiss the present Appeal From Order.

5 Heard the learned advocates for the respective parties at length. At the outset, it is required to be noted that by the impugned order, learned Commercial Court has dismissed the application submitted by the appellants herein - original defendants, which was submitted to reject the plaint under Order 7 Rule 10 and Order 7 Rule 11 of the Code of Civil Procedure, 1908 contending inter alia that as registered office of the plaintiffs is at Anand (not with the local territorial jurisdiction of the

Court at Ahmedabad (Rural) and therefore, the suit filed by the plaintiffs in the District Court, Ahmedabad (Rural) for the reliefs sought in the plaint shall not be maintainable and also on the ground that such a composite suit seeking relief for infringement of Trade Mark; infringement of Copyright and passing off action shall not be maintainable. It is the case on behalf of the appellants - original defendants that in view of specific provisions contained in Section 134 of the Trade Marks Act and Section 62 of the Copyright Act, the suit shall be maintainable in the District Court where the plaintiffs resides and / or carries on business. The learned Commercial Court considering the various decisions of the Hon'ble Supreme Court as well as this Court has held that considering Section 20 of the Code of Civil Procedure, the suit filed by the plaintiffs in the District Court at Ahmedabad (Rural) shall be maintainable as the defendants are having their registered office within local territorial jurisdiction of the District Court, Ahmedabad (Rural). It is the case on behalf of the appellants that in view of Section 134 of the Trade Marks Act and Section 62 of the Copyright Act, Section 20 of the Code of Civil Procedure shall not be applicable. However, the aforesaid question is now not resintegra in view of the recent decision of the Hon'ble Supreme Court in the case of Indian Performing Rights Society Ltd (supra) (AIR 2015 SC 3479). Even the issue involved in the present appeal is also squarely covered by the decision of the Hon'ble Supreme Court in the case of Exphar SA and Anr (supra) (AIR 2004 SC 1682). In the case of Indian Performing Rights Society Ltd (supra) the Hon'ble Supreme Court has observed and held that by Section 62 of the Copyright Act and Section 134 of the Trade Marks Act, an additional forum has been provided by including a District Court within whose limits the plaintiff actually and voluntarily resides or carries on business or personally works for gain. It is further observed and held that expression "notwithstanding anything contained in the Code of Civil Procedure, does not oust the applicability of the provisions of Section 20 of the Code of Civil Procedure and it is clear that additional remedy has been provided to the plaintiff so as to file a suit where he is residing or carrying on business etc. as the case may be. In para 16 to 21, the Hon'ble Supreme Court has observed and held as under:

16. On a due and anxious consideration of the provisions contained in section 20 of the CPC, section 62 of the Copyright Act and section 134 of the Trade Marks Act, and the object with which the latter provisions have been enacted, it is clear that if a cause of action has arisen wholly or in part, where the plaintiff is residing or having its principal office/carries on business or personally works for gain, the suit can be filed at such place/s. Plaintiff(s) can also institute a suit at a place where he is residing, carrying on business or personally works for gain de hors the fact that the cause of action has not arisen at a place where he/they are residing or any one of them is residing, carries on business or personally works for gain. However, this right to institute suit at such a place has to be read subject to certain restrictions, such as in case plaintiff is residing or carrying on business at a particular place/having its head office and at such place cause of action has also arisen wholly or in part, plaintiff cannot ignore such a place under the guise that he is carrying on business at other far flung places also. The very intendment of the insertion of provision in the Copyright Act and Trade Marks Act is the convenience of the plaintiff. The rule of convenience of the parties has been given a statutory expression in section 20 of the CPC as well. The interpretation of provisions has to be such which prevents the mischief of causing inconvenience to parties.

17. The intendment of the aforesaid provisions inserted in the Copyright Act and the Trade Marks Act is to provide a forum to the plaintiff where he is residing, carrying on business or personally works for gain. The object is to ensure that the plaintiff is not deterred from instituting infringement proceedings "because the court in which proceedings are to be instituted is at a considerable

distance from the place of their ordinary residence". The impediment created to the plaintiff by section 20 C.P.C. of going to a place where it was not having ordinary residence or principal place of business was sought to be removed by virtue of the aforesaid provisions of the Copyright Act and the Trade Marks Act. Where the Corporation is having ordinary residence/principal place of business and cause of action has also arisen at that place, it has to institute a suit at the said place and not at other places. The provisions of section 62 of the Copyright Act and section 134 of the Trade Marks Act never intended to operate in the field where the plaintiff is having its principal place of business at a particular place and the cause of action has also arisen at that place so as to enable it to file a suit at a distant place where its subordinate office is situated though at such place no cause of action has arisen. Such interpretation would cause great harm and would be juxtaposed to the very legislative intent of the provisions so enacted.

18. In our opinion, in a case where cause of action has arisen at a place where the plaintiff is residing or where there are more than one such persons, any of them actually or voluntarily resides or carries on business or personally works for gain would oust the jurisdiction of other place where the cause of action has not arisen though at such a place, by virtue of having subordinate office, the plaintiff instituting a suit or other proceedings might be carrying on business or personally works for gain.

19. At the same time, the provisions of section 62 of the Copyright Act and section 134 of the Trade Marks Act have removed the embargo of suing at place of accrual of cause of action wholly or in part, with regard to a place where the plaintiff or any of them ordinarily resides, carries on business or personally works for gain. We agree to the aforesaid extent the impediment imposed under section 20 of the CPC to a plaintiff to institute a suit in a court where the defendant resides or carries on business or where the cause of action wholly or in part arises, has been removed. But the right is subject to the rider in case plaintiff resides or has its principal place of business/carries on business or personally works for gain at a place where cause of action has also arisen, suit should be filed at that place not at other places where plaintiff is having branch offices etc.

20. There is no doubt about it that the words used in section 62 of the Copyright Act and section 134 of the Trade Marks Act, 'notwithstanding anything contained in CPC or any other law for the time being in force', emphasise that the requirement of section 20 of the CPC would not have to be complied with by the plaintiff if he resides or carries on business in the local limits of the court where he has filed the suit but, in our view, at the same time, as the provision providing for an additional forum, cannot be interpreted in the manner that it has authorised the plaintiff to institute a suit at a different place other than the place where he is ordinarily residing or having principal office and incidentally where the cause of action wholly or in part has also arisen. The impugned judgments, in our considered view, do not take away the additional forum and fundamental basis of conferring the right and advantage to the authors of the Copyright Act and the Trade Marks Act provided under the aforesaid provisions.

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

5.1. However, while holding that by Section 62 of the Copyright Act and Section 134 of the Trade Marks Act, an additional forum has been provided by including a District Court within whose limits

the plaintiff actually and voluntarily resides or carries on business or personally works for gain. It is observed that the object of the provisions was to enable the plaintiff to institute a suit at a place where he or they resided or carried on business, the Hon'ble Supreme Court has also cautioned that even in such a case also, the plaintiff cannot institute suit at a distant place where its subordinate office is situated, which is away from the principal office or away from the place where he or they resides or carries on business and where no cause of action has arisen. Therefore, in para 23 and 24, the Hon'ble Supreme Court has observed and held as under:

23. Considering the first aspect of aforesaid principle, the common law which was existing before the provisions of law were passed was section 20 of the CPC. It did not provide for the plaintiff to institute a suit except in accordance with the provisions contained in section 20. The defect in existing law was inconvenience/deterrence caused to the authors suffering from financial constraints on account of having to vindicate their intellectual property rights at a place far away from their residence or the place of their business. The said mischief or defect in the existing law which did not provide for the plaintiff to sue at a place where he ordinarily resides or carries on business or personally works for gain, was sought to be removed. Hence, the remedy was provided incorporating the provisions of section 62 of the Copyright Act. The provisions 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 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 unconnected place as compared to a place where plaintiff is carrying on their business, and at such place, cause of action too has arisen. In the instant cases, the principal place of business is, admittedly, in Mumbai and the cause of action has also arisen in Mumbai. Thus, the provisions of section 62 of the Copyright Act and section 134 of the Trade Marks Act cannot be interpreted in a manner so as to confer jurisdiction on the Delhi court in the aforesaid circumstances to entertain such suits. The Delhi court would have no territorial jurisdiction to entertain it.

24. 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 law makers 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 marks 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 plaintiff at convenient place; he is not to travel away. Debate was not to enable plaintiff to take 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 to 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 plaintiff is carrying on the business at Mumbai and cause of action has arisen in Mumbai. Plaintiff is having branch offices at Kanyakumari and also at Port Blair, if interpretation suggested by appellants is acceptable, mischief may 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.

6 Applying the law laid down by the Hon'ble Supreme Court in the case of Indian Performing Rights Society Ltd (supra) to the facts of the case on hand, the case falls both within Section 20 of the Code of Civil Procedure as well as Section 62 of the Copyright Act and Section 134 of the Trade Marks Act. It is not in dispute that the defendants have their registered office within the local territorial jurisdiction of Ahmedabad (Rural). Therefore, as per Section 20 of the Code of Civil Procedure, the suit can be instituted by the plaintiffs where the defendants reside or carries on the business and / or having his /its registered / subordinate office. Therefore, the case shall not fall within the exception carved out by the Hon'ble Supreme Court in the case of Indian Performing Rights Society Ltd (supra) (para 23 and 24). Under the circumstances and as held by the Hon'ble Supreme Court that by Section 62 of the Copyright Act and Section 134 of the Trade Marks Act, an additional forum has been provided by including a District Court within whose limits the plaintiff actually and voluntarily resides or carries on business or personally works for gain and that it does not oust the applicability of the provisions of Section 20 of the Code of Civil Procedure, it can be said that in the present case, the cause of action has also arisen within the local territorial jurisdiction of Ahmedabad (Rural), as defendants have their registered office within the local territorial jurisdiction of the Ahmedabad (Rural). Therefore, it cannot be said the learned Commercial Court has committed any error in rejecting the application Exh.13 and in not rejecting the plaint as prayed by the defendants.

7 Now, so far as submission on behalf of the defendants that a composite suit for the reliefs for infringement of Trade Mark, infringement of Copyright and passing off action shall not be maintainable, relying upon the decision of the Hon'ble Supreme Court in the case of Dabur India Ltd (supra) (AIR 2008 SC 3123) is concerned, it is required to be noted that the aforesaid issue is also covered against the defendants in light of the decision of this Court in the case of Lark Laboratories Ltd vs. Nabros Pharma Pvt Ltd reported in 2009(2) GLH 761 and after considering the decision of the Hon'ble Supreme Court in the case of Dabur India Ltd (supra) (AIR 2008 SC 3123), in para 11 and 12, the learned Single Judge has observed and held as under:

"11. xxxxx Relying upon the decision of the Hon'ble Supreme Court in the case of Dabur India Ltd.(supra), it is sought to be contended that as for relief of passing off action, Civil Court at Ahmedabad would not have jurisdiction and therefore, such composite suit for aforesaid three reliefs is not maintainable at all and plaint is to be rejected. For that purpose, facts of the case

before the Hon'ble Supreme Court in the case of Dabur India Ltd.(supra) are required to be considered. It cannot be disputed that every decision of the Court is in the facts of particular case. In the case before the Hon'ble Supreme Court, Dabur India Ltd (Plaintiff). instituted composite suit against the K.R.Industries (Defendant) for copyright infringement as well as for relief for passing off action before the Delhi High Court. It was found that defendant is the resident of Andra Pradesh. The defendant filed application in the said suit purported to be under Order VII Rule 11 of the CPC contending that as defendant is resident of Andra Pradesh, Delhi High Court has no jurisdiction. The learned Single Judge of the Delhi High Court accepted the said contention of the defendant and held that suit filed by the plaintiff insofar it relates to the relief for passing off, is not maintainable for want of territorial jurisdiction and since the plaint is filed for both causes of action, namely, infringement of copyright and passing off, same is required to be returned to the plaintiff for filing in the Court of competent jurisdiction. Said order was challenged by the plaintiff Dabur India Ltd. before the Division Bench of the Delhi High Court and it was contended for both the reliefs suit before the Delhi High Court would be maintainable. However, it was also submitted that as relief for infringement of copyright is concerned, Delhi High Court would have jurisdiction and plaint ought not to have been returned as a whole. Accepting the second submission the Division Bench of the Delhi High Court in para 6 has held as under:

6. So far the relief claimed as against the infringement of copyright is concerned, it is clearly established that the trial court will have the territorial jurisdiction and therefore, we also agree with the conclusions and findings recorded by the learned Single Judge that in the case of infringement of copyright, this Court will have the jurisdiction. The learned Single Judge has directed that the plaint be returned to the appellant / plaintiff for filing of the same in the Court of competent jurisdiction. We make it clear that it will be open to the appellant / plaintiff to file a fresh suit in the Court of competent jurisdiction in accordance with law with a further observation that so far as the relief for infringement of copyright is concerned, this Court will have jurisdiction.

12. Against the judgment passed by the Division Bench of the Delhi High Court, original plaintiff Dabur India Ltd. approached Hon'ble Supreme Court contending inter alia that relying decision of the Hon'ble Supreme Court in the case of Dhodha House (supra) such a composite suit for both reliefs under the copyrights act as well as trademark act is maintainable. Considering above fact situation and decision of the Hon'ble Supreme Court in the case of Dhodha House (supra), as well as Order II Rule 3 of the CPC, the Hon'ble Supreme Court has held that as Delhi High Court has no territorial jurisdiction to entertain the suit for relief for passing off action as defendant is residing at Andra Pradesh, such a composite suit for copyright infringement and relief for passing off action is not maintainable. Hon'ble Supreme Court has further clarified what would be meant by a composite suit?. As held by the Hon'ble Supreme Court in para 29, composite suit would not entitle a Court to entertain a suit in respect whereof it has no jurisdiction, territorial or otherwise. Hon'ble Supreme Court in the said decision has further observed that composite suit within the provisions of the 1957 Act as considered in Dhoda House (supra) therefore, would mean the suit which is founded on infringement of a copyright and wherein the incidental power of the Court is required to be invoked. A plaintiff may seek remedy which can otherwise be granted by the Court. It is further observed by the Hon'ble Supreme Court that it was that aspect of the matter which had not been considered in Dhoda House(supra) but it never meant that two suits having different causes of action can be clubbed together as a composite suit. Therefore, considering decision of the Hon'ble Supreme Court in Dhoda House(supra) as a whole and the facts stated herein above, it cannot be said that by the

said decision, the Hon'ble Supreme Court has laid down absolute proposition of law that such a composite suit for the reliefs i.e. infringement of trademark, infringement of copyrights and passing off before the Court having territorial jurisdiction is not maintainable at all as sought to be canvassed on behalf of the defendant. On fair reading of the aforesaid decision, it appears that it is held by the Hon'ble Supreme Court that composite suit for infringement of trademark, infringement of copyrights and passing off would not be maintainable, if otherwise it is found that for any of such relief the Court has no jurisdiction, territorial or otherwise. Under the circumstances, the contention on behalf of the defendant that for such a composite suit i.e. infringement of trademark, infringement of copyrights and passing off is not maintainable and therefore, the learned Judge has committed an error in granting injunction cannot be accepted.

7.1. Under the circumstances, submission on behalf of the appellants that a composite suit for infringement of Trade Mark, infringement of Copyright and passing off action shall not be maintainable, cannot be accepted as the same has no substance. In the present case and as observed herein above for all the three reliefs the suit in the District Court, Ahmedabad (Rural) shall be maintainable. At this stage, it is required to be noted that even subsequently the suit has been transferred to the Commercial Court, Ahmedabad.

8 In view of the above and for the reasons stated above, present Appeal From Order fails and same deserves to be dismissed and is accordingly dismissed. No costs.

9 In view of the dismissal of Appeal From Order, Civil Application stands dismissed.