



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

COMAP No.2 of 2025
Reserved on : 20.05.2026
Decided on : 04.06.2026
Uploaded on : 04.06.2026

Safex Chemicals Private Limited ...Appellant.

Versus

SML Limited and another ...Respondents.

Coram

Hon'ble Mr. Gurmeet Singh Sandhawalia, Chief Justice.

Hon'ble Mr. Justice Bipin Chander Negi, Judge.

Whether approved for reporting?¹

For the appellant : Mr. Shrawan Dogra, Sr. Advocate, with Mr. Vipul Sharda, Mr. Raditya Katoch and Mr. Antriksh Mishra, Advocates.

For the respondent(s) : Mr. Ashok Aggarwal, Sr. Advocate (through Video Conferencing) and Mr. Vinay Kuthiala, Sr. Advocate, with Dr. Sanjay Kumar, Ms. Arpita Swahney Mr. Atul Jhingan, Mr. Arun Kumar Jana, Mr. Priyansh Sharma, Mr. Ankit Thakur, Mr. Sanket Singh Sengar and Ms. Akanksha Chauhan, Advocates, for respondent No.1.

Mr. Ajay Sharma, Sr. Advocate with Mr. Rajesh Kashyap, Advocate, for respondent No.2.

Bipin Chander Negi, Judge

Present appeal has been preferred against the impugned order dated 06.06.2025, passed in OMP No.320/23 in COMS No.6/2026, whereby an ex-parte ad-interim injunction granted by the learned Single Judge on 24.07.2023, has been confirmed. The present appeal has been preferred by

¹ ***Whether the reporters of the local papers may be allowed to see the Judgment? Yes***

defendant No.2 in the civil suit pending adjudication before the learned Single Judge.

2. The appeal as agreed by the parties is only being heard on a preliminary issue of territorial jurisdiction as is evident from order dated 12.05.2026 and order dated 29.12.2025. It is the contention of the appellant (defendant No.2) that in view of the law laid down by the Apex Court in ***Asma Lateef and Anr Vs. Shabbir and Ors. (2024) 4 SCC 696***, even for grant of an interim injunction the question of jurisdiction assumes significant importance.

3. The respondent No.1(plaintiff) has instituted a suit claiming therein that the appellant (defendant No.2) and respondent No.2 (defendant No.1) have infringed a patent owned by the respondent No.1/plaintiff. A perusal of the plaint specifically the cause title reflects that respondent No.2 is located within the territorial jurisdiction of this Court. Further in the plaint, it has been averred that insofar as respondent No.2 (defendant No.1) is concerned, its principal place of business is situate within the territorial jurisdiction of the Court.

4. However, insofar as the appellant (defendant No.2) is concerned the address mentioned in the cause title pertains to New Delhi and Jaipur in Rajasthan. In para 8 of the plaint, it has been averred that insofar as appellant (defendant No.2) is

concerned, the said entity is carrying on business within the territorial jurisdiction of this Court.

5. With respect to the alleged infringement, it has been averred that respondent No.1(plaintiff) has been able to lay hands on infringing products manufactured and marketed by the appellant (defendant No.2) and offered for sale unauthorizedly by respondent No.2 (defendant No.1) under the brand name "Aladdin" within the territorial jurisdiction of this court. Sale invoices in this respect have been placed on record. Reference in this respect can be made to paras 29, 55 and 56 of the plaint.

6. In the written statement filed by appellant (defendant No.2) a categorical stand has been taken with respect to lack of territorial jurisdiction of this Court to entertain the suit filed by respondent No.1(plaintiff). In this respect, it has been categorically averred that respondent No.2 (defendant No.1) is not an authorized dealer of the appellant (defendant No.2). Further it has been contended that the product in question i.e. "Aladdin" is a commodity regulated by the Fertilizer (Control) Order 1985 issued under the Essential Commodities Act, 1955. The appellant (defendant No.2) has obtained permission to market the said product only in certain specific States in the country, it is further contended in the written statement filed by

appellant (defendant No.2) that there is no authorization to sell the infringing product "Aladdin" within the State of Himachal Pradesh. Further it has been categorically averred that the appellant (defendant No.2) has no authorized dealers/retailers within the State of HP.

7. Other than the aforesaid, it has been contended that respondent No.1 (plaintiff) has illegally obtained the product in another State wherein the appellant (defendant No.2) is authorized to sell the product and thereafter, it has been re-sold in the State of HP with the sole intent and purpose to drag the present appellant (defendant No.2) into the present litigation.

8. According to appellant (defendant No.2) a single trap purchase is insufficient to invoke the territorial jurisdiction of this Court and hence, no cause of action has arisen qua appellant (defendant No.2) to entertain the suit under Section 20(c) of the CPC. According to appellant (defendant No.2) present case is a classic case of suggestio-falsi for invoking the jurisdiction of this Hon'ble Court to obtain an injunction.

9. In the replication filed the respondent No.1 (plaintiff) has reiterated that defendant No.1 is carrying on business within the territorial jurisdiction of this Court. Other than the aforesaid, sale instances placed on record qua the infringing

product "Aladdin" by respondent No.2 (defendant No.1) have been reiterated and it has been categorically averred that it is question of trial as to whether respondent No.2 (defendant No.1) sold the infringing product without express authorization of the appellant (defendant No.2).

10. In the aforesaid factual matrix the specific grievance of the appellant (defendant No.2) is with respect to the finding returned by the learned Single Judge in para 55 of the impugned order dated 06.06.2025, qua the issue of territorial jurisdiction. On a perusal of para 55 of the impugned judgment it is pointed out that the territorial jurisdiction of the Court was considered primarily on the basis of sale invoices made by respondent No.2 (defendant No.1) qua the infringing product "Aladdin" and the alleged existence of a manufacturing unit of the appellant (defendant No.2) stated to be located at Una within the territorial jurisdiction of this Court wherein it is alleged that the infringing product "Aladdin" is being manufactured.

11. In the aforesaid backdrop, before pointing out the fallacy in the aforesaid finding so arrived at by the learned Single Judge with respect to territorial jurisdiction in the case at hand, based on the judgment in *Asma Lateef's* case (supra), it is contended by the Senior Counsel for the appellant that

before an interim injunction is granted by the Court it must be prima facie satisfied that it has the jurisdiction.

12. Insofar as finding returned in para 55 of the impugned judgment qua manufacturing facility of the appellant/defendant No.2 existing in Himachal Pradesh is concerned, it is contended that there exist no pleadings in this respect. Both the plaint and the replication are stated to be silent on this aspect. Further it is contended that nowhere in the pleadings has it been averred by respondent No.1 (plaintiff) that respondent No.2 (defendant No.1) is the authorized dealer of appellant (defendant No.2).

13. Besides the aforesaid, attention of this Court is invited to the replication wherein it has been averred by respondent No.1 (plaintiff) that the issue of jurisdiction is a matter of trial. Further on the basis of four invoices "trap" purchases, it is vehemently contended by the appellant (defendant No.2) that the territorial jurisdiction of this Court cannot be invoked. The suspicious nature of the aforesaid transactions made by respondent No.2 (defendant No.1) have been highlighted.

14. Besides the aforesaid, attention of the Court is invited to order dated 08.01.2026 passed in the present appeal wherein respondent No.2 (defendant No.1) had come present in

person. Respondent No.2 (defendant No.1)-Mr. Mohan Lal Sharma on the said date had produced the original letter of authorization to carry on the business of selling fertilizer. From a perusal of the same, it is evident that respondent No.2 (defendant No.1) has no authorization to sell the alleged infringing product "Aladdin" which he had been purchased from Jangra Khad Beej Bhandar, Sarmathla. Moreover, it has been pointed out that the said respondent No.2 (defendant No.1) had not filed the written statement before the learned Single Judge.

15. Attention of this Court has been invited to the documents filed by appellant (defendant No.2) to show that the facility which is being made a mention in para 55 of the impugned order pertains to a separate and different entity "M/s Him Bio Agro" (page 10 of the documents filed by the defendant). From the said document, it is pointed out that the appellant (defendant No.2) has its manufacturing facility in New Delhi. The product qua which invoices have been placed on record, clearly state that the same have been manufactured and marketed by the appellant (defendant No.2) from New Delhi. Moreover, it is pointed out that if "Aladdin" (the infringing product) was being manufactured by M/s Him Bio Agro at its own facility at Una and was available for sale in Himachal Pradesh, then there was no requirement for

respondent No.2 (defendant No.1) to have procured the same from Haryana.

16. In order to support its contention, reliance has been placed on **Indovax Pvt. Ltd. Vs. Merck Animla Health and Ors², Banyan Tree Holding (P) Limited Vs. A. Murali Krishna Reddy and Anr.³, M/s Allied Blenders and Distillers Pvt. Ltd. Vs. Prag Distillery Pvt. Ltd. And Anr.⁴ and to the judgment passed by the Delhi High Court in **Helsinn Healthcare SA VS. AET Laboratories Pvt. Limited and Ors.⁵** decided on 26.09.2025.**

17. Per contra learned counsel appearing on behalf of respondent No.1 (plaintiff) has drawn the attention of this Court to the written statement filed by defendant No.2 specifically para 12 at page 567 of the paper book and paras 83(b) and 83(c) at page Nos.606/607 of the paper book (Volume I). Based on the aforesaid, it is pointed out that insofar as the present appellant (defendant No.2) is concerned, the said entity has only permission to market infringing product "Aladdin" in five specific States detailed in para 12 at page 567 of the paper book (Volume 1). However, as per the own admission of the appellant (defendant No.2) in their written statement

² 2017 SCC Online Del 9393 : (2017) 71 PTC 647

³ (2009) SCC OnLine Del 3780 : (2010) 42 PTC 361

⁴ 2017 SCC OnLine Del 7225 : (2017) 70 PTC 1

⁵ (CS(Comm) 1188/2024, I.As. 49552/2024, 49553/2024)

specifically at para 83(b) at page 606 of the paper book (Volume 1), it is being sold in 11 States.

18. The attention of this Court is drawn to authorization letter bearing No.345/Micro/18 issued by the State of Madhya Pradesh, whereby appellant (defendant No.2) has been authorized to carry on business as applied for a period of 5 years from 29.06.2021 till 28.06.2026 in the State of Madhya Pradesh. In the same, attention is specifically invited to Annexure-I (page 10 of the documents filed by the defendant). Herein attention is invited to Column No.8 to show that the infringing product "Aladdin" is being manufactured in District Una within the territorial jurisdiction of this Court.

19. Other than the aforesaid, attention of this Court is invited to Section 48 of the Patents Act, which detail the rights of a patentee. Based on the aforesaid, it is contended that even a single act of selling, making, offering for sale or importing for the aforesaid purposes would be violative of a right of a patentee. Besides the aforesaid, attention of this Court is invited to Section 108 of the Patents Act to justify the reliefs being sought in the case at hand by respondent No.1 (plaintiff). Since a claim for damages has also been made in the plaint, therefore, it is contended that the case would fall within the parameters of Section 19 of the Code of Civil

Procedure.

20. The judgments whereupon reliance has been placed by the appellant (defendant No.2) are concerned are sought to be distinguished on the ground that the same pertain to Trademark Act and not the Patent Act. As has already been stated supra, it is contended that a single act of violation of the Patent Act is good enough for invoking the jurisdiction of this Court. Qua rights conferred upon registration of a trademark, attention of this Court has been invited to Section 28 of the Trademarks Act. With respect to infringement of registered trademark Section 29 has also been perused. Attention has also been invited to Section 134(2) of the Trademark Act to show that under the Trademark Act suit can be filed at a place wherein the person instituting the suit actually and voluntarily resides or carries on business or purposely works for gain.

21. The aforesaid distinction has also been sought to be used to distinguish the judgments pertaining to "Trap Transactions" referred to by the appellant. In order to support his contention, learned counsel for respondent No.1 (plaintiff) has drawn the attention of this Court to the pronouncement of the Delhi High Court in **Rieter AG and Anr. Vs. Kavassery Narayanaswamy Venkatasubramanian**⁶. Further attention

⁶ 2025 SCC Online Del 4379 : (2025) 103 PTC 192

has been drawn to the judgment of the Delhi High Court **in IA No.1778/2024 in CS(COMM) No.655/2023**, titled **Kubota Corporation and Godabari Agro Machinery and Services India Pvt. Ltd and Ors** and **Great Galleon Venture Limited vs. Champa Prema Tandel Sole Proprietor of Dharmesh Distiller & Another, C.S. (CoMM) No.343/2023**, decided on 01.05.2024. Besides reliance has also been placed on the judgment passed by the High Court of Judicature at Madras in **OSA Nos.38, 40 and 42 of 2020 and CMP Nos.1518, 1538 and 1544 of 2020**, titled **Sulphur Mills Limited Vs. M/s Dayal Fertilizers Pvt. Ltd and Ors**.

22. Heard counsels for the parties. Perused the record of the commercial suit.

23. The question of jurisdiction assumes importance even at a stage when a Court is considering the question of grant of interim relief. At the said stage, the Court is required to record at least a prima facie satisfaction in this respect. Said satisfaction is required to be recorded on the basis of the averments made in the plaint, written statement, relevant law cited in this respect, it would be appropriate to refer to the pronouncement of the Apex Court in **Asma Lateef's** case stated supra. Relevant extract reads as under:-

"49. What follows from a conspectus of all the aforesaid

decisions is that jurisdiction is the entitlement of the civil court to embark upon an enquiry as to whether the cause has been brought before it by the plaintiff in a manner prescribed by law and also whether a good case for grant of relief claimed been set up by him. As and when such entitlement is established, any subsequent error till delivery of judgment could be regarded as an error within the jurisdiction. The enquiry as to whether the civil court is entitled to entertain and try a suit has to be made by it keeping in mind the provision in section 9, CPC and the relevant enactment which, according to the objector, bars a suit. Needless to observe, the question of jurisdiction has to be determined at the commencement and not at the conclusion of the enquiry.

50. Although not directly arising in the present case, we also wish to observe that the question of jurisdiction would assume importance even at the stage a court considers the question of grant of interim relief. Where interim relief is claimed in a suit before a civil court and the party to be affected by grant of such relief, or any other party to the suit, raises a point of maintainability thereof or that it is barred by law and also contends on that basis that interim relief should not to be granted, grant of relief in whatever form, if at all, ought to be preceded by formation and recording of at least a prima facie satisfaction that the suit is maintainable or that it is not barred by law. Such a satisfaction resting on appreciation of the averments in the plaint, the application for interim relief and the written objection thereto, as well as the relevant law that is cited in support of the objection, would be a part of the court's reasoning of a prima facie case having been set up for interim relief, that the balance of convenience is in favour of the grant and non-grant would cause irreparable harm and prejudice. It would be inappropriate for a court to abstain from recording its prima facie satisfaction on the question of maintainability, yet, proceed to grant protection pro tem on the assumption that the question of maintainability has to be decided as a preliminary issue under Rule 2 of Order XIV, CPC. That could amount to an improper exercise of power. If the court is of the opinion at the stage of hearing the application for interim relief that the suit is barred by law or is otherwise not maintainable, it cannot dismiss it without framing a preliminary issue after the written statement is filed but can most certainly assign such opinion for refusing interim relief. However, if an extraordinary situation arises where it could take time to decide the point of maintainability of the suit and non-grant of protection pro tem pending such decision could lead to irreversible consequences, the court may proceed to make an appropriate order in the manner indicated above justifying the course of action it adopts. In other words, such an order may be passed, if at all required, to avoid irreparable harm or injury or undue hardship to the

party claiming the relief and/or to ensure that the proceedings are not rendered infructuous by reason of non-interference by the court."

24. In para 55 of the impugned order, a categorical finding has been recorded that the appellant (defendant No.2) has a manufacturing unit situated in Una Himachal Pradesh, which falls within the territorial jurisdiction of this Court. In this respect when the pleadings in the plaint are perused, it is evident that in para 8 of the plaint the categorical averment made by the respondent No.1 (plaintiff) is that appellant (defendant No.2) "carries on business for gain within the territorial jurisdiction of this Hon'ble Court." It is further averred that the details in this regard have been procured from the link mentioned in para 8, and the relevant downloaded documents have been placed on record as Annexure "D" [Pages 15 to 21 of the documents filed by respondent No. 1 (plaintiff)]. From a perusal of the same, nowhere can it be made out that appellant (defendant No. 2) has a manufacturing facility within the territorial jurisdiction of this Court.

25. Other than the aforesaid, the infringing activities of the defendants have been highlighted from paras 29 to 32 of the plaint. A conjoint reading of the aforesaid paragraphs make it evident that the contention of respondent No.1 (plaintiff) is that the appellant (defendant No. 2) is manufacturing,

marketing, selling the infringing product under the brand name “Aladdin” within the territorial jurisdiction of this Court. Similar contentions have been raised in para 56 of the plaint. Conspicuous by absence is any document placed on record by respondent No. 1 (plaintiff) to demonstrate that manufacture of the infringing product “Aladdin” is being carried out by the appellant (defendant No. 2) within the territorial jurisdiction of this Court.

26. During arguments, the factum of manufacture of the infringing product within the territorial jurisdiction of this Court was sought to be justified on the basis of documents placed on record by the appellant (defendant No. 2). The said document is an annexure appended along with authorisation letter issued by the appropriate authority in the State of Madhya Pradesh authorising the appellant (defendant No. 2) to carry on business within the State of Madhya Pradesh. The said Annexure-I has been placed at page 10 of the documents filed by the defendant. A perusal of the same reflects that it details the product and brand name which the appellant (defendant No. 2) has been authorised to sell within the State of Madhya Pradesh. Besides mentioning the product brand name, it even details the source of supply. A further perusal reflects that the infringing product “Aladdin” is detailed at serial Nos. 5 and 8 of the said

Annexure-I. Insofar as serial No. 5 is concerned, the same is being manufactured by appellant/defendant No. 2 at Delhi itself. However, insofar as serial No. 8 is concerned, the same is being manufactured by M/s Him Bio Agro at Village Bala, Bathari, Tehsil Haroli, District Una, Himachal Pradesh.

27. Hence, from the said document, it is clearly evident that the "Aladdin" is not being manufactured by the appellant (defendant No. 2) within the territorial jurisdiction. The finding qua manufacture of the infringing product "Aladdin" within the territorial jurisdiction of this Court in para 55 of the impugned judgment is stated to be based on a brochure available on the website of appellant (defendant No. 2). As has already been stated supra, Annexure "D" placed on record by respondent No. 1 (plaintiff), which provide the relevant details of appellant (defendant No. 2), nowhere depict that the infringing product is being manufactured within the territorial jurisdiction of this Court.

28. In the written statement filed by the appellant (defendant No. 2), while taking a specific objection qua lack of territorial jurisdiction of this Court to try the suit, a specific averment has been made to the effect that infringing product "Aladdin" is a commodity regulated by the Fertilizer (Control) Order 1985 issued under the Essential Commodities Act, 1955.

Permission to sell the same has been obtained by the appellant (defendant No. 2). As per the averments made, specific permission to sell the same has been obtained from five States detailed in para 12 of the written statement. However, in para 83(b) of the written statement, it has been averred that the same is being sold in 11 States detailed therein. Conspicuous by absence is permission to sell within the State of Himachal Pradesh. Besides in the plaint filed there is no averment that the same is being sold in Himachal Pradesh without requisite permission through un-authorised channels.

29. Further, in the written statement, it has been averred that the infringing product, being a regulated product, is only being sold through authorized dealers. It is specifically averred that respondent No. 2 (defendant No. 1) is not the authorized dealer of the appellant (defendant No. 2).

30. The cause of action, in the case at hand, is stated to have arisen within the territorial jurisdiction of this Court on account of sale made qua the infringing product "Aladdin". Invoices depicting such sale within the territorial jurisdiction of this Court, have been placed on record as Annexure-M. The invoices placed on record categorically reflect that the infringing product sold is "Aladdin", manufactured and marketed by appellant (defendant No.2) and not by M/s Him Bio

Agro, who have a unit in Una within the territorial jurisdiction of this Court. An averment in this regard is made in Paragraph-29 of the plaint duly supported by an affidavit in terms of Order 6 Rule 15-A and Order 11 Rule 3 of the Code of Civil Procedure. The contents of Paragraph-29 are stated to be based on information received.

31. Other than the aforesaid, pleading with respect to cause of action, i.e., Paragraph-52 of the plaint, is stated to be true and correct on the basis of legal advice. In this regard, as has already been stated (supra), the present appellant (defendant No.2) has categorically asserted in his written statement that he has no authorised dealers for sale of the infringed product "Aladdin", within the State of Himachal Pradesh (see Para 30 supra).

32. In order to show that the cause of action had arisen within the jurisdiction of this court, the respondent No.1 (plaintiff) has filed on record four invoices of respondent No.2 (defendant No.1). These invoices have not been issued to respondent No.1 (plaintiff), but to third parties. There is no explanation as to how the respondent No.1 (plaintiff) had obtained the four invoices stated herein above. Moreover there are no pleadings in the plaint to show any connection between the appellant (defendant No.2) and respondent No.2 (defendant

No.1) nor *inter-se* the aforesaid third parties and respondent No.1 (plaintiff) or with the appellant (defendant No.2).

33. In terms of Section 48 of the Patents Act, the rights of the patentee (respondent No.1 /plaintiff) would be violated if the appellant/defendant No.2 is shown to have indulged in a single act of selling, making, offering for sale or importing for the aforesaid purposes within the jurisdiction of this Court. From order dated 08.01.2026 reproduced herein below, when summoned by this Court, it is evident that respondent No. 2 (defendant No. 1) had no authorization, express or implied to sell the infringing product "Aladdin" on behalf of the appellant/defendant No. 2 within the jurisdiction of this Court. Neither in this respect, any averment had been made in the plaint by respondent No.1 (plaintiff), i.e., to the effect that respondent No.2 (defendant No.1) was the authorised stockist, dealer, distributor of the appellant (defendant No.2). The goods in question had been procured by the respondent No.2 (defendant No.1) from Haryana where the appellant/ defendant No.2 was authorised to sell and the same had been procured from an authorised dealer of appellant/defendant No.2. Moreover, it is not the case of the respondent No.1/plaintiff that respondent No.2 (defendant No.1) was acting on behalf of appellant/defendant No.2 or the authorised dealer of

appellant/defendant No.2 from where the infringing product had been procured for further sale in the state of Himachal Pradesh and that the infringing product had been offered for sale to respondent No.1/plaintiff by an authorised agent of the appellant/defendant No.2 for further sale within the jurisdiction of this Court.

34. At the time of adjudication of the application under Order 39 Rules 1 and 2 CPC before the learned Single Judge, no written statement had been filed by the present respondent No.2 (defendant No.1). In the aforesaid backdrop, keeping in view the provisions of Order 10, Section 107(2) of the Code of Civil Procedure, proprietor of respondent No.2 (defendant No.1) concerned had been summoned before this Court vide order dated 29.12.2025. The said order is being reproduced hereinbelow for ready reference:-

"In pursuance to the last order dated 23.12.2025, counter affidavit filed by defendant No.1 in the suit has been traced in the original file.

2. A perusal of the same would go on to show that initially it was filed on 23.03.2024 and objections were raised by the Office on 26.03.2024. The copy of the same was only supplied to the counsel for the plaintiff and not to defendant No.2-appellant. No effort as such was made to remove the objections and only when we passed the order on 23.12.2025, the objections have been removed and therefore the said counter affidavit has come on record in the Civil Suit. Even the counsel has stated that the alleged proprietor-Mohan Lal Sharma has also only signed at one place and there is no verification done whether the said person has verified the contents of the said affidavit to be correct to the best of his knowledge and based on records.

3. Defendant No.1 in paragraph 4 of the said counter-affidavit has thus pleaded that the impugned product" is manufactured and marketed by respondent No.2 i.e. present appellant and he is only a retailer who purchased the impugned product from a wholesaler or distributor of respondent No.2 so as to meet the market demand for such product. Nothing has been mentioned in the said affidavit as by which invoice the product had been purchased from the said respondent-appellant.

4. Learned Senior Counsel for the appellant has thus raised the serious issue of jurisdiction by relying upon the Division Bench judgment of the High Court of Delhi in *Banyan Tree Holding (P) Limited Vs. A. Murali Krishna Reddy & Another* 2009 SCC OnLine Del 3780: (2010) 42 PTC 361 and Single Bench judgment in *Indovax Pvt. Ltd. Vs. Merck Animal Health and Others* 2017 SCC OnLine Del 9393: (2017) 71 PTC 647 to submit that mere one trap sale as such would not give the jurisdiction to this Court apart from the judgment of the Apex Court in *Asma Lateef and Another Vs. Shabbir and Others* (2024) 4 SCC 696, wherein it has been held that for even grant of interim relief as such, the question of jurisdiction would assume importance.

5. In such circumstances, we are of the considered opinion that it would be imperative to secure the presence of Mr. Mohan Lal Sharma to verify the alleged sale which had taken place on the basis of which the learned Single Judge had granted injunction.

6. Let the said person come alongwith the records and show that he is an authorized dealer and also produce the original invoice of products which had been sold on the basis of which the suit has been filed and also to show whether he had purchased the said goods from the appellant or some other distributor as mentioned in his counter-affidavit which apparently was not before the learned Single Judge and also when the impugned order was passed on 06.01.2025.

7. Accordingly, the proceedings are deferred for 08.01.2026."

35. In pursuance to the aforesaid order, Mr. Mohan Lal Sharma had come present in person on the next date, i.e. 08.01.2026. On the said date, the following order had been passed:-

“Mr. Mohan Lal Sharma has come present in person in pursuance of the last order dated 29.12.2025 and produced the original Tax Invoice only of dated 13.03.2023, whereby 40 Kg of ‘Aladdin’ has been purchased from Jangra Khad Beej Bhandar, Sarmathla. The photocopies of the Tax Invoice dated 21st, 22nd & 23rd March, 2023 have also been placed on record, whereby the said product has further been sold to various locals. The photocopies of the said documents are taken on record.

2. The original letter of authorisation to carry on the business of selling fertilizer, which is valid upto 07.05.2030 alongwith letter dated 28.07.2025 issued by the Deputy Director, Agriculture, Shimla, H.P. has also been produced and photocopy has also been appended. The perusal of the same would go on to show that apparently the said person is only entitled to carry on the business of selling of straight fertilizer, NPK complex fertilizers and bio fertilizers as specified in Fertilizer Control Order as a retail dealer and the sources are mentioned as (1) ICL Management & Trading India Pvt.; (2) Lalit Chemicals & Fertilizer Industries; (3) Goyal Chemical Industries and (4) Zuari Farmhub Ltd.

3. We have interacted with the said gentleman and he has acknowledged the fact that he did not have any such kind of authority to sell the said product i.e. ‘Aladdin’, which he has purchased from Jangra Khad Beej Bhandar.

4. The original letter of authorisation has been returned back.

5. Counsel for respondent No. 2 prays for time to file necessary affidavit explaining the manner in which the purchase has been done, since the earlier affidavit filed in commercial suit has not been verified in the manner prescribed by the law. Needful be done before the next date of hearing.

6. Accordingly, the proceedings are deferred for 09.03.2026.”

36. From a perusal of the aforesaid order dated 08.01.2026, it is evident that respondent No.2 (defendant No.1) had no authorization, express or implied to sell the infringing product “Aladdin”, as per the authorization on the basis of which the said respondent No. 2 is carrying on his

business.

37. The possibility of one being dragged into litigation, by adducing flimsy material, cannot be ruled out as it is easy for the present appellant to be dragged into litigation if the only material necessary to give jurisdiction to a court is a few invoices issued by an entity, who is not an authorised representative of the appellant, to some third parties. Since the only material placed on record is in the form of four transactions entered into by respondent No.2 (defendant No.1), they would have to be shown to be obtained using fair means (prima- facie). **Rieter AG and another vs. Kavassery Narayanaswamy Venkatasubramanian, 2025 SSC Online, Del 4379** and **Kubota Corporation vs. Godabari Agro Machinery Services Private Limited and others, I.A. No.1778/2024**, decided on 12.08.2025 relied upon by respondent No.1 (plaintiff) were cases of infringement of a patent. In **Rieter AG** the plaintiff's investigator had placed an order for the defendant's goods and in **Kubota Corporation** offer for sale had been made by the defendant therein to the plaintiff's investigator. Hence in both the aforesaid cases it was shown to the court by fair, authentic transactions that the infringement of their patent was happening within the territorial jurisdiction of the court either by an actual sale or by an offer

for sale. Such is not the situation in the case at hand.

38. Reliance placed upon **Great Galleon Venture Limited vs. Champa Prema Tandel Sole Proprietor of Dharmesh Distiller & Another, C.S. (CoMM) No.343/2023**, decided on 01.05.2024 by respondent No.1 is also of no avail. The said case pertains to an infraction of a Trademark and a copyright. Attention during the course of arguments had been invited to Section 134(2) of the Trademark Act, by respondent No.1, to show that under the Trademark Act suit can be filed at a place wherein the person instituting the suit actually and voluntarily resides or carries on business or purposely works for gain. In **Great Galleon Venture Limited** the plaintiff had a subordinate office in Delhi. Besides the infringing product therein was liquor being manufactured by the defendant allegedly being sold through peddlers in Delhi. Therein on account of the nature of goods involved commercial documentation i.e cash memos, tax invoices could not have existed for alleged illicit sale of liquor. Hence, based on both accounts i.e Section 134(2) of the Trademark Act and averments made in the plaint qua alleged illicit sale of liquor suit filed in Delhi was held to be maintainable.

39. Besides the aforesaid, **Rieter AG** and **Kubota Corporation** were cases wherein an application under Order 7

Rule 10 of the Code, seeking return of plaint on the ground of lack of territorial jurisdiction, was being considered. In this respect it would be appropriate to refer to the apex court judgement in **Exphar Sa v. Eupharma Laboratories Ltd., (2004) 3 SCC 688**. Relevant extract whereof reads as under:

“9. Besides, when an objection to jurisdiction is raised by way of demurrer and not at the trial, the objection must proceed on the basis that the facts as pleaded by the initiator of the impugned proceedings are true. The submission in order to succeed must show that granted those facts the court does not have jurisdiction as a matter of law. In rejecting a plaint on the ground of jurisdiction, the Division Bench should have taken the allegations contained in the plaint to be correct.”

40. At this juncture, it would be relevant to refer to the decision of the Delhi high Court, in **M/s Allied Blender & Distillers Pvt. Limited vs. Prag Distillers Private Limited and another, 2017 SCC Online Del 7225** (FAO (OS) No.49/2017, decided on 01.03.2017), wherein, it has been clarified that the consideration with regard to territorial jurisdiction in the context of Order 7 Rule 10 of the Code are entirely different from those in an application under Order 39 Rules 1 and 2 of the Code. The relevant extract, whereof, is being reproduced here-in-under:-

“14. It must be clarified that the considerations with regard to territorial jurisdiction in the context of Order VII Rule 10 of the Code are entirely different from those in an application under Order XXXIX Rules 1 & 2 of the Code or when a finding is to be returned on the issue of territorial jurisdiction. Under Order VII Rule 10 of the Code, only the averments in the plaint are to be

seen and that, too, on the assumption that they are correct. While considering an application under Order XXXIX Rules 1 & 2 of the Code, not only the averments in the plaint but also other material including the defendant's reply and written statement are to be seen. For establishing the existence of a *prima facie* case (a condition precedent for an *ad interim* injunction order), the plaintiff would obviously have to demonstrate, albeit at a *prima facie* level, that the apprehension was reasonable and credible. Here, a mere averment in the plaint would not do. And, the assumption that the averments in the plaint are correct would also not be available. Where the issue of jurisdiction is to be decided at the trial, the standard of proof would be even higher. Therefore, while for the purposes of an examination under Order VII Rule 10 of the Code, the court may 'conclude' that it has territorial jurisdiction, this would not come in the way of the defendant in raising a question as to territorial jurisdiction, both, when the issue of temporary injunction under Order XXXIX Rules 1 & 2 of the Code is being considered and when an issue as to territorial jurisdiction is being decided in the trial of the suit. In other words, while a plaintiff may succeed in demonstrating, for the purposes of Order VII Rule 10 of the Code that this court has territorial jurisdiction and that the plaint ought not to be returned, he may fail in obtaining an order of interim injunction on the ground that the plaintiff's case is itself shaky because the issue of territorial jurisdiction is highly debatable and *prima facie* not tenable. Therefore, the decision of the court in rejecting the objection of the defendant and in refusing the defendant's prayer for return of the plaint under Order VII Rule 10 of the Code, would not come in the way of the defendant raising the question of territorial jurisdiction, both as an objection to the grant of an interim injunction as also at the time of decision of the issue of territorial jurisdiction, if framed, at the trial of the suit."

41. Similarly, in **OSA No.38, 40 and 42 of 2020** titled ***Sulphur Mills Limited vs. M/s Dayal Fertilizers Private Limited***, (DB Madras High Court) decided on 11.11.2020, an application seeking revocation of leave granted to the appellant (plaintiff) therein, was being considered. The same was a case of a patent infringement. Therein it was held that a suit could be maintained on the basis of a lone "trap order" and further whether the defendants/respondents therein were offloading

their product within the jurisdiction of the court or not was to be decided at trial and not in the application seeking revocation of leave.

42. Last but not the least it has been contended on behalf of the respondent No.1/plaintiff that since in the suit filed in the case at hand one of the reliefs sought is for grant of damages, therefore, for the purpose of territorial jurisdiction in the aforesaid factual matrix whereby infringement is alleged to have taken place within the jurisdiction of this Hon'ble court section 19 CPC which pertains to suits for compensation for wrongs to person or movables would be applicable. Section 19 CPC reads as under;

19. Suits for compensation for wrongs to person or movables.— *Where a suit is for compensation for wrong done to the person or to movable property, if the wrong was done within the local limits of the jurisdiction of one Court and the defendant resides, or carries on business, or personally works for gain, within the local limits of the jurisdiction of another Court, the suit may be instituted at the option of the plaintiff in either of the said Courts.*

Illustrations

(a) A, residing in Delhi, beats B in Calcutta. B may sue A either in Calcutta or in Delhi.

(b) A, residing in Delhi, publishes in Calcutta statements defamatory of B. B may sue A either in Calcutta or in Delhi.

From the reasons recorded supra *prima-facie* it is evident that the alleged wrong in the case at hand has not been committed by the appellant/defendant No.2.

43. For the aforesaid reasons, the appeal is allowed as *prima-facie* this Court is convinced that in the facts and attending circumstances of the case at hand, there exists no cause of action/wrong done to invoke the territorial jurisdiction of this Court insofar as appellant/defendant No.2 is concerned. The alleged cause of action/wrong done by appellant/defendant No.2 is a triable issue. As a consequence whereof, the impugned interim order dated 06.06.2025, passed in *OMP No.320/23 in COMS No.6/2026*, insofar as it pertains to appellant/defendant No.2, shall stand vacated. Needless to say, the present observation herein are only for deciding the issue of the injunction at this stage and will not influence the learned Single Judge to come to a contrary finding on the basis of additional material, if any, brought on record by the parties

44. The present appeal stands disposed of in the above terms, so also the pending miscellaneous application(s), if any.

(G.S. Sandhawalia)
Chief Justice

(Bipin Chander Negi)
Judge

04th June, 2026
(vs/ks/Gaurav Rawat)