IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

OMP No. 343 of 2025 in
Civil Suit No. 23 of 2024
Reserved on: April 1, 2026
Decided on: May 6, 2026
Uploaded on: May 8, 2026

Geobrugg AG …….. Non-applicant/Plaintiff

Versus

Techfab (India) Industries Limited ..Applicant/Defendant

Coram:
Hon'ble Mr. Justice Sandeep Sharma, Judge.
Whether approved for reporting? [1] Yes.

For the applicant/defendant Mr. L. Badri Narayanan and Mr. Vipul Sharda, Advocates.

For the non-applicant/ plaintiff Mr. Neeraj Gupta, Senior Advocate with Ms. Shradha Karol, Mr. Rohit Rangi, Ms. Suchita Kaintura, Mr. Vaibhav Singh Chauhan and Ms. Rupali Sharma, Advocates. .

Sandeep Sharma, Judge

OMP No. 343 of 2026

Through instant application filed under Order I, rule 9, Order I, rule 13 read with Order VII, rule 11 and further read with S.151 CPC, prayer has been made on behalf of the applicant/defendant "Techfab (India) Industries Limited (hereinafter, 'defendant') for rejection of plaint on the ground that same is vexatious, illusory, meritless, not disclosing any cause of action. It is averred in the application that the averments contained in the plaint as well as documents annexed therewith clearly reveal that the non-applicant/plaintiff "M/s Geogrugg AG (hereinafter, 'plaintiff') has miserably failed to establish that there is any cause of

[1] *Whether the reporters of the local papers may be allowed to see the judgment?*

action, on the basis of which commercial suit i.e. COMS No.23 of 2024, could be filed in this Court. Suit filed by the plaintiff has been sought to be dismissed on the grounds that the plaintiff, before filing the suit has failed to exhaust remedy of pre-institution mediation as provided under S.12(A) of the Commercial Courts Act, 2015 (hereinafter, 'Act 2015'). It is also averred in the application that suit of the plaintiff does not demonstrate/contemplate any urgency, as such, it was mandatory for the plaintiff to comply with provisions of S.12(A) of the Act 2015. While referring to the documents filed with the suit, particularly the invoices (Marked as Annexure P-14 by the plaintiff), it has been further submitted on behalf of the defendant that the plaintiff had become aware of the defendant's impugned product, as early as in May, 2024 based on the invoices, but yet it failed to file suit promptly nor attempted to resolve the issue through pre-institution mediation. It has been averred in the application that the plaintiff failed to issue any 'cease and desist' notice upon the defendant even after having gained knowledge of alleged infringement of impugned product as early as in May, 2024. It is further averred in the application that the cause of action, on the basis of which suit has been instituted, arises due to the sale of the allegedly infringing impugned product to the third party, which was consequently obtained by the plaintiff but such third party, which otherwise is a necessary party, has not been made party in the suit. Non-impleadment of third party to the suit as defendant, is improper and reflects a malafide intent to institute a vexatious litigation with the sole interest to stifle the business interests of the defendant. In addition to this, defendant has also disputed plaintiff's testing of

impugned product to establish infringement, as samples of allegedly infringing impugned product, which were eventually tested by the plaintiff, were not sourced from the defendant, but through third party i.e. Urbtech Engineering Construction Private Limited (hereinafter, 'Urbtech'), which otherwise has not been made a party-defendant.

2. It is further stated in the application that there is nothing in the plaint suggestive of the fact that impugned product obtained from third party is manufactured by the defendant, hence, in the absence of any evidence led by the plaintiff to show that the allegedly infringing product originated from the defendant, the suit is not maintainable.

3. It is further claimed in the application at hand that suit of the plaintiff is not in proper form and format as required under the Act, 2015. Though, in terms of the Act, plaintiff, while filing documents with the plaint has to mandatorily specify whether the documents in the power, possession, control or custody of plaintiff are originals, office copies or photocopies and the list shall also set out in brief, details of parties to each document, mode of execution, issuance or receipt and line of custody of each document. It is further averred that such mandatory requirement has not been adhered to by the plaintiff, which has not provided information regarding execution of documents, whether the documents exist in original or copy form.

4. Pursuant to notices issued in the instant proceedings, plaintiff has filed a detailed reply to the application, specifically stating therein that defendant's application under Order I, rule 13, Order VII, rule 11 CPC, seeking rejection of the plaint is not maintainable, for the reason that same does not disclose the grounds, as are otherwise required to

be taken/raised in terms of provisions contained under Order VII, rule 11 CPC. It is further submitted in the reply that mis-joinder/non-joinder under Order I, rule 9 CPC and Order I, rule 13 CPC, is not a ground for rejection of plaint under Order VII, rule 11 CPC, thus, reliance upon aforesaid provisions of law for rejection of plaint is wholly misplaced and unfounded. While submitting that Urbtech is not a necessary party, it has been further averred in the reply that no relief is sought against said party coupled with the fact that plaintiff being *dominus litis* is within its right to chose a party against whom, relief is sought. While relying upon S.48 of the Patents Act, which confers a right upon a patentee to prevent third parties from unauthorized making, using, offering for sale, selling, or importing patented products or process, it has been averred in the reply that defendant has committed infringement of plaintiff's right, who is using the technology covered by suit patents and manufacturing and selling the impugned product. While stating that in view of limited and ancillary role of third party, the plaintiff, being *dominus litis* has not deemed it necessary to implead the third party in the present suit, since 'necessary party' is a party, whose presence is indispensible and without whom no effective order can be passed by this Court.

5. While negating the plea set up at the behest of the defendant that plaint deserves to be rejected on the ground of failure on the part of the plaintiff to resort to pre-institution mediation, it has been averred in the reply that pre-institution mediation is not mandatory in proceedings, which contemplate an urgent interim relief against the defendant, rather, same is necessary in a suit which does not

contemplate any urgent relief. It is submitted by the plaintiff that it has made out a prima facie case of patent infringement. disclosing infringement by the defendant and balance of convenience also lies in favour of the plaintiff, for grant of interim injunction.

6. It is further averred in the reply that plaintiff will suffer irreparable loss and harm if defendant is not immediately restrained. While making specific mention of paragraphs 41 to 52 of plaint, it has been stated in the application that the suit contemplates an urgent interim relief, hence, plaintiff is not under any obligation to resort to pre-institution mediation. While making reference to injunction application under Order XXXIX, rules 1 and 2 CPC, it has been further stated that there is continuous infringement of impugned product by the defendant and, in case, defendant is not immediately restrained by way of interim injunction, plaintiff will not only lose out on substantial market share and sale on account of defendant's acts of unfair competition by misappropriating plaintiff's technology but is also likely to lose the reputation and goodwill.

7. While denying the claim set up by the defendant that no cause of action has been made out against the defendant, it has been submitted by the plaintiff that purpose of expert evidence is to demonstrate that impugned product maps on to the claims of the suit patents and by performing relevant tests and presenting visual and other findings, the plaintiff's expert has clearly established the infringement through her affidavit. It is not the aim of the expert affidavit to demonstrate or comment on the source of the impugned product. It is further averred in the reply by the plaintiff that source of tested

products unequivocally establishes that the same are being manufactured and sold by defendant and mere denial of same on flimsy grounds does not advance the case of the defendant, in any manner.

8. While referring to the application made at the behest of the defendant, it is averred in the reply that defendant has neither stated that it is not in the business of manufacturing and selling the impugned product nor has challenged the veracity of copy of invoice of the impugned product thus, by raising such a frivolous and baseless objection, the defendant is trying to waste precious judicial time by deviating from the main issue. It is submitted by the plaintiff in the reply that the plea attempted to be set up that impugned products are not authentic, is wholly untenable and deserves outright rejection. While denying the claim of the defendant that this court does not have jurisdiction, it is further submitted on behalf of the plaintiff that anyone can order impugned product from Indiamart website in Himachal Pradesh, however, there was no reason for plaintiff to procure product from IndiaMart since plaintiff has already an invoice issued by the defendant for sale of impugned product in Himachal Pradesh. While reiterating that third party is merely a distributor of impugned product and not a necessary party, it is averred that plaintiff could have obtained sample from IndiaMart website thereby enabling plaintiff to invoke jurisdiction of this Court. While stating that contents of para-27 and 28 of application are false and baseless, it has been stated that instant application seeking rejection of plaint, has been filed on multiple unfounded grounds, which are not even maintainable, rather

application deliberately attempts to misuse judicial process, thereby causing unnecessary delay and diverting the attention of this court from the substantive issues in the matter.

9. While responding to the averments contained in the application regarding violation of rule-18 Himachal Pradesh High Court Intellectual Property Rules, 2022, it is averred by the plaintiff that said rule does not make it mandatory for a party to serve a Litigation Hold Notice to a party before initiating any proceedings and it is on the discretion of the party to initiate litigation proceedings or serve a Litigation Hold Notice and thus present suit not barred by provisions of rule 18 of Rules ibid.

10. I have heard the parties and gone through record.

11. Before ascertaining the correctness and genuineness of rival submissions made by learned counsel for the parties, it would be apt to take note of the provisions of Order VII, rule 7 CPC, which read as under:

> 11. Rejection of plaint.- The plaint shall be rejected in the following cases:—
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> (a) where it does not disclose a cause of action;
> (b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;
> (c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;
> (d) where the suit appears from the statement in the plaint to be barred by any law;
> (e) where it is not filed in duplicate;
> (f) where the plaintiff fails comply with the provision of Rule 9.
>
> Provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp papers shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp papers, as

the case may be within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff.

12. Bare perusal of aforesaid provision of law, if read in its entirety, clearly reveals that the plaint can be rejected, if it does not disclose cause of action or suit is barred in terms of rule 11(d). Most importantly, where suit appears from statement of plaint to be barred by any law, court while exercising power under Order VII, rule 11 CPC can reject the plaint. Since the power conferred on the court to terminate civil action at the threshold is drastic, the conditions enumerated under Order 7 Rule 11 CPC to the exercise of power of rejection of plaint have to be strictly adhered to. While considering the prayer, if any, made under aforesaid provision of law, court is under obligation to determine whether the plaint discloses cause of action, on scrutiny of averments contained in the plaint read in conjunction with documents relied upon. If the Court, after scrutiny of averments contained in the plaint and documents annexed therewith arrives at a conclusion that no cause of action exists in favour of the plaintiff, it may proceed to reject the plaint.

13. Similarly, if court is convinced that the suit is barred by any law, it may not permit the plaintiff to unnecessarily protract the proceedings in suit rather, in that situation, it may put an end to any sham litigation, so that judicial time is not wasted.

14. Since the plaintiff, in terms of the provisions of Order VII, rule 14 CPC is entitled to place on record documents alongwith the plaint, court, while considering the prayer made under Order VII, rule 11 CPC, can also take into consideration the documents annexed with the

plaint, to ascertain, whether cause of action exists in favour of the plaintiff or not?

15. Besides ascertaining the correctness of the averments contained in the plaint, court would also determine, whether a assertions made in the plaint are contradictory to settled law or judicial dicta and if it arrives at a conclusion that the assertions made in the plaint are contrary to settled law or suit, in any eventuality is bound to fail on account of judicial pronouncements, it can reject the plaint at the threshold. Plea taken by the defendant in the written statement and application for rejection of the plaint on merit, would not be relevant and cannot be taken into consideration by court, while considering application under Order VII, rule 11 CPC.

16. At this stage, it would be apt to place reliance upon judgment rendered by Hon'ble Supreme Court of India in **Dahiben** v. **Arvindbhai Kalyanji Bhanushali (Gajra)** (2020) 7 SCC 366, wherein, it has been held as under:

> "23. We have heard the learned Counsel for the parties, perused the plaint and documents filed therewith, as also the written submissions filed on behalf of the parties.
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> 23.1 We will first briefly touch upon the law applicable for deciding an application under Order VII Rule 11 CPC, which reads as under:
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> > "11. Rejection of plaint.– The plaint shall be rejected in the following cases:–
> >
> > (a) where it does not disclose a cause of action;
> >
> > (b) where the relief claimed in undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;
> >
> > (c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the

requisite stamp-paper within a time to be fixed by the Court, fails to do so;

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

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of rule 9

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevent by any cause of exceptional nature for correction the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff." (emphasis supplied)

23.2 The remedy under Order VII Rule 11 is an independent and special remedy, wherein the Court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.

23.3 The underlying object of Order VII Rule 11 (a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11 (d), the Court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.

23.4 In Azhar Hussain v. Rajiv Gandhi this Court held that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be 11986 Supp. SCC 315 Followed in Maharaj Shri Manvendrasinhji Jadeja v. Rajmata Vijaykunverba w/o Late Maharaja Mahedrasinhji, (1998) 2 GLH 823

permitted to waste judicial time of the court, in the following words :

> "12. …The whole purpose of conferment of such power is to ensure that a litigation which is meaningless, and bound to prove abortive should not be permitted to occupy the time of the Court, and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even if an ordinary civil litigation, the Court readily exercises the power to reject a plaint, if it does not disclose any cause of action."

23.5 The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order VII Rule 11 are required to be strictly adhered to.

23.6 Under Order VII Rule 11, a duty is cast on the Court to determine whether the plaint discloses a cause of action by scrutinizing the averments in the plaint2, read in conjunction with the documents relied upon, or whether the suit is barred by any law.

23.7 Order VII Rule 14(1) provides for production of documents, on which the plaintiff places reliance in his suit, which reads as under :

> "Order 7 Rule 14: Production of document on which plaintiff sues or relies.–
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> (1)Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in Court when the plaint is presented by him and shall, at 2 Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I & Anr., (2004) 9 SCC 512 the same time deliver the document and a copy thereof, to be filed with the plaint.
>
> (2)Where any such document is not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is.
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> (3)A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.
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> (4)Nothing in this rule shall apply to document produced for the cross examination of the plaintiff's witnesses, or, handed over to a witness merely to refresh his memory." (emphasis supplied)

23.8 Having regard to Order VII Rule 14 CPC, the documents filed alongwith the plaint, are required to be taken into consideration for deciding the application under Order VII Rule 11 (a). When a document referred to in the plaint, forms the basis of the plaint, it should be treated as a part of the plaint.

23.9 In exercise of power under this provision, the Court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.

23.10 At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration.

23.11 The test for exercising the power under Order VII Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. This test was laid down in Liverpool & London S.P. & I Assn. Ltd. v. M.V.Sea Success I & Anr., which reads as :

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

23.12 In Hardesh Ores (P.) Ltd. v. Hede & Co.5 the Court further held that it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into. The plaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the plaint prima facie show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact.6 12.8 If on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power under Order VII Rule 11 CPC. 12.9 The power under Order VII Rule 11 CPC may be exercised by the Court at any stage of the suit, either before registering the plaint, or after issuing summons to the defendant, or before conclusion of the trial, as held by this Court in the judgment of Saleem Bhai v. State of Maharashtra.7 The plea that once issues are framed, the matter must necessarily go to trial was repelled by this Court in Azhar Hussain (supra).

23.15 The provision of Order VII Rule 11 is mandatory in nature. It states that the plaint "shall" be rejected if any of the grounds specified in clause (a) to (e) are made out. If the Court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the Court has no option, but to reject the plaint."

17. If the aforesaid judgment is read in its entirety, it clearly reveals that provisions contained under Order VII, rule 11 CPC are mandatory in nature and in case court is convinced that the plaint does not disclose any cause of action or suit is barred by law, it can proceed to reject the plaint. Apart from above, if the court is convinced that the suit is manifestly vexatious and without any merit and it does not disclose right to sue, it may not permit the plaintiff to continue the same.

18. Reliance is also placed upon judgment passed by Hon'ble Supreme Court of India in **Ramisetty Ventakanna & Anr.** v. **Nasyam Jamal Saheb & Ors**, Civil Appeal No. 27170/2023, decided on 28.4.2023, wherein, it came to be ruled that if the plaint is found to be manifestly vexatious and meritless and does not disclose clear right to sue, court can exercise power under Order VII, rule 11 CPC, for rejection of the plaint. Most importantly, it also came to be held in the afore judgment that, if the plaint discloses an illusory cause of action, is barred by limitation or it is a case of clever drafting, court is duty bound to nip it in the bud by examining a party under Order X CPC. Relevant paragraphs of the aforesaid judgment read as under:

> "5. We have heard learned counsel appearing on behalf of the respective parties at length. We have also gone through the averments made in the plaint. On going through the averments, it appears that the suit is essentially based upon the premise that there was an error in partition deed dated 11.03.1953 and in partition deed survey number 706/A9 was wrongly mentioned. Therefore, it is the case on behalf of the plaintiffs that Sarambee and other descendants including the vendors of the appellants never had any right to effect transactions in respect of the land in survey number 706/A9. However, it is required to be noted that despite the above, very cleverly the plaintiffs have not sought any relief with respect to partition deed

dated 11.03.1953. Deliberately and purposely, the plaintiffs have not prayed any relief with respect to partition deed dated 11.03.1953 though it is the case on behalf of the plaintiffs that there was an error in partition deed dated 11.03.1953. It is to be noted that pursuant to the partition deed dated 11.03.1953, after the demise of the original land owner Nasyam Jamal Saheb, his five children namely, 1) Nasyam Jafar Saheb; 2) Nasyam Dasthagiri Saheb; 3) Nasyam Ibrahim Saheb; 4) Sarambee; and 5) Jainabee got partitioned the properties under a registered partition deed dated 11.03.1953. Under the registered partition deed, predecessor in interest of plaintiffs, N. Ibrahim Saheb got 1 acre and predecessor in interest of vendors of the appellants Sarambee got 1 acre 16 cents. All the parties to the registered partition deed acted upon the said partition deed. That thereafter, further transaction took place and Sarambee executed a registered gift deed dated 24.01.1968 in favour of her eldest daughter Kareembee – mother of the vendors of the appellants to an extent of lands measuring 58 cents. That thereafter, two sons of Kareebee who became co-owner on the death of Kareembee executed the registered sale deed dated 24.08.2010 in favour of the appellants in Survey No. 706/A9 to an extent of land measuring 58 cents for a valid sale consideration. Since 2010, the appellants are in possession of the land purchased vide registered sale deed dated 24.08.2010. Without challenging partition deed dated 11.03.1953 and even subsequent gift deed dated 24.01.1968, the plaintiffs have instituted the present suit with the aforesaid prayers which is nothing but a clever drafting to get out of the limitation. If partition deed dated 11.03.1953 was to be challenged which as such, the plaintiffs are attempting to do virtually, the suit would be hopelessly barred by limitation having being instituted after lapse of 61 years from the partition deed.

5.1 In the case of T. Arivandandam (supra) in paragraph 5 while considering the provision of Order VII Rule XI, this Court has observed as under: -

> “5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentantly resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving plaints. 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."

5.2 In the case of Sopan Sukhdeo Sable Vs. Charity Commr., (2004) 3 SCC 137 in paras 11 and 12, this Court has observed and held as under:

> "11. In ITC Ltd. v. Debts Recovery Appellate Tribunal [ITC Ltd. v. Debts Recovery Appellate Tribunal, (1998) 2 SCC 70] it was held that the basic question to be decided while dealing with an application filed under Order 7 Rule 11 of the Code is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order 7 Rule 11 of the Code.
> 12. The trial court must remember that if on a meaningful and not formal reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise the power under Order 7 Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the party searchingly under Order 10 of the Code. (See T. Arivandandam v. T.V. Satyapal [(1977) 4 SCC 467].)"

5.3 In the case of Madanuri Sri Rama Chandra Murthy Vs. Syed Jalal, (2017) 13 SCC 174, this Court observed and held as under:

> "7. The plaint can be rejected under Order 7 Rule 11 if conditions enumerated in the said provision are fulfilled. It is needless to observe that the power under Order 7 Rule 11 CPC can be exercised by the court at any stage of the suit. The relevant facts which need to be looked into for deciding the application are the averments of the plaint only. If on an entire and meaningful reading of the plaint, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the court should exercise power under Order 7 Rule 11 CPC. Since the power conferred on the court to terminate civil action at the threshold is drastic, the conditions enumerated under Order 7 Rule 11 CPC to the exercise of power of rejection of plaint have to be strictly adhered to. The averments of the plaint have to be read as a whole to find out whether the averments disclose a cause of action or whether the suit is barred by any law. It is needless to observe that the question as to whether the suit is barred by any law, would always depend upon the facts and circumstances of each case. The averments in the written statement as well as the contentions of the defendant are wholly immaterial while considering the prayer of the defendant for rejection of the plaint. Even when the allegations made in the plaint are taken to be correct as a whole on their face

> value, if they show that the suit is barred by any law, or do not disclose cause of action, the application for rejection of plaint can be entertained and the power under Order 7 Rule 11 CPC can be exercised. If clever drafting of the plaint has created the illusion of a cause of action, the court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage."

5.4 In the case of Ram Singh Vs. Gram Panchayat Mehal Kalan, (1986) 4 SCC 364, this Court observed and held that when the suit is barred by any law, the plaintiff cannot be allowed to circumvent that provision by means of clever drafting so as to avoid mention of those circumstances, by which the suit is barred by law of limitation. Similar view has been expressed by this Court in the case of Raj Narain Sarin (supra).

6. Applying the law laid down by this Court in the aforesaid decisions on the applicability of Order VII Rule XI to the facts of the case on hand, we are of the opinion that the plaint ought to have been rejected in exercise of powers under Order VII Rule XI(a) and (d) of CPC being vexatious, illusory cause of action and barred by limitation. By clever drafting and not asking any relief with respect to partition deed dated 11.03.1953, the plaintiffs have tried to circumvent the provision of limitation act and have tried to maintain the suit which is nothing but abuse of process of court and the law.

7. Now, so far as the reliance placed on the decision of the Privy Council referred to hereinabove and on the decision of this Court in the case of Subhaga (supra) are concerned, there cannot be any dispute with respect to the proposition of law laid down in the aforesaid two decisions. However, the question is the suit being barred by limitation and the illusory cause of action.

7.1 Now so far as the reliance placed upon the decision of this Court in the case of Nusli Neville Wadia (supra) is concerned, again there cannot be any dispute with respect to the proposition of law laid down by this Court that while deciding the application under Order VII Rule XI, mainly the averments in the plaint only are required to be considered and not the averments in the written statement. However, on considering the averments in the plaint as they are, we are of the opinion that the plaint is ought to have been rejected being vexatious, illusory cause of action and barred by limitation and it is a clear case of clever drafting."

19. It is quite evident from aforesaid exposition of law laid down by Hon'ble Apex Court as well as provisions contained under Order VII, rule 11 CPC, that court can reject a plaint on following grounds:

(a) where it does not disclose a cause of action;
(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;
(c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;
(d) where the suit appears from the statement in the plaint to be barred by any law;
(e) where it is not filed in duplicate;
(f) where the plaintiff fails to comply with the provisions of rule 9.

20. As per judgment passed by Hon'ble Apex Court, while adjudicating application under Order VII, rule 11, a duty is cast upon a court to determine whether the plaint discloses a cause of action, by scrutinizing averments contained in the plaint, read in conjunction with documents relied upon, or whether suit is barred by any law, meaning thereby at the time of considering application under Order VII, rule 11 CPC, only contents of plaint as well as documents relied upon can be taken into consideration but certainly, in no eventuality, averments contained in the written statement or documents relied upon by the defendant can be taken into consideration. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed. Besides above, in exercise of

power under this provision, the court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.

21. Plaintiff Geobrugg AG (hereinafter, 'Geogrugg') is owner of Indian Patent Nos. 448244 and 454374 (hereinafter referred to as, 'IN'244" and 'IN'374', respectively and 'suit patents', collectively). The suit patents are related to high-tensile steel wire netting/ mesh used for protection against rockfall, landslides, debris flows, avalanches etc.. The plaintiff is marketing and selling wire mesh under its registered trade name "TECCO' in India, which is covered by suit patents. The defendant-Techfab (India) Industries Limited is manufacturing, marketing and selling wire mesh which allegedly infringes the plaintiff's suit patents without any permission/ licence from the plaintiff.

22. Plaintiff is a Swiss company and its headquarters are located in Romanshorn, Switzerland. The plaintiff is an independent company, within the BRUGG Group and is present in over 50 countries. Plaintiff claims to be a world leader in the design and fabrication of protection systems using high-tensile steel wire mesh and developing & manufacturing protection solutions since 1951. It is averred by plaintiff that these protection systems protect against natural hazards such as rock fall, landslides, debris flows, avalanches or coastal erosion. Plaintiff has a fully owned Indian subsidiary named "Geobrugg India Private Limited, having its registered office at Unit No. 959 & 959A, JMD Mega Polis Sohna Road, Sector 48, Gurgaon-122018. Plaintiff has a manufacturing facility at Geobrugg India Private Limited, Outer

Ring Road, Opposite to Busur Girls High School, Lalkhatanga, Ranchi. Plaintiff claims itself to be the first company to supply and install an ETA (European Technical Approval) approved rockfall barrier in India.

23. Defendant is stated to be an Indian public company engaged in the business of manufacturing, marketing and selling inter-alia the wire mesh, which is used for protection against rock fall, landslides, debris flows, avalanches etc.

24. As per plaintiff, to protect its rights in innovations made during development of TECCO wire mesh, it has obtained a number of patents worldwide including the suit patents.

25. IN'374 patent concerns a wire mesh made of high-tensile strength steel wire, which can be used for protection against rock fall, landslides, debris flows, avalanches etc. In a typical wire mesh there are plurality of helix, which are braided with each other. According to the invention claimed in IN'374 patent, wire from which helix is made, torsion-free in itself along a contour of leg(s) of the helix. The wire mesh made according to the invention of IN'374 patent has high tensile strength and high load bearing capacity.

26. IN'244 patent concerns a wire mesh, which can be used for protection against rockfall, landslides, debris flows, avalanches etc. A wire mesh made of high-tensile strength steel wire gives the wire mesh a high resistance to wire breaks in the tensile direction, but is vulnerable to bending since typically, high-tensile strength steel is brittle compared to normal grade steel, when being bent, especially with small bending radii.

27. By virtue of aforesaid suit, plaintiff has exclusive right to prevent third parties, who do not have its consent, from the act of making, using, offering for sale, selling or importing for those purposes, the invention claimed in the patent. The suit patents are valid and enforceable for a term of 20 years from January 16, 2018 (international filing date) until January 16, 2038 and the plaintiff is entitled to claim damages from the date of publication of the applications of suit patents, which is September 6, 2019 in case of IN'244 and July 17, 2019 in case of IN'374.

28. Somewhere in May 2024, plaintiff became aware that the defendant is selling wire mesh which is similar to plaintiff's TECCO wire mesh (hereinafter, 'impugned product'), as such, its team obtained sample of wire mesh being sold by the defendant under trade name "High Tensile Steel Rhomboidal Wire mesh" to a third party i.e. Urbtech in Kullu, Himachal Pradesh.

29. On the basis of testing and analysis, it transpired that wire mesh of defendant has all the features of at least claim 1 of IN'374 patent and also claim 1 of IN'244 patent, therefore, defendant's product infringes IN'244 as well as IN'374 patents of plaintiff. To substantiate aforesaid claim, plaintiff has also filed an affidavit of technical expert Ms. Susane Feurer, confirming infringement of suit patents. In the afore background, suit for permanent injunction restraining defendant from infringing patents owned by plaintiff and other consequential reliefs under S.108 of Patents Act and Order 26 CPC has been filed by the plaintiff, which is pending adjudication.

30. Before afore suit could proceed further, instant application under Order VII, rule 11 CPC has been filed at the behest of the defendant for rejection of plaint, on the grounds as have been taken note of herein above.

31. Precisely, the case of defendant, as came to be argued by Mr. L. Badri Narayanan, duly assisted by Mr. Vipul Sharda is that since plaintiff obtained impugned product in Himachal Pradesh from third party i.e. Urbtech, therefore, only Urbtech which is the only party in the State of Himachal Pradesh that has sold and/or used the impugned goods in the State, can be sued here. Learned counsel for the defendant further argued that defendant has no relation with Urbtech other than being customer of impugned product, therefore, since Urbtech, which is a necessary party, has not been made party, as such, suit is liable to be rejected for non-joinder of necessary party.

32. However, having carefully perused the provisions of Order VII, rule 11 CPC, this court is persuaded to agree with Mr. Neeraj Gupta, learned Senior Counsel duly assisted by Ms. Shradha Karol, Advocate that non-joinder of parties cannot be a ground for rejection of plaint. Moreover, having carefully perused provisions of Order I, rule 9 and Order I, rule 13 CPC, it becomes clear that no suit shall be defeated by reason of misjoinder or non-joinder of parties, and the court may deal with the matter in controversy regarding the rights and interests of the parties actually before it.

33. Though, objection of non-joinder of party can be taken at the earliest possible opportunity before settlement of issues, unless ground of objection is substantiated by reason and if no such objection is

taken, shall be deemed to have been waived. Moreover, by placing on record invoice of impugned product, plaintiff has attempted to prove that Urbtech has bought impugned product from defendant, hence, same is not necessary party rather defendant is the only necessary party, which is manufacturing, marketing and selling the impugned product throughout India.

34. At this stage, it would be apt to take note of judgment passed by Hon'ble Apex Court in **Prem Lala Nahata & Anr** v. **Chandi Prasad Sikaria,** (2007) 2 SCC 551, wherein it was held that Court cannot reject plaint on ground of non-joinder of parties. Relevant paras of aforesaid judgment read as under:

> "12. Thus, in a case where a plaint suffers from the defect of misjoinder of parties or misjoinder of causes of action either in terms of Order I Rule 1 and Order I Rule 3 on the one hand, or Order II Rule 3 on the other, the Code itself indicates that the perceived defect does not make the suit one barred by law or liable to rejection. This is clear from Rules 3A, 4 and 5 of Order I of the Code, and this is emphasised by Rule 9 of Order I of the Code which provides that no suit shall be defeated by reason of non- joinder or misjoinder of parties and the court may in either case deal with the matter in controversy so far as it regards the rights and interests of the parties actually before it. This is further emphasised by Rule 10 of Order I which enables the court in appropriate circumstances to substitute or add any person as a plaintiff in a suit. Order II deals with the framing of a suit and Rule 3 provides that save as otherwise provided, a plaintiff may unite in the same suit several causes of actions against the same defendant and any plaintiffs having causes of actions in which they are jointly interested against the same defendant may unite such causes of action in the same suit.

Rule 6 enables the Court to order separate trials even in a case of misjoinder of causes of action in a plaint filed.

16. Order VII Rule 11 (d) speaks of the suit being "barred by any law". According to the Black's Law Dictionary, bar means, a plea arresting a law suit or legal claim. It means as a verb, to prevent by legal objection. According to Ramanatha Aiyar's Law Lexicon, 'bar' is that which obstructs entry or egress; to exclude from consideration. It is therefore necessary to see whether a suit bad for misjoinder of parties or of causes of action is excluded from consideration or is barred entry for adjudication. As pointed out already, on the scheme of the Code, there is no such prohibition or a prevention at the entry of a suit defective for misjoinder of parties or of causes of action. The court is still competent to try and decide the suit, though the court may also be competent to tell the plaintiffs either to elect to proceed at the instance of one of the plaintiffs or to proceed with one of the causes of action. On the scheme of the Code of Civil Procedure, it cannot therefore be held that a suit barred for misjoinder of parties or of causes of action is barred by a law, here the Code. This may be contrasted with the failure to comply with Section 80 of the Code. In a case not covered by sub-section (2) of Section 80, it is provided in sub-section (1) of Section 80 that "no suit shall be instituted". This is therefore a bar to the institution of the suit and that is why courts have taken the view that in a case where notice under Section 80 of the Code is mandatory, if the averments in the plaint indicate the absence of a notice, the plaint is liable to be rejected. For, in that case, the entertaining of the suit would be barred by Section 80 of the Code. The same would be the position when a suit hit by Section 86 of the Code is filed without pleading the obtaining of consent of the Central Government if the suit is not for rent from a tenant. Not only are there no words of such import in Order I or Order II but on the other hand, Rule 9 of Order I, Rules 1 and 3 of Order I, and Rules 3 and 6 of Order II clearly suggest that it

is open to the court to proceed with the suit notwithstanding the defect of misjoinder of parties or misjoinder of causes of action and if the suit results in a decision, the same could not be set aside in appeal, merely on that ground, in view of Section 99 of the Code, unless the conditions of Section 99 are satisfied. Therefore, by no stretch of imagination, can a suit bad for misjoinder of parties or misjoinder of causes of action be held to be barred by any law within the meaning of Order VII Rule 11(d) of the Code.

17. Thus, when one considers Order VII Rule 11 of the Code with particular reference to Clause (d), it is difficult to say that a suit which is bad for misjoinder of parties or misjoinder of causes of action, is a suit barred by any law. A procedural objection to the impleading of parties or to the joinder of causes of action or the frame of the suit, could be successfully urged only as a procedural objection which may enable the Court either to permit the continuance of the suit as it is or to direct the plaintiff or plaintiffs to elect to proceed with a part of the suit or even to try the causes of action joined in the suit as separate suits."

35. Mr. L. Badri Narayanan also argued that the plaint is barred by law, since no pre-institution mediation has been exhausted which is mandatory as per S12-A of the Act.

36. Though, S.12A of the Act provides pre-institution mediation but same is not required if the suit contemplates an urgent relief. Since, in the case at hand, an urgent relief has been contemplated, as infringement of plaintiff's patent right is continuous, plaintiff is seeking an interim injunction.

37. Reliance is placed upon **Novenco Building and Industry A/S** v. **Xero Energy Engineering Solutions Private Ltd. & Anr.**, 2025 SCC OnLine SC 2278, relevant paragraphs whereof read as under:

"ANALYSIS

21. Thus, the question whether a suit 'contemplates any urgent interim relief' needs to be examined on the touchstone of the aforementioned criteria. The issue which arises for consideration in this appeal is whether a suit alleging continuing infringement of patent and design rights, accompanied by a prayer for interim injunction, can be said to contemplate urgent relief within the meaning of Section 12A of the Act, notwithstanding certain delay in its institution.

22. The subject matter of the present action is continuing infringement of intellectual property. Each act of manufacture, sale, or offer for sale of the infringing product constitutes a fresh wrong and recurring cause of action. It is well settled in law that mere delay in bringing an action does not legalise an infringement and the same cannot defeat the right of the proprietor to seek injunctive relief against the dishonest user5. The appellant has pleaded that Xero Energy, its former distributor, has dishonestly appropriated its proprietary designs and patents to manufacture and market identical fans under deceptively similar name. The accompanying material demonstrates that such infringing activity is continuing and causing immediate and irreparable harm to the appellant's business reputation, goodwill and proprietary rights.

23. From the standpoint of the appellant, each day of continuing infringement aggravates injury to its intellectual property and erodes its market standing. The urgency, therefore, Midas Hygiene Industries Private Ltd. & Anr. (supra) is inherent in the nature of the wrong and does not lie in the age of the cause but in the persistence of the peril. The court cannot be unmindful of the fact that intellectual property disputes are not confined to the private realm. When imitation masquerades as innovation, it sows confusion among consumers, taints the market place and diminishes faith in the sanctity of the trade. The public interest, therefore, becomes the moral axis upon which the urgency turns. Therefore, the public interest element, need to prevent confusion in the market and to protect consumers from deception further imparts a colour of immediacy to the reliefs sought.

24. The appellant's prayer for injunction cannot be characterised as mere camouflage to evade mediation. It is a real grievance founded

> on the continuing nature of infringement and irreparable prejudice likely to be caused by the delay. The court must look beyond time lag and evaluate the substance of the plea for interim protection. The insistence of pre-institution mediation in a situation of ongoing infringement, in effect, would render the plaintiff remediless allowing the infringer to continue to profit under the protection of procedural formality. Section 12A of the Act was not intended to achieve such kind of anomalous result.
>
> 25. The learned Single Judge as well as the Division Bench of the High Court erred in construing the test for urgent relief enumerated in Section 12A of the Act, in as much as the courts have proceeded to examine the entitlement of the appellant to urgent relief based on the merits of the case rather than looking at the urgency as is evident from the plaint and the documents annexed thereto from the standpoint of the plaintiff. The High Court has proceeded on the premise that lapse of time between the appellant's discovery of infringement and filing of suit negated the element of urgency. Such an approach, in our considered view, is contrary to the principles laid down by the decisions of this Court. The High Court has also failed to take into account that the present action is one of the continuous infringement of intellectual property.
>
> CONCLUSION
>
> 26. For the reasons stated above, we hold that (i) In actions alleging continuing infringement of intellectual property rights, urgency must be assessed in the context of the ongoing injury and the public interest in preventing deception, (ii) Mere delay in institution of a suit by itself, does not negate urgency when the infringement is continuing."

38. Though, in the application filed for rejection of plaint, no specific averment has been made with regard to lack of territorial jurisdiction to entertain the present suit, but during arguments, Mr. L. Badri Narayanan, learned counsel for the defendant vehemently argued that this Court does not have territorial jurisdiction to entertain the present suit. He submitted that though lack of territorial jurisdiction is not a

ground for rejection of plaint under Order VII, rule 11 CPC, but yet this Court can look into the question of territorial jurisdiction, *suo motu*.

39. While referring to S.20 CPC and S.48 of Patents Act, Mr. L. Badri Narayanan submitted that S.20 provides territorial jurisdiction to the appropriate court if, either defendant resides in the territory or carries on business or works for personal gains in the territory or whole or part of the cause of action arises in the said territory. He submitted that the defendant is neither a resident of State of Himachal Pradesh nor has any establishment, distributor, wholesaler or agents in the State of Himachal Pradesh for carrying on business, therefore, this Court has no territorial jurisdiction to entertain suit filed at the behest of plaintiff. He further submitted that though by way of placing on record invoice, an attempt has been made by plaintiff to assert territorial jurisdiction of this Court, but since no sale or purchase of infringing product ever took place within the territorial jurisdiction of this Court, plaintiff's case being baseless, deserves to be rejected. He submitted that the Patents Act, regulates registration of patents in India and provides for exclusive rights to the patent holders in India.

40. Mr. L. Badri Narayanan submitted that there is no dispute that defendant is not making, using or importing said goods in the State of Himachal Pradesh, hence this Court has no jurisdiction in the matter. He submitted that in matters of contract, cause of action arises at certain places but not everywhere. While referring to judgment passed by Hon'ble Apex Court in **A.B.C. Laminart Pvt. Ltd.** v. **A.P. Agencies** (1989) 2 SCC 163, wherein S.20(c) CPC came to be interpreted in the context of contracts, Mr. L. Badri Narayanan submitted that explanation

III to S.7 of previous CPC Act of 1888 was a guiding factor. He submitted that primary basis is that the defendant has infringed the impugned patents by selling its impugned goods and plaintiff must satisfy the court that some aspect of the above elements is present in the State of Himachal Pradesh and mere presence of impugned goods in the State is not sufficient. He further submitted that contract sale was not made in State of Himachal Pradesh, rather money was paid in Maharashtra and delivery of goods, which is impugned product in the case at hand, was made in Uttarakhand. He submitted that contract and money transfer took place outside Himachal Pradesh, hence, this Court has no jurisdiction. He submitted that contract of sale was performed wholly in the State of Uttarakhand, when the goods were delivered by the defendant to the common carrier in the State of Uttarakhand.

41. While referring to S.19 read with S.23(2) and S.39 of Sale of Goods Act, 1930, Mr. L. Badri Narayanan stated that title is transferred when the goods are delivered to the common carrier by the seller. In support of afore submission, Mr. L. Badri Narayanan placed reliance upon **Escorts JCB Lt.** v. **CCE, Delhi**, (2003) 1 SCC 281, wherein Hon'ble Apex Court, while relying upon S.39 held that ownership in the goods gets transferred to the buyer at the time of delivery to the carrier as per Sale of Goods Act. He submitted that factum of transit insurance or arranging the transport for delivery to final destination does not result in the ownership being retained by the seller during the transit and the same being transferred to the buyer at the destination and thus, transaction of sale is complete once the goods are delivered to

the common carrier in Uttarakhand. However, delivery, if any, in Himachal Pradesh to Urbtech would not confer territorial jurisdiction upon this Court.

42. Mr. Neeraj Gupta, learned senior counsel for the plaintiff, while responding to afore submissions made at the behest of defendant, submitted that performance of contract sale of impugned goods was not compete in Uttarakhand since as per S.41 of the Sale of Goods Act, buyer is not deemed to have accepted the goods until and unless, he has had a reasonable opportunity of examining them.

43. At this stage, it would be apt to take note of Ss.39 (1) and 41 of Sale of Goods Act, which read as under:

> "39. Delivery to carrier or wharfinger. – (1) Where, in pursuance of a contract of sale, the seller is authorized or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not, for the purpose of transmission to the buyer , delivery of the goods to a carrier, whether named by the buyer or not, for the purpose of transmission to the buyer or delivery of the goods to a wharfinger for safe custody, is prima facie deemed to be a delivery of the goods to the buyer.
>
> 41. Buyer's right of examining the goods. – (1) Where goods are delivered to the buyer which he has not previously examined, he is not deemed to have accepted them unless and until he has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract"

44. Admittedly, in the case at hand, buyer had not examined impugned product before delivery of goods and such fact is evident from invoice itself wherein it is stated that, "all quality related of the above products will only be entertained within 7 days from receipt of material at the consignee location." (P.188 of plaintiff's documents).

Hence, this court is persuaded to agree with Mr. Neeraj Gupta, learned senior counsel appearing for the plaintiff that performance of contract was complete after acceptance of impugned product by buyer in Kullu and not in Uttarakhand, as alleged by the defendant, hence, it can be said that cause of action arose in Himachal Pradesh and this Court has territorial jurisdiction to try and entertain the present suit.

45. Reliance in this regard is placed upon a judgment passed by Madras High Court in **Sorabji Hormusha Joshi and Co.** v. **V.M. Ismail and Ors.** 1959 SCC OnLine Mad 239:AIR 1960 Mad 520, wherein it has been held as under:

> "(32) A mere receipt of goods does not amount to acceptance and before the buyer can be called upon to accept the goods, he can claim a reasonable opportunity of examining the goods. That opportunity is to be given by the seller on request by the buyer. Whether the opportunity offered by the seller for the examination of the goods was reasonable would, like any other question of fact, depend on the circumstances of each case. It would also depend on the terms of the contract.
>
> (33) The seller's duty is to afford the buyer a reasonable opportunity; it is up to the buyer to avail of that opportunity and if he fails to avail of it or if he avails of it in an incomplete or perfunctory manner the seller cannot be held liable: (1919) 1 KB 486; Bragg v. Villa Nova, (1923) 40 TLR 154. Peer Mohammad Rowther v. Dalooram Jayanarayan, AIR 1919 Mad 728; Muthukrishna Reddiar and Sons v. Madhavji Devichand and Co. Ltd., . The opportunity is to be afforded only on request from the buyer. Where no such request is made it may be presumed that the buyer has dispensed with this requirement, i. e, has chosen to waive. Waiver may be implied from other acts or conduct of the buyer as well; National Traders v. Hindustan Soap Works, .
>
> (34) The inspection and rejection must be without practicable delay. The trial Court has rightly relied on Mithan Lal v. Suraj Parshad, AIR 1932 Lah 52 and Province of Madras v. Galia Kotwalla and Co., Ltd.,

1945-2 Mad LJ 418: (AIR 1946 Mad 69, for the proposition that avoidable and inordinate delay would disentitle the plaintiffs from maintaining any action for damages.

(35) Prima facie the place and the time of examination are the time and place of delivery: Perkins v. Bell, (1893) 1 QB 193; Nagar Dass v. Vel Mohammed, AIR 1930 Bom 249; In re Andrew Yule and Co., AIR 1932 Cal 879. The general rule may, however, be replaced by the circumstances of the particular contract: Saunt v. Belcher and Gibbons Ltd., (1920) 26 Com Cas 115. The right of inspection in a c. i. f., contract does not exist at the place or time of delivery. The buyer is bound to make payment against the tender of goods; his right of examining the goods and to reject them if they are not in conformity with the contract, however, remains even after payment and is exercised on actual delivery of goods: Polenghi Bros. v. Dried Milk Co., (1905) 92 LT 64; Ram Dayal Ram Narain v. Bhairo Bux, AIR 1924 Pat 240; Mahadev Ganga Prasad v. Gourishankar, AIR 1950 Orissa 42.

(36) The place of delivery is the proper place of inspection: Hilebutt v. Hickson, (1872) 7 C. P. 438. But the circumstances of the case may show that some other place is the appropriate place. Where the goods to the knowledge of the seller are purchased by the buyer to deliver for further destination and the nature of goods and the way in which they are packed make it unreasonable to inspect immediately on delivery, the right to reject will be extended to the later date: Van Den Hurk v. Martons and Co. Ltd., (1920) 1 KB 850; Hardy and Co. v. Hillerns and Fowler, (1923) 2 KB 490.

(37) Section 41 of the Act gives the buyer a right to inspection and unless he has had an opportunity of exercising that right, he is not deemed to have accepted the goods. In other words, he has the right to reject them. Where the contract is for specific goods, the property in which has passed to the buyer, the right of rejection is lost: S. 13(2). The right to reject is also lost where the buyer has accepted the goods and that acceptance may take place before or after the examination of the goods. The right of examination is, therefore, closely connected with the acceptance of the goods and the passing of property.

38. The parties may intend whether a right of examination is to be treated as a condition precedent qualifying the buyer's obligation either to take title or to pay the price or a condition subsequent

authorising the return of the goods and the recovery of the price, if title to the goods has passed, or the price has been paid: see 3 Williston and Sales, S. 471.

(39) If it is a condition precedent, the goods must be merchantable on arrival at destination in order to conform to the contract and the risk of deterioration and the loss would be wholly upon the seller. Where it is treated as a condition subsequent, the risk of deterioration would rest upon the buyer. His right of examination would be there, but it would be only for the purpose of determining whether at the time the title passed, that is to say, at the time the sale was made or at the time the delivery was made to the carrier, the goods conformed to the contract and were merchantable.

(40) Closely associated with this question is the distinction between assent to delivery to be operative as a transfer of property and acceptance of goods after examination under S. 41. There may assent so as to pass the property constantly with the examination goods later on and rejection, if necessary.

"The defendant insists that the goods are not appropriated to a contract with the assent of the buyer until the buyer has so manifested his approval of their quality as to preclude him thereafter from giving notice of rescission. In that view, the passage of title may be indefinitely postponed and reasonable time within which a buyer is privileged to return goods found to be defective will vary with many circumstances, as, for instance, the nature of the defects, whether patent or concealed. We think assent to appropriation is something more immediate and certain. It does not signify an acceptance so definitive and deliberate as to bar rescission for defect". 3 Williston on Sales, S. 482.

(41) It signifies the buyer's willingness to take as his own the goods appropriated by the seller, subject to rescission and return if defects are afterwards discovered. The cases are many in which goods are shipped by carriers who receive them for the buyers. An order for such shipment is an assent that the goods be appropriated by the seller, and title passes when they are delivered to the carrier 'in a deliverable state': Ramdas v. Firm Laxmichand Kashiram, AIR 1955 NUC (Raj) 133.

(42) This does not mean that the buyer is helpless if the goods when they reach their destination are found to be defective. His assent

to the appropriation of goods in a deliverable state is not assent to the appropriation of any goods, though of a kind or a quality at variance with the contract. On the other hand, his assent will stand, and may be retracted, if the variance is pretended. There is no distinction in this respect between delivery to the buyer through a carrier or other intermediary and delivery to the buyer personally. The question in each case is whether delivery is made in such circumstances as to indicate assent to the appropriation by the seller.

(43) Delivery to be operative as a transfer of the property must be assented to by the buyer: 3 Williston on Sales, S. 472. The seller may not force the goods upon buyer unwilling to receive them. The buyer, when delivery is tendered, may refuse to assent to it at all (taking of course the risk of liability for damages), or may assent subject to the condition that he be allowed to see the goods before delivery or appropriation shall be deemed to be complete.

(44) There is difference in other words, between inspection following delivery, and inspection to determine whether delivery shall be permitted. Until that determination is made, the transaction is in fieri. Delivery remains inchoate while the buyer refuses to treat it as perfected. Even taking the goods in, may be so qualified by notice or agreement that possession will not operate as an expression of assent.

(45) The buyer is entitled examine the goods to decide whether he will become owner, and until the examination is completed or waived he is under no obligation to accept the goods: 3 Williston on Sales, S. 472. The examination is waived, however, in so far as it is a condition precedent to the transfer of the property, when there is an assent to delivery without reservation or condition accompanying the receipt and qualifying or postponing or neutralizing its effect: Henry Glass and Co. v. Misroch, New York Court of Appeals, (1925) 239 N. Y. Rep 475”

46. Though, Mr. L. Badri Narayanan, learned counsel for the defendant placed reliance upon judgments passed in **Escorts JCB Limited** v. **Commissioner of Central Excise, Delhi-II** (2003) 1 SCC 281, **Sasa Musa Sugar Works Pvt. Ltd.** v. **Chunilal Charoria** AIR 1959 SC 923, **M/s J.C. Entrprises (Regd.)** v. **Ranganatha**

Enterprises and Auto Engineering Works v. **Bansal Trading Co.** (2001) 10 SCC 630, however having carefully perused aforesaid judgments, this court is persuaded to agree with Mr. Neeraj Gupta, learned senior counsel for the plaintiff that same have no bearing in the present case.

47. In **Escorts JCB Limited** supra, parties agreed that sale was ex-works and it was agreed that delivery of goods would be complete once goods would be delivered to the carrier. Delivery of goods to the buyer was deemed when goods were delivered, by virtue of agreement between the parties. S.19 of Sale goods Act, 1930, permits parties to agree as to the time at which the property in the goods is to pass to the buyer. Section 19 of said Act reads as under:

> "Section 19: Property passes when intended to pass.
> **19.** (1) Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to he transferred.
> (2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.
> (3) Unless a different intention appears, the rules contained in sections 20 to 24 are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer."

48. In case **M/s J.C. Enterprises** and **Auto Engineering Works**, supra, agreement between the parties were oral and presumption under S.39 of the Sale of Goods Act, could not be rebutted. Moreover, carful perusal of aforesaid judgments reveals that S.41 of said Act was not argued or considered, whereas, having carefully perused S.41 of

the Act *ibid*, this Court is persuaded to agree with Mr. Neeraj Gupta, learned senior counsel for the plaintiff that same is applicable in the case at hand. Presumption under S.39 would not apply.

49. Besides above, it has been specifically averred in the plaint that defendant is also carrying on business within the territorial jurisdiction of this Court through Indiamart website. While making aforesaid averment, plaintiff has virtually placed reliance upon S.20(a) and 20(c) CPC, for establishing jurisdiction of this Court (See Para 54 and 56 of plaint)

50. To refute aforesaid claim set up by the plaintiff, Mr. L. Badri Narayanan, learned counsel for the defendant argued that Indiamart is not an interactive site, as no sale can be concluded there. However, having carefully perused the judgment passed by Division Bench of Delhi High Court in **Shree Girirajji and Co.** v. **Gagan Pagrani, Proprietor of Plastica Industries**, 2024 SCC OnLine Del 2084, this court is not persuaded to agree with Mr. L. Badri Narayanan.

51. In the aforesaid judgment, Division Bench of Delhi High Court held that Indiamart Website is an interactive site. It is has been held as under:

> "9. The respondent alleges that the appellant also sells goods through an interactive website - www.indiamart.com.
>
> 10. The learned Commercial Court had, prima facie, accepted the said allegations and had issued an ad interim order dated 25.08.2023 restraining the appellant and other persons acting on its behalf from using, directly or indirectly, the trademark "SUPER SHAKTI LENO" and various formative trademarks, which are deceptively similar to the respondent's trademarks. Further, the learned Commercial Court also appointed a Local Commissioner to, inter alia, conduct a search and inspect the various premises of the appellant located in Indore, Ratlam

and Shajapur. The said commission was executed and its report indicates that goods bearing the trademark "SUPER SHAKTI LENO" were found in the premises of the appellant in sufficient quantities.

11. The appellant had filed an application under Order XXXIX Rule 4 of the CPC seeking vacation of the ad interim order principally on the ground that the learned Commercial Court did not have the jurisdiction to entertain the suit. The said application was rejected by the impugned order.

12. The appellant claims that it is not selling the goods bearing the offending trademarks in NCT of Delhi or through the online market place (www.indiamart.com), therefore, the learned Commercial Court had no jurisdiction to entertain the suit. This is stoutly disputed by the respondents.

13. It is material to note that before the learned Commercial Court, the appellant had conceded that it was selling leno bags through the interactive web page on 'www.indiamart.com'. It was admitted that if an order to purchase these bags was placed by a customer in Delhi, the appellant would service the said order and supply the goods. In view of the above, the learned Commercial Court held that since, the said website is an interactive one that can be accessed from Delhi, the learned Commercial Court would have the jurisdiction to entertain the suit.

14. Undisputedly, if a person carries on his business through an interactive site and, sells and markets its goods through such sites, the courts exercising jurisdiction in respect of places where the goods are made available would have the jurisdiction to entertain a suit for infringement of the trademarks. Indisputably, customers in Delhi can place orders and purchase goods online through the interactive website. Thus, the courts in Delhi would have the jurisdiction to entertain the suit for infringement of trademarks and passing off (Reference: World Wrestling Entertainment, Inc. v. M/s. Reshma Collection & Ors.: 2014 SCC OnLine Del 2031).

15. Having stated above, this Court also notes that there is a dispute whether the goods sold through the interactive site bear the offending trademarks. According to the appellant, it does not do so. It is also material to note that in its written statement the appellant had denied that it is selling the goods clandestinely or using any third-party

websites like 'www.indiamart.com' to solicit customers in South Delhi, areas which do not have any vegetable or fruit mandi. However, the material placed on record does indicate that the appellant is registered with Indiamart and its goods are being sold on the Indiamart website. The appellant does not dispute that it sells goods through the online market place, although the appellant disputes that the goods offered through the website bear the offending trademarks. However, there is no specific denial in the written statement to the effect that the appellant is selling goods through the website but not those goods that bear the impugned trademark as is contended before this Court. As noted above, the appellant had conceded before the learned Commercial Court that it was selling leno bags through the website of Indiamart and orders placed by customers through the website would be serviced by the appellant."

52. In case **Sunil Niranjan Shah** v. **Vijay Bahadur** 2025 SCC OnLine Del 8644, it has been further reiterated that Indiamart website is an interactive website. Relevant paragraphs of aforesaid judgment read as under:

"ANALYSIS AND FINDINGS:

Cause of action within the territorial jurisdiction

6. It is submitted by the Defendant that no cause of action has arisen within the territorial jurisdiction of this Court as neither of the parties resides, works for gain, nor carries on business within Delhi. The Defendant is operating only in Basti, Gorakhpur, Ambedkar Nagar, Siddharth Nagar, Maharajganj, Gorakhpur and Kushi Nagar districts in Uttar Pradesh and the Suit has been filed with a mala fide intention to harass the Petitioners. CS(COMM) 669/2025 Page 16 of 21

7. However, a bare perusal of the Plaint would show that the Plaintiff has sufficiently pleaded that the cause of action has arisen within the jurisdiction of this Court by relying upon the screenshots showing the use of the Impugned Marks by the Defendant, which is deceptively similar to the Plaintiff's Marks. The evidence relied upon by the Plaintiff in the Plaint is sufficient to prima facie establish that the Defendant is engaged in selling of the Infringing Products bearing the

Impugned Trade Marks, which are deceptively similar to the Plaintiff's Marks, and are available to the customers within the jurisdiction of this Court. Hence, there is clear cause of action that has arisen within the jurisdiction of this Court.

8. As the Plaint has sufficiently shown that the Defendant is present on interactive third party e-commerce platform, IndiaMart, where the customers located within the jurisdiction of this Court can buy and sell the products with the Impugned Marks, the same would satisfy the test of having 'purposefully availed' of the jurisdiction of this Court by making the goods available and targeting the customers within the jurisdiction of this Court. Accordingly, this Court has the territorial jurisdiction in view of the accessibility of the IndiaMart listing, which is interactive in nature and because the Defendant has purposefully availed itself of the jurisdiction of this Court.

9. The decisions in Indian Performing Rights Society Ltd. (supra), Banyan Tree Holding (supra) and M/s Kohinoor Seed Fields (supra) does not help the case of the Defendant as the Defendant is carrying on business through interactive e-commerce platform within the jurisdiction of this Court and that the cause of action has arisen as the Defendant is also offering to sell the products with Impugned Trade Marks within the CS(COMM) 669/2025 Page 17 of 21 jurisdiction of this Court, the objection with regard to the territorial jurisdiction as raised by the Defendant is not maintainable.

10. It is trite law that while deciding the Application under Order VII Rules 10 and 11 of CPC, the averments made in the Plaint are presumed to be correct and the Application is decided on demurrer. In Sonal Kanodia (supra), World Wrestling (supra), M/s Bhatia Industries (supra) and LT Foods Limited (supra), it has been held that while deciding on the issue of territorial jurisdiction, averments made in the plaint are required to be considered as correct on a demurrer. Considering the overall averments made in the Plaint and the prima facie perusal of the documents filed along with the Plaint show that the Plaintiff has made out a case for maintaining the Suit before this Court"

53. Reliance has further been placed by plaintiff on judgments passed by Delhi High in **Marico Ltd.** v. **Mukesh Kumar and Ors.** 2018

SCC OnLine Del 13412 and **Shakthi Fashion and another** v. **Burberry Limited** 2022 SCC OnLine Del 1636.

54. Though, Mr. L. Badri Narayanan argued that plaintiff has not shown any sale through Indiamart within the territorial jurisdiction of this Court, however, this Court is not impressed with aforesaid submission made at the behest of defendant, because, access to an interactive website is sufficient to mean "carrying on business" within the jurisdiction of this Court.

55. Reliance in this regard is placed upon a judgment passed by Delhi High Court in **Kohinoor Seed Fields India Pvt. Ltd.** v **Veda Seed Sciences Pvt. Ltd.** 2025 SCC OnLine Del 8727, wherein, it has been held as under:

> "19.4.6 The learned Single Judge is, therefore, correct in his view that, as per the law declared in Banyan Tree Holding, the mere existence of an interactive website of the defendant, accessible within the territorial jurisdiction of this Court, would not be sufficient for the suit to be maintainable here. It would additionally have to be shown that some commercial transaction was concluded within the jurisdiction of this Court.
>
> 19.5 The decision in World Wrestling Entertainment
>
> 19.5.1 Banyan Tree Holding was, however, subsequently diluted to an extent by the judgment of the Division Bench of this Court in World Wrestling Entertainment.
>
> 19.5.2 World Wrestling Entertainment was a case which involved Section 134 of the Trade Marks Act. The plaintiff World Wide Wrestling Entertainment28 sought to invoke the jurisdiction of this Court on the ground that it "carried on business" within the jurisdiction of this Court. In other words, WWE pressed into service Section

134(2) of the Trade Marks Act. Banyan Tree Holding was cited against the stand of the WWE.

19.5.3 The Division Bench proceeded to answer this issue thus:

"23. Let us now apply these principles to the type of transaction over the internet, which we have explained above. The website of the appellant/plaintiff refers to various goods and services. It is not an offer but an invitation to an offer, just as a menu in a restaurant. The invitation, if accepted by a customer in Delhi, becomes an offer made by the customer in Delhi for purchasing the goods "advertised" on the website of the appellant/plaintiff. When, through the mode of the software and the browser, the transaction is confirmed and payment is made to the appellant/plaintiff through its website, the appellant/plaintiff accepts the offer of the customer at Delhi. Since the transaction between the two takes place instantaneously, the acceptance by the appellant/plaintiff is instantaneously communicated to its customer through the internet at Delhi. Therefore, in such a case, part of the cause of action would arise in Delhi.

21. 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.

22. Therefore, in our view, although the learned Single Judge had made a correct reference to the decision of the Supreme Court in the case of Bhagwan Goverdhandas Kedia30 (supra), the full ramifications of that decision were not perceived by him. When the two decisions of the Supreme Court in Bhagwan Goverdhandas Kedia (supra) and Dhodha House (supra) are considered in the manner indicated above, it would appear that, on the averments made by the appellant/plaintiff in the plaint, the Delhi High court would, on a demurrer, have jurisdiction to entertain the suit inasmuch as the appellant/plaintiff would be regarded as carrying on business in Delhi within the meaning of the expression under Section 134(2) of the Trademarks Act, 1999 and Section 62(2) of the Copyright Act, 1957. Consequently, the learned Single Judge ought not to have returned the plaint under Order 7 Rule 10 CPC. As a result, the impugned order is set aside and the suit is restored to its original number and the same be placed before the Roster Bench for further steps therein on 28.10.2014, in the first instance. This, however, would not preclude the defendants from raising the plea of jurisdiction on facts which, if raised, could be considered by the court based on the evidence and upon the law explained above. The appeal is allowed, as above."

19.5.4 The existence of a website of the plaintiff, over which a commercial transaction could be concluded was, therefore, regarded by the Division Bench in World Wrestling Entertainment as sufficient to amount to "carrying on a business" by WWE within the jurisdiction of

this Court. The actual conclusion of a transaction was, therefore, no longer indispensable, after World Wrestling Entertainment.

19.5.5 World Wrestling Entertainment undoubtedly is not an authority for understanding the expression "cause of action" as contained in Section 20(c) of the CPC. However, it is an authority for the understanding of the expression "carries on business" in an era in which business is considerably carried on over e-commerce websites. The Division Bench has held, in World Wrestling Entertainment, that, even if the website of the plaintiff was interactive and one over which a commercial transaction could be concluded, that would suffice to constitute "carrying on of business by the plaintiff", as, in the e-commerce universe, every place where the website of an entity would be accessible for the purpose of concluding a commercial transaction would amount to a place where the entity has a market place. If, therefore, WWE had a website over which commercial transactions could be concluded at Delhi, it was equivalent to WWE having a brick and mortar store in Delhi, resulting in this Court having territorial jurisdiction in the matter. Thus, the requirement of actual concluding of a commercial transaction over the website stands diluted in World Wrestling Entertainment.

19.6 Section 20(a) of the CPC permit a plaintiff to sue a defendant wherever the defendant carries on business. The law declared by this Court in World Wrestling Entertainment with respect to the carrying on business by the plaintiff, in an e-commerce regime, for the purpose of Section 134(2) of the Trade Marks Act, would equally apply to carrying on a business by the defendant for the purpose of Section 20(a) of the CPC. Wherever, therefore, the defendant would have an interactive website, over which a commercial transaction could be concluded, any Court having jurisdiction over every place where this could be done would have jurisdiction to entertain the suit.

19.7 But then, submits Mr. Raj Shekhar Rao, there is no interactive website of the respondent, over or across which the allegedly infringing goods could be purchased at Delhi. At least, the plaint does not so aver. The placement of the goods for sale over e-commerce websites by third parties, without the concurrence or authorization of

the respondent, tacit or express, could not create a cause of action for the appellant, for the purposes of territorial jurisdiction.

19.8 The submission is unquestionably weighty. After all, the tort of infringement is not infringer innocent. Section 29 of the Trade Marks Act envisages infringement only vis-à-vis an infringer, who must be using the infringing marks without proprietorial or permissive right to do so. The finding of the learned Single Judge that, if the respondent has nothing to do with the listing of the allegedly infringing products on the IndiaMart and Kalgudi websites, the respondent cannot be held to account therefor is, therefore, prima facie correct.

19.9 Where, however, the learned Single Judge, in our considered opinion, has erred on this issue is in the observation, in para 42 of the impugned judgment, that the listing of the products on the IndiaMart and Kalgudi websites was not at the instance of the respondent. In so observing, the learned Single Judge, in our considered opinion, failed to realize the fact that the issue before him was the right of the appellant to sue. Insofar as the appellant was concerned, the allegedly infringing goods were available, for sale and purchase, across e-commerce websites, over which a transaction could be concluded within the territorial limits of the jurisdiction of this Court. There is no admission, in the plaint, that the listing of the products on the IndianMart or Kalgudi websites was not at the instance of the respondent. It would be for the respondent to so aver, and that averment, which could emerge at the earliest in the respondent's written statement, could not be considered while examining the aspect of territorial jurisdiction under Order VII Rule 10, which has to be limited to the assertions in the plaint. At the highest, therefore, the issue of whether the respondent had anything to do with the listing of the allegedly infringing goods over the IndiaMart or Kalgudi websites would be a matter of trial. Arguendo, if the appellant were able to establish, in trial, that the entities who placed the respondent's goods for sale and purchase on the IndiaMart and Kalgudi websites did so at the instance of the respondent, or with its knowledge, the respondent might still be answerable therefor.

19.10 That the goods were, in fact, available for purchase across the IndiaMart and Kalgudi websites, is not disputed. That the goods could be purchased across the said websites within the jurisdiction of this Court, is equally not disputed. Whether the respondent, directly or indirectly, was involved in the said listings, is, at best, a matter of trial. The learned Single Judge could not, therefore, have held that the appellant could not sue the respondent in this Court, even when the allegedly infringing goods could be purchased, across the IndiaMart and Kalgudi websites, within its jurisdiction, on the premise that the respondent was innocent of the listings.

19.11 For the purposes of an application under Order VII Rule 10 of the CPC, these assertions, in the absence of anything to the contrary either in the plaint or in the documents filed with the plaint, had to be treated as correct.

19.12 The assertion that the allegedly infringing goods of the respondent were available on the IndiaMart and Kalgudi websites, and that orders could be placed on these websites within the territorial jurisdiction of this Court were, therefore, sufficient to confer jurisdiction on this Court to adjudicate on the suit.

19.13 We are in agreement with Mr. Agarwal that the issue of whether the listings on the IndiaMart and Kalgudi e-commerce platforms, of the allegedly infringing goods of the respondent, for sale, were at the instance of the respondent or of some other party, is extraneous to the aspect of territorial jurisdiction. Once the infringing goods were available for sale, the tort of infringement, which predicates use of the infringed mark, or a mark which is deceptively similar thereto, for trade, stood committed. The suit, seeking relief thereagainst, could be filed before every Court having territorial jurisdiction over the situs of sale of such goods. World Wrestling Entertainment extends, in a case of e-commerce, the situs to include every place where a commercial transaction could be concluded and the goods bought or sold. Every Court having jurisdiction over such place can, therefore, adjudicate on the aspect of infringement, or passing off. The decision of the learned Single Judge is clearly contrary to this principle.

> 19.14 There is no dispute about the fact that the allegedly infringing products of the respondent were available on IndiaMart and Kalgudi. It was specifically asserted, in the plaint, that the IndiaMart and Kalgudi websites were accessible in Delhi. In paras 49 and 50 of the plaint, it was further specifically pleaded that, as orders could be placed across these websites, the dynamic effect of the availability of the respondent's goods on the said e-market platforms was felt within the jurisdiction of this Court.
>
> 19.15 The findings of the learned Single Judge with respect to the listing of the products on the IndiaMart and Kalgudi platforms is also, therefore, not sustainable in law."

56. Mr. L. Badri Narayanan further argued that impugned product on Indiamart is listed by a third party and not the defendant, however, having carefully perused the printout of relevant page of Indiamart (Annexure P-19, page 219 of plaintiff's document), this Court finds that defendant's name is clearly listed as seller of impugned product on Indiamart Website. Moreover, defendant has not denied plaintiff's assertion that defendant is selling impugned product on Indiamart (see para-19 of application).

57. Mr. L. Badri Narayanan further argued that the sale of impugned product, for which invoices are placed is a trap sale, therefore, this Court could not assume jurisdiction based on such trap. However, this Court is not persuaded to agree with learned counsel for the defendant for the reason that sale of impugned product has been made through ordinary course of trade to a legitimate company, carrying on business i.e. Urbtech Engineering Construction Private Limited and not to an individual engaged by the plaintiff. Moreover, sale was not for a small

sample but for 525 square metres of impugned product, worth Rs.4.89 Lakh.

58. Leaving everything aside defendant is promoting and selling its products including the impugned products ('TechSlope Mesh') throughout India (See para-6 of written statement).

59. In view of the detailed discussion made supra and various judgments passed on the subject by Hon'ble Apex Court and other High Courts, this court finds no merit in the present application and the same is accordingly dismissed.

COMS No 23 of 2024 & Counter Claim No. 5 of 2025

60. Be listed on **17.6.2026**, for arguments on OMP No. 1079 of 2024.

(Sandeep Sharma)
Judge

May 6, 2026
Vikrant

Head note

Order VII, Rule 11 of Code of Civil Procedure, 1908- Rejection of Plaint - Suit for permanent prohibitory injunction restraining defendant from infringing patents of plaintiff-plaintiff purchased allegedly infringing product from third party, which was not arrayed as defendant-impugned infringing product delivered by defendant at Kullu to third party- jurisdiction-pre-institution mediation not exhausted by plaintiff- held, third party not a necessary party and further same is not a ground for rejection of plaint under Order VII, rule 11 CPC- also held since impugned product is available for sale throughout country, also in Kullu, Himachal Pradesh, court has jurisdiction- further held when urgent interim relief not claimed, pre-institution mediation not mandatory- application dismissed.