



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

OMP No.34 of 2024 in COMS No.3 of 2024

Order reserved on: 11.05.2026

Date of Decision: 02.07.2026

SML LimitedApplicant/plaintiff
Versus
M/s Happy Agro Chemicals ... Respondents/Defendants

Coram:
Hon’ble Mr. Justice Sandeep Sharma, Judge.
Whether approved for reporting? ¹

For the Applicant: Mr. Ashok Aggarwal, Senior Advocate with Dr. Sanjay Kumar, Ms. Arpita Sawhney, Mr. Atul Jhingan, Mr. Priyansh Sharma, Mr. Ankit Thakur, Mr. Sanket Singh Sengar and Ms. Akanksha Chauhan, Advocates.
For the Respondents: Ms. Ranjana, Advocate vice Mr. Rajesh Kashyap, Advocate for defendant/respondent No.1.
Ms. Devyani Sharma, Senior Advocate with Mr. Vipul Sharda, Mr. Ankit Virmani and Mr. Raditya Katoch, Advocate, for defendants /respondents No.2 and 3.

Sandeep Sharma, Judge(oral):

Order at hand shall dispose of an application filed by the applicant/plaintiff under Order XXXIX Rule 1 and 2 read with Section 151 CPC, seeking therein direction to restrain the respondents/defendants by themselves, their directors, partners, licensees, stockiest and distributors, agents and /or anyone claiming through any of them jointly and severally from infringing the patent rights of the

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

applicant under Indian Patent No.282092 by advertising, launching, making, using, offering for sale, selling, importing and/or exporting any product including "SELZIC" or any other product covered by the suit patent IN 282092 granted in March 30,2017 to the applicant/plaintiff.

2. Afore prayer made on behalf of the applicant/plaintiff has been seriously opposed by the respondents/defendants by filing detailed reply to the application. Before ascertaining the correctness of the rival contentions raised at the behest of the parties to the *lis*, this Court finds it necessary to take note of certain facts, which may be relevant for adjudication of the application at hand, which reads as under:-

- a) The applicant/plaintiff which is a company incorporated under the Companies Act, 1956, claims itself to be a research-driven organization involved in developing and promoting the use of advanced high-performance, end to end solutions in crop nutrition, crop protection, bio-stimulants and bio-fertilizers. Plaintiff also claims itself to be owner of various patents inter alia Indian Patent No. 282092, which was granted to the plaintiff on 30.3.2017 under Section 43 of the Patents Act, 1970, for agricultural composition entitled "Agricultural Composition" for twenty years. Plaintiff also claims to have received rights qua suit patent through assignment agreement from one Mr. Deepak Pranjivandas Shah. It is also averred in

the plaintiff that as many as 13 countries have granted patents in respect of suit patent. As per the plaintiff, while its prayer for grant of patent in question was being considered no pre or post grant oppositions were filed by defendants. Two entities had filed pre-grant oppositions, however same were dismissed vide order dated 30.03.2017 (Annexure-G at pages 38-69 of Plaintiff's documents). Thereafter two post-grant oppositions under Section 25(2) of Patents Act, 1970 were filed by two entities, which were also dismissed on 16.6.2023 (Annexure-I at pages 89-169 of Plaintiff's documents).

- b) It is averred in the plaintiff that in terms of Section 48 of the Act which defines rights of patentee, it has exclusive right to prevent third parties, who do not have his consent from the act of making using, offering for sale, selling or importing for those purposes that product in India.
- c) Plaintiff has alleged that infringing acts on the part of defendants by offering to sell the suit patent under the brand name, "SELZIC" and thus alleged infringement of rights of the plaintiff qua the suit patent. With the aforesaid material averments, suit has been filed seeking permanent injunction against the defendants from infringing the patent rights of plaintiff qua suit patent. The plaintiff has also sought direction for the removal of infringing product from all websites and online platforms, a decree for recovery of

Rs.1.02 Crores and an order directing defendants to destroy the stocks of infringing product.

3. Alongwith suit, plaintiff also filed an application under Order XXXIX, Rules 1 and 2 read with Section 151 of the Code of Civil Procedure seeking therein interim injunction against the defendants to the effect, as detailed hereinabove. It is averred in the application that unauthorized launch, advertisement, manufacture, market use, sale, offer for sale and/or export of the infringing product covered by the suit patent in the Indian market within the territorial jurisdiction of this Court by the respondents is ongoing and therefore, there is an urgency to restrain the respondents from infringing the patent rights of plaintiff qua suit patent by making, advertising, launching, using, offering for sale, selling, importing and/or exporting of the infringing product, sold under brand name "SELZIC" or any other product under any brand. Vide order dated 12.01.2024, this Court granted ad-interim injunction in favour of the plaintiff, thereby restraining the defendants from infringing the Patent right of the plaintiff. The order was passed ex-parte restraining the defendants from directly or indirectly dealing in its products, including "SELZIC" which allegedly infringes the suit patent.

4. Against afore order dated 12.01.2024, the defendants preferred Commercial Appeal bearing OSA No.05 of 2024, titled **ULink Agri Tech Private Limited vs. SML Limited and others,**

which came to be allowed vide order dated 20.08.2024. In afore order, Division Bench of this Court returned finding that an ex-parte ad-interim injunction must be supported by reasons showing why notice to opposite party would defeat the object of injunction under proviso to Order XXXIX Rule 3, CPC. While passing afore order, Division Bench of this Court remitted the application at hand back to learned Single Judge for fresh consideration and also permitted the defendants to file reply to the application with further request to learned Single Judge to decide the application expeditiously. In the aforesaid background, application at hand came to be heard by this Court and same is now being disposed of vide instant order.

5. Having heard learned counsel for the parties and perused the material available on record, this Court finds that plaintiff was granted suit patent on March 30, 2017 under Section 43 of the Patents Act, 1970 (hereinafter referred to as 'the Act') under IN'092 for agricultural composition entitled 'AGRICULTURAL COMPOSITION', for a term of 20 years and the product was launched in the market under brand name 'TECHNO Z' in August, 2018. However, subsequently it came to the notice of applicant/plaintiff that the suit patent has been infringed by the defendants by manufacturing, marketing, and selling/offering for sale product under the brand name of "SELZIC".

6. Mr. Ashok Aggarwal, learned Senior Advocate duly assisted by Dr. Sanjay Kumar and Mr. Atul Jhingan, learned counsel representing the applicant/plaintiff vehemently argued that by virtue of Section 48 of the Act, a Patent granted under this Act, shall confer an exclusive right upon the patentee to prevent third party, who do not have its consent from the act of making, using, offering for sale, selling or importing such product in India and, therefore, applicant-plaintiff, being exclusive patent holder, is entitled to file and maintain present suit against infringement of Patent granted in its favour along with application for interim directions. In support of afore contention, reliance came to be placed upon the judgment passed by Hon'ble High Court of Delhi in **Novartis AG & Anr. v. Cipla Ltd. 2015 SCCOnLine Del 6430**, wherein it came to be held that a patent holder enjoys exclusive rights/ monopoly qua the patent and third party cannot use the same, without the exclusive license.

7. While making this Court peruse Patent Certificate (Annexure-D at pages 8-9 of Plaintiff's documents) and Patent Specification (Annexure-E at pages 10-36 of Plaintiff's documents) as granted by Patent Office, Mr. Aggarwal, learned Senior Counsel argued that plaintiff alone from the date of its being granted patent qua the product in question has been exclusive right to make, use, offer for sale, sell, import and/or export the product covered by the suit

patent and as such, acts of defendants of infringing the Plaintiff's suit patent are causing and will continue to cause substantial financial loss to the plaintiff and in case defendants were not restrained from their acts of infringement of patent, irreparable injury would be caused to the plaintiff.

8. Mr. Aggarwal, further argued that if the Defendants are allowed to manufacture, offer for sale and/or sell the suit patented product, it will not only infringe the suit patent but will also completely defeat the purpose of the 'Product Patent regime' introduced by the Act, which in turn will be adverse to the intention of the Legislature. He submitted that defendants have attempted to take advantage of research and development carried out by the plaintiff. He submitted that suit patent is an old patent in its 14th year out of 20 years of patent term which has stood the test of multiple pre-grant and post-grant oppositions, and has successfully worked for significant number of years. He further argued that defendants could have filed pre-grant or post-grant oppositions qua the patent, but such procedure was never adopted. He further argued that pre-grant and post-grant oppositions filed by other parties were disposed of by the competent authority taking note of all the evidence, prior art documents, written submissions, reply and arguments advanced by the opposition. He further argued that no revocation petition has been filed before the

erstwhile Intellectual Property Appellate Board (now dissolved) or High Courts by the defendants on account of their being aggrieved by the grant of patent in favour of the plaintiff. He submitted that it was only as a defensive measure that once they were 'caught in the act' of infringing the patent, they chose to assail its validity.

9. Mr. Aggarwal, further contended that product is an invention under Section 2(1)(j) of the Act, which is comprised of an effective amount of sulphur, an effective amount of zinc oxide and at least one agrochemically acceptable excipient (Surfactant), having a particle size of 0.1 micron to 50 microns, which provides a higher yield and improves plant's physiology. He further argued that composition demonstrates excellent dispersion, readily usable for micro irrigation systems, which is not known to interested individuals and is a product of years of research and development. To substantiate his aforesaid submissions, he specifically placed reliance upon the affidavit of Dr. Phool Kumar Patanjali, (Annexure-N at pages 196-294 of Plaintiff's documents) who is a technical expert/scientist in the field of agrochemical formulations, who after having perused the complete specifications, including claims of Suit patent No. IN'092 opined that defendants no. 2's product 'SELZIC' falls within the scope of claims of IN'092. He submitted that as per affidavit of Dr. Patanjali, patent of the plaintiff comprises of 12 claims, out of which claims 11 and 12 have

been found with essential features which have been infringed by defendant no. 2.

10. Mr. Aggarwal further argued that subject patent is a valid patent which has been granted after detailed scrutiny and examination by the patent office, being expert/competent authority by virtue of Section 43 of the Act. He submitted that by now it is well settled that the Court when faced with a prayer for grant of an injunction in an infringement suit must enquire whether the defendant has raised 'a credible challenge', meaning thereby that once a patent is granted, the onus to make out a credible challenge as to its validity would rest squarely on the party challenging it i.e., the defendants. He submitted that since defendants have failed to lay a valid credible challenge to validity of the patent, coupled with the fact that patent has remained valid, unchallenged and reduced into practice for several years, the presumption of prima facie validity weighs in favour of the plaintiff. In support of his aforesaid claim, he placed reliance upon the judgment passed by Hon'ble High Court Delhi in case titled **FMC Corporation Vs Best Crop. Science, 2021 SCC OnLine Del 3647.**

11. To the contrary, Ms. Devyani Sharma, learned Senior Advocate duly assisted by Mr. Vipul Sharda, learned counsel appearing for defendants No.2 and 3, argued that Court lacks territorial jurisdiction to entertain the present suit and by now it is well

settled that prayer of interim injunction can be denied in case Courts arrives at conclusion that it has no territorial jurisdiction to try the suit. In support of her aforesaid submission, Ms. Devyani Sharma, learned Senior counsel representing defendants No.2 and 3 placed reliance upon the judgment passed by Hon'ble Apex Court in case titled **Asma Lateef and another vs. Shabbir and others, (2024) 4 SCC, 696**, wherein it came to be held that question of jurisdiction assumes significant importance even at the stage a Court considers the question of grant of interim relief. Reliance is also placed upon the judgment passed by Hon'ble High Court of Delhi in case titled **New Life Laboratories Pvt. Ltd. vs. Dr. Ilyas New Life Homeo and Herbals Pvt. Limited CS(COMM) 323 of 2023**.

12. Ms. Devyani Sharma, learned Senior counsel vehemently argued that since suit at hand is based solely on three invoices of purported isolated purchases of defendant no. 2's product from a single retailer i.e. defendant no. 1, these purchases are trap purchases from an unauthorized dealer and cannot be made basis to create jurisdiction. She submitted that since the infringing product 'SELZIC' is a commodity regulated by Fertilizer (Control) Order, 1985 (hereinafter FCO), and defendant No. 2 has already obtained permission to market the product in certain States, which does not include the State of Himachal, defendant No. 2 and 3 cannot be made

to suffer on the basis of these three isolated purchases done by an unrelated party i.e. defendant No.1. She submitted that these trap purchases were orchestrated just to create jurisdiction where same does not exist, thus, prayer of interim injunction deserves to be rejected. While further elaborating upon her submissions with regard to territorial jurisdiction, Ms. Devyani Sharma, further submitted that defendants No.2 and 3 are situate outside the territorial jurisdiction of this Court and in cases where several defendants are impleaded and only some reside within the territorial jurisdiction of the Court, Section 20 (b) CPC mandates that plaintiff has to seek leave of the Court to proceed against all the defendants, whereas in the instant case, no such leave has been sought by the plaintiff to proceed with the present suit.

13. Ms. Devyani Sharma, learned Senior counsel further argued that territorial jurisdiction of this Court is sought to be invoked on the basis of three isolated purchases of the product of defendants no. 2 and 3 from defendant no. 1's shop in Tehsil Rohru on 9th and 11th December, 2023 (Annexure L-Colly at pages 188-190 of plaintiff's documents) but bare perusal of the same clearly reveals that alleged purchases are ex facie bogus, illegal and unauthorized. She submitted that defendant no. 1 had no authority to sell the product "SELZIC" and that these are false transactions/ trap purchases intended to falsely create jurisdiction where none exists. She submitted that fertilizers are regulated commodities and separate

state-level authorizations are required to sell the product. Since Defendant no. 3 does not have any licence for the State of Himachal Pradesh and does not sell in the State of Himachal Pradesh, same could not have been sold by defendant No.1, a retailer without first obtaining authorization for sale from the Notified Authority. She submitted that to get such authorization, the retailer is required to submit a memorandum of intimation in Form A-1 alongwith an authorization from the source Certificate of Source in Form O as prescribed in FCO [Clause 8(2)]. She submitted that if a retailer obtains fertilizers for sale from different sources, then certificate of source is required from each such source as provided under forth proviso to Clause 8(3) of FCO (Document no. 9 at pages 48-54 of Defendants' documents). She submitted that neither Defendant no. 2 nor Defendant no. 3 has authorized Defendant no. 1 to sell 'SELZIC' nor they supplied 'SELZIC' to Defendant no. 1.

14. Ms. Devyani Sharma, learned Senior counsel representing defendants No.2 and 3 also referred to the order dated 26.04.2024 passed by this Court, wherein it came to be recorded that defendant No.1 has adopted the contents of the written statement of defendants No.2 and 3. She submitted that where defendants No.2 and 3 have explicitly stated that they have not supplied 'SELZIC' to defendant No.1 and as such assertion made by them have been

accepted by defendant No.1, by no stretch of imagination it can be said that defendant No.1 had any authority to sell the product "SELZIC". She submitted that since afore product was being sold unauthorizedly without there being any authority, coupled with the fact that there is no evidence adduced on record suggestive of the fact that product "SELZIC" was made available by defendants No.2 and 3 to defendant No.1 for sale, this Court cannot be said to have territorial jurisdiction to entertain the suit filed by the plaintiff qua infringement of suit patent. She submitted that sham and unlawful transactions which are either of a counterfeit product or are false transactions cannot be made basis to create jurisdiction. While placing reliance upon the judgment passed Hon'ble Delhi High Court in case titled **Indovax Private Limited vs. Merck Animal Health and others, 2017 SCC OnLine Del 9393**, Ms. Devyani Sharma, learned Senior counsel argued that isolated trap purchases cannot be used to procure jurisdiction, and sales by defendants at commercial scale within the territorial jurisdiction must be shown. She further submitted that listings of product on the website of Defendant no. 3 does not show that the product could be purchased in Himachal Pradesh, rather defendant No.3 was authorized to sell only in five States- Gujarat, Maharashtra, U.P., M.P., and Rajasthan, and could therefore, sell the product only in these 5 states (Document no. 5 at pages 32-41 of

Defendants' documents). She submitted that only a person situated in these States could place orders for SELZIC on Defendant no. 3's website. She submitted that website screenshots produced by the plaintiff show that the States selected for delivery were U.P., and Maharashtra and no order has been shown to be placed on the website from HP or for delivery to HP, therefore, these listings cannot assist the plaintiff in invoking jurisdiction of this Court (Annexure-M Colly at pages 191-194 of Plaintiff's documents).

15. While responding to the purported listing on Indiamart website, Ms. Devyani Sharma, learned Senior Counsel vehemently argued that a mere listing on Indiamart does not by itself confer jurisdiction because Indiamart is an interactive website on which orders can not directly be placed, rather same is only a platform which connects buyers and sellers and is like a directory where a prospective buyer can find the contact details of the supplier in respect of a listing of any product. She submitted that only because one can access Indiamart website across the country does not mean that jurisdiction can be created simply by accessing the website. However, in the case at hand nothing has been placed on record to show that there was any actual transaction affected between any buyer and any Defendants No. 2 and 3 in Himachal Pradesh through Indiamart. In support of her aforesaid submissions, she placed

reliance upon the judgments passed by Hon'ble High Court Delhi, in case titled **Banyan Tree Holding Private Limited vs. A. Murali Krishna Reddy and another, 2009 SCC OnLine Delhi 3780** and **Vikrant Chemico Industries Private Limited vs. Shri Gopal Engineering and Chemical Works Private Limited and others, 2025 SCC OnLine Delhi, 5562.**

16. Ms. Devyani Sharma, learned Senior counsel representing the defendants no. 2 and 3 argued that judgment passed by this Court dated 06.0.6.2025 in **SML Ltd. Vs. Mohan & Company and another. COMS No.6 of 2023** is distinguishable. She submitted that though issue of territorial jurisdiction was considered in afore judgment, but same was on different facts. There was no admission by the retailer (Defendant no. 1 in that case) that the manufacturer (Defendant no. 2 in that case) had neither authorized the retailer nor supplied the product to the retailer. She submitted that in afore case defendants had allegedly a manufacturing unit in Himachal Pradesh and the provisions of FCO pertaining to grant of authorization to sell to a retailer based on submissions of Certificate of Source in Form O received from the manufacturer or wholesaler were not considered.

17. Though, learned Senior counsel representing defendants, in addition to her aforesaid submissions with regard to territorial jurisdiction, also made detailed submissions/rebuttal to persuade this

Court that no prima facie case of infringement is made out, but having taken note of the judgment passed by Hon'ble Apex Court in **Asma Lateef** (supra), wherein it specifically came to be ruled that where interim relief is claimed in a suit before a civil court and party to be affected by grant of such relief, or any other party to 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 suit is maintainable or that it is not barred by law, this Court at first instance finds it appropriate to deal with the question of lack of territorial jurisdiction raised at the behest of the defendants.

18. Precisely, the claim of the plaintiff is that infringement of the plaintiff's suit patent has taken place within the jurisdiction of this Court. To prove aforesaid claim, heavy reliance is placed upon invoices available at pages 188-190 of the plaintiff's document, whereby allegedly defendant No.1 has sold the infringing product "SELZIC" manufactured and marketed by defendant No.2. In addition to afore, it is also claimed by the plaintiff that infringing product is being marketed, offered for sale and sold across the country online through various third-party websites, thus the cause of action has substantively arisen within the jurisdiction of the present Court. It is

also claimed by the plaintiff that since defendant No.1's principal place of business as well as Administrative Office falls within the jurisdiction of this Court, coupled with the fact that GST details of defendant No.1's principal place of business falls within the jurisdiction of this Court and that it works for gain within the territorial jurisdiction of this Court, this Court has territorial jurisdiction to entertain the case at hand.

19. While refuting the assertion of defendants No. 2 and 3 that they are unrelated entities and that defendant No.1 is not their authorized seller/dealer, it is clarified that only relevant fact in this context is that the cause of action has arisen within the jurisdiction of this Court. It is also claimed at the behest of the plaintiff that alleged complicity of the defendants in illegal acts in areas where it is not authorized to do so cannot be used as a shield to try and dislodge the jurisdiction of this Court, rather admission on the part of the defendants that they are marketing and selling the products in states where they are allegedly not permitted to do so is a ground to cancel the license/permission granted to defendant No.2 under the Fertilizer (Control) Order, 1985 issued under the Essential Commodities Act, 1955. It is also claimed by the plaintiff that even assuming that defendant No.1 sold the goods without the express authorization of defendants No.2 and 3, it is for defendants No.2 and 3 to demonstrate

that the same occurred despite their having exercised due diligence and comprehensive oversight, all of which are a matter of trial in such proceedings.

20. Careful perusal of the reply to the application at hand and written statement to the main suit reveal that defendants No.2 and 3 are unrelated entities, each being a distinct legal entity and functioning entirely independently from the other. The Mitul Industries make the product in question that sold by ULink under the brand 'SELZIC'. Mitul Industries is a manufacturer and supplier of a wide range of sulphur based fertilizers and fungicides such as Sulphur 90% power fertilizer, zincated bentonite sulphur (Sulphur 65% + zinc 18%), sulphur micronutrient & Sea Weed based PGR Gell, etc. Mitul Industries has been a manufacturer in this industry since 1998 and is also recognized as an accredited member of the Pesticide Association of India, having its registered office at 1, Kasturi Park, New Maneklal Estate, L.B.S. Marg, Ghatkopar (W), Mumbai. ULink is an Indian Private Limited Company primarily engaged in wholesale of fertilizers, having its registered office at Office Nos. 001 and 002, Ground Floor Wing, "A" and Nos. 003 and 004 Ground Floor Wing "B" Nyayi Tech Park, Wadgaon Sheri, Pune. ULink is also the owner of the brand and registered proprietor of the trademark "SELZIC" registered under Class 1 bearing registration number 535705 (Document No.2

available at page No.8-9 of defendants' documents). In the year 2021, Mitul Industries entered into an agreement with ULink, whereby they were permitted to market and manufacture the fertilizer as mentioned above, under the brand name of "SELZIC". Since 2021, ULink has been authorized to and is offering for sale and selling the aforementioned fertilizer under the brand name of "SELZIC" to its distributors and customers in five states i.e. Gujarat, Maharashtra, Madhya Pradesh, Rajasthan and Uttar Pradesh. ULink also sells the said product through its distributors and retail network of Saathi Stores present in the five States that it is authorized to sell. Since fertilizers are regulated by the Fertilizer (Inorganic, Organic or Mixed) (Control) Order 1985 ('FCO') made by the Central Government under the Essential Commodities Act, 1955, every person including manufacturer, importer, a pool handling agency, wholesaler and a retail dealer intending to sell or offer for sale or carrying on the business of selling the fertilizer is required to make a Memorandum of Intimation to the State Government in Form A1 alongwith a certificate of source in Form O. On receipt of the complete memorandum, the State Government shall issue an acknowledgment of receipt in Form A-2. The Mitul Industries has the requisite licenses under the FCO to manufacture fertilizers (Documents No.4 at pages 25 to 31 of defendants' documents). ULink has the requisite authorization letter

under the FCO to sell fertilizers only in 5 States i.e., Gujarat, Maharashtra, Madhya Pradesh, Rajasthan and Uttar Pradesh, meaning thereby product "SELZIC" cannot be sold by Mitul Industries save and except in five States, as detailed hereinabove.

21. Specific objection with regard to territorial jurisdiction has been raised by the defendants No.2 and 3. It is averred in the reply to the application as well as written statement that (a) defendants No. 2 and 3 do not reside in the State of Himachal Pradesh, (b) they are not selling in the State of Himachal Pradesh, (c) they have not sold the infringing product to defendant No.1 or any other dealer in the State of Himachal Pradesh and (d) even if defendant No.1 sold the allegedly infringing product in Himachal Pradesh, it was an illegal sale by an unauthorized person with no permission or license to market or distribute or sell defendants No.2 and 3 product and defendant No.1 has been falsely implicated in the present suit only to invoke the jurisdiction of this Court.

22. At this stage, it is important to take note of the fact that notice in the main suit was also issued to defendant No.1. On 26.04.2024, Sh. Rajesh Kashyap, Advocate appeared on behalf of defendant No.1 and made a statement that he shall adopt the written statement filed on behalf of defendants No.2 and 3 and the written statement filed by aforesaid defendants may also be treated as written

statement on behalf of defendant No.1. This Court, after having recorded statement of above named counsel, granted four weeks' time to the plaintiff to file replication as well as rejoinder to the stay application.

23. At first instance, this Court vide order dated 12.01.2024, proceeded to grant ad interim injunction in favour of the plaintiff, thereby restraining the defendants, but subsequently afore order was taken into appeal before the Division Bench of this Court and order passed on 12.01.2024 was set-aside and matter was remitted back to this Court for fresh consideration. Even in proceedings pending before the Division Bench of this Court, defendant No.1 did not appear. Since specific statement came to be made at the behest of defendant No.1 that it be permitted to adopt the written statement filed by defendants No.2 and 3, this Court is persuaded to agree with Ms. Devyani Sharma, learned Senior counsel representing defendants No.2 and 3 that it stands established on record that afore defendants No.2 and 3 had not sold the infringing product to defendant No.1 and sale of the infringing product, if any, by defendant No.1 is an illegal sale by an unauthorized person with no permission or license to market, distribute or sell defendants No.2 and 3's product.

24. Though, it came to be strenuously argued by learned Senior counsel representing defendants No.2 and 3 that bare perusal

of invoices, available at page Nos. 188 to 190 of the plaintiff's documents, adduced on record by the plaintiff suggests sale of infringing product by defendant No.1, but this Court is of the view that same may not be of much relevance for the reason that defendant No.1 by adopting the written statement filed on behalf of defendants No.2 and 3 has admitted that he was not authorized by defendants No.2 and 3 to sell infringing product and sale shown to have been made in the State of Himachal Pradesh is an illegal sale by an unauthorized person with no permission or licence to market or distribute or sell defendants No.2 and 3's product. Since defendant No.1 has neither specifically denied the factum of his having made the sale of the infringing product in the State of Himachal Pradesh nor made any claim that he has been falsely implicated in the present suit only with a view to invoke territorial jurisdiction of this Court, this Court is persuaded to conclude at this stage that invoices available at page Nos. 188 to 190 of the plaintiff's document have been adduced on record solely with a view to invoke jurisdiction of this Court, which actually does not have territorial jurisdiction for so many other reason as would be spelt out hereinafter.

25. No doubt, it would be determined during trial whether invoices qua the sale of infringing product were actually issued by defendant No.1 or not. However, even if it is assumed that the

invoices were issued by defendant No.1, mere production thereof would not, by itself, be sufficient to confer territorial jurisdiction upon this Court once defendant No.1 has taken categorical stand before this Court by way of adopting written statement filed on behalf of defendants No. 2 and 3 that it was not authorized to sell infringing product of defendants No.2 and 3 in the State of Himachal Pradesh and sale, if any, made by it of infringing product in Himachal Pradesh was illegal sale by an unauthorized person with no permission or license to market or distribute the infringing produce. Mere production of invoices, as detailed hereinabove, would not be sufficient to conclude territorial jurisdiction of this Court to entertain the instant application.

26. At this stage, it is apt to mention that while considering the jurisdictional objection to determine the grant/denial of an interim injunction, the standard under Order 7 Rule 10 CPC does not apply, meaning thereby Court is not restricted to merely the averments in the plaint, nor is the Court bound to assume the plaint averments to be true. Territorial jurisdiction of this Court has been sought to be invoked on the basis of three alleged isolated purchases of the product of Defendants no. 2 and 3 from Defendant 1's shop in Tehsil Rohru. However, having carefully perused aforesaid invoices, coupled with the stand taken by defendant No.1, this Court at this stage is

persuaded to infer that these three alleged purchases appears to have been created with a view to create jurisdiction of this Court.

27. Besides above, this Court is also persuaded to agree with learned Senior counsel representing defendants No.2 and 3 that fertilizers being regulated commodities cannot be sold by defendant No.1, a retailer without obtaining authorization for sale from the Notified Agency. Clauses 8(2) and 8(3) of FCO reveal that every person, including a manufacturer, importer, pool handling agency, wholesaler or retail dealer, intending to sell or offer for sale fertilizers is required to submit a Memorandum of Intimation in Form A1, along with the prescribed fee and a certificate of source in Form O, to the Notified Authority. Upon receipt of such Memorandum, the Notified Authority is obliged to issue an acknowledgement in Form A2, which is deemed to be an authorization letter, thereby recognizing the concerned person as an authorized dealer for the purposes of the Fertilizer (Control) Order. If a retailer obtains fertilizers for sale from different sources, then certificate of source is required from each such source (Forth Proviso to Clause 8(3) of FCO). Neither Defendants no. 2 and. 3 have authorized Defendant no. 1 to sell "SELZIC" by issuing a Certificate of source in Form O to Defendant no. 1, nor there is any material to show that defendants No. 2 and 3 have supplied infringing product to defendant No.1, which fact otherwise has been admitted by

defendant No.1 by adopting the written statement filed by defendants No. 2 and 3. With the adoption of written statement filed by defendants No.2 and 3, defendant No.1 has virtually proved the claim of the plaintiff that all the three alleged instances of sale by defendant No.1 are not the product of defendants No.2 and 3, rather same are totally unauthorized and unlawful.

28. Moreover, by now it is well settled that isolated trap purchases cannot be used to procure jurisdiction, and sales by defendants at commercial scale within the territorial jurisdiction must be shown. Reliance in this regard is placed upon the judgment passed by Hon'ble High Court of Delhi in **Indovax Private Limited** (supra) wherein it has been held as under:-

“24. In *Glen* (supra) case, this Court has clearly held that one or two transactions is not sufficient to give jurisdiction to the Court and sale has to be on a commercial scale. In this case, the Court has also held that mere supply of the goods to individual purchaser for use is not sufficient to give jurisdiction to the Court as in such cases; the probability of public being deceived would not be present. The law laid down by this Court in this case clearly shows that unless the sale is on the commercial scale, it cannot be said that the cause of action for passing off has arisen in favour of the plaintiff within the jurisdiction of this Court. In the case of *Banyan Tree Holding (P) Limited v. A. Murali Krishna Reddy*, (2010) 42 PTC 361 (Del), this Court formulated the various questions including question no.(iii) in para 7 which is “*Is it permissible for the plaintiff to establish such prima facie case through “trap orders” or “trap transactions?”*” and proceeded to answer it in the following manner:—

57. Reverting to the present case, the position that emerges from the above judicial decisions is that while in trade mark and infringement cases, trap orders or trap transactions may be used as evidence, the fairness of such transactions is a relevant factor to be considered. Other relevant factors would be the nature of goods or services offered for purchase on the in-

ternet. If they require the customer to further physically verify their quality then the mere purchase of such goods through a trap transaction may not be treated as being sufficient evidence of infringement. The facts of each case will determine whether the trap transaction is a fair one and has resulted in a purchase on the internet of goods or services. A lone trap transaction will not be sufficient evidence of infringement or passing off. For the purposes of establishing that a part of the cause of action arose within the jurisdiction of the court, the Plaintiff would have to show that the Defendant has purposefully availed of the jurisdiction of the forum court by entering into a commercial transaction with an internet user located within the jurisdiction of the forum court. This cannot possibly be a solitary trap transaction since that would not be an instance of "purposeful" availment by the Defendant. It would have to be a real commercial transaction that the Defendant has with someone not set up by the Plaintiff itself. If the only evidence is in the form of a series of trap transactions, they have to be shown to be obtained using fair means. The Plaintiff seeking to establish jurisdiction on the basis of such trap transactions would have to aver unambiguously in the plaint, and also place along with it supporting material, to prima facie show that the trap transactions relied upon satisfy the above test. Question (iii) is answered accordingly."

25. So even if the plaintiff relies on a trap transaction it is required to show that the defendants are indulging into commercial sale of its product. The question what constitute a commercial transaction or sale is dealt with by Madras High Court in *Smithkline French Laboratories Limited v. Indoco Remedies Ltd.*, (2001) 21 PTC 672 (Mad), wherein it held:—

"6. *Per contra*, learned counsel for the respondent stated that only if the goods have been sold through a stockist or distributor or dealer of the respondent, then alone it can be construed as a commercial sale on the part of the respondent, so as to give jurisdiction to the court. Nowhere in the plaint it is stated that such a commercial sale is carried on in the City of Madras by the respondent. Perusal of the cause of action paragraph also indicates that no such averment is there to show that the respondent had authorised the stockist or distributor or dealer in the City of Chennai. Hence, it is stated that the sale of the product by any other unauthorised person would not confer any jurisdiction in this court. I am of the view that there is some force in the contention raised by the learned counsel for the respondent."

(emphasis supplied)

26. In *Himachal Pradesh Horticulture Produce Marketing and Processing Corporation Ltd. v. Mohan Meakin Breweries Limited*, (1981) 1 PTC 74

(P&H), the Court while dealing with the question of jurisdiction in cases of passing off has held as under:—

“9. In a case of present nature, the cause of action partly or wholly can arise in a given jurisdiction only if it is the defendant who is proved to have directly made sale of the goods under the impugned trade mark (within the jurisdiction of a given Court) not to an individual consumer but to a distributor or a wholesaler or a retailer and that such a sale should be at a commercial scale. If this much is not insisted upon, then the defendant can be dragged into litigation in any part of the country by only adducing flimsy kind of evidence that has been adduced in the present case by a company which has its head office of Solan in Himachal Pradesh where the defendant too have their head office and where it was convenient to the plaintiff to prosecute the suit and to the defendant to defend the suit. A big firm like Mohan Meakin Breweries Limited has its ramification all over the country and it is easy for it to have dragged this public corporation into litigation even at a far off place like Kanya Kumari if the only evidence necessary to give jurisdiction to that Court was of purchasing of a few bottles by any agent of Mohan Meakin Limited from someone locally there.”

(emphasis supplied)

27. The Supreme Court in *Dhodha House v. S.K. Maingi*, (2006) 32 PTC 1 (SC) has also clearly held as under:—

“43. In Patel Field Marshal Industries v. P.M. Diesels Ltd. again the thrust was on the sale of products and/or advertisement by the Appellant for registration of trade marks in the Trade Marks Journal and other local papers. The Division Bench of the High Court, as has been noticed hereinbefore, did not advert to the issue as to whether the defendant had been selling its product in Delhi on commercial scale or not. It is, therefore, not necessary for us also to dilate further on the said question. We have furthermore noticed hereinbefore that the advertisement appearing in a journal or newspapers by itself would not confer any jurisdiction on the court, if it otherwise did not have any.”

28. In the plaint, the plaintiff has nowhere alleged that the defendant has any authorized distributor, dealer or stockiest in Delhi. The plaintiff only averred *“that the Defendants through their small time agents are even paddling their products in Delhi.”* Also, in the paragraph where the plaintiff has pleaded that this Court has the jurisdiction, it only says that the said *“product is available for purchase in Delhi”*.

29. The plaintiff in para 43 of its amended plaint has alleged that cause of action arisen in favour of the plaintiff on 05.06.2013 when it asked the de-

fendants through a notice dated 28.05.2013 to desist from selling its product and its reply dated 14.06.2013. The plaintiff has also contended that the cause of action has also arisen in May 2013 when a poultry owner complained about the sub-standard vaccine manufactured by the defendants, believing it to that of the plaintiff. There is no document on record to show that the said poultry farm owner has purchased the vaccine of the defendants in Delhi from any dealer, authorized representative or agents of the defendants. The plaintiff has also alleged that the cause of action has arisen in his favour when the defendants advertised on its website that they are manufacturing the vaccine and also when they learnt that the defendants have fraudulently obtained the registration of their trademark. As discussed above, the defendants are the owner of the registered trademark and the plaintiff has already dropped his relief of infringement of its trademark. It is required to *prima facie* show that the defendants are indulging into commercial activity of sale of its product which the plaintiff claims is deceptively similar to its trademark within the jurisdiction of this Court. One of the contentions is that the defendants have put an advertisement informing the poultry world about its product in the name of "IN-NOVAX" which has been accessed by anyone in Delhi and, therefore, the part of the cause of action can be said to have arisen within the jurisdiction of this Court. However, the plaintiff has not produced any sufficient evidence except the transaction it has relied upon, to show that the defendants are selling their products in Delhi. As regards the cause of action dated 08.08.2013, it relates to the cancellation of trademark registration of defendants.

30. In *Banyan Tree* case (supra), this Court has held that posting of an advertisement depicting its mark is not sufficient to give cause of action for passing off unless it enables the defendants to enter into any commercial transaction with the viewer in the forum state. The Court has held as under:—

45. *This court holds that in order to prima facie establish that the Defendant purposefully availed of the jurisdiction of this court, the Plaintiff would have to show that the Defendant engaged in some commercial activity in the forum State by targeting its website specifically at customers within that State. This is consistent with the law laid down in *Cybersell* and reiterated later in *Toys R Us*. It is also consistent with the application of the 'tighter' version of the 'effects' test which is 'targeting'. In any action for passing off or infringement, it would have to be shown that the Defendant by using its mark intended to pass off its goods as that of the Plaintiff's. A mere hosting of a website which can be accessible from anyone from within the jurisdiction of the court is not sufficient for this purpose. Also a mere posting of an advertisement by the Defendant depicting its mark*

on a passive website which does not enable the Defendant to enter into any commercial transaction with the viewer in the forum state cannot satisfy the requirement of giving rise to a cause of action in the forum state. Even an interactive website, which is not shown to be specifically targeted at viewers in the forum state for commercial transactions, will not result in the court of the forum state having jurisdiction. In sum, for the purposes of Section 20(c) CPC, in order to show that some part of the cause of action has arisen in the forum state by the use of the internet by the Defendant, the Plaintiff will have to show prima facie that the said website, whether euphemistically termed as “passive plus” or “interactive”, was specifically targeted at viewers in the forum state for commercial transactions. The Plaintiff would have to plead this and produce material to prima facie show that some commercial transaction using the website was entered into by the Defendant with a user of its website within the forum state and that the specific targeting of the forum state by the Defendant resulted in an injury or harm to the Plaintiff within the forum state. Question no. (ii) is answered accordingly. Question (iii) Is it permissible for the Plaintiff to establish such prima facie case through “trap orders” or “trap transactions”?

31. In the case of *Sholay Media Entertainment v. Yogesh Patel*, ILR (2010) Supp. (1) Delhi 11, this Court held in para 17 read as under:—

“17. As to what are the principles applicable for a court to discern that particular internet based causes of action subsist in a suit, has been spelt out in a recent Division Bench of this Court, in *Banyan Tree Holding Ltd. v. Murali Krishna Reddy Suit No. 894/2009*, decided on a reference to the Division Bench on the issue of jurisdiction, on 23.11.2009. The Court held that:

38. Having surveyed the law as it has developed in different jurisdictions, this Court is of the view that the essential principles developed as part of the common law can be adopted without difficulty by our courts in determining whether the forum court has jurisdiction where the alleged breach is related to an activity on the internet. At the outset, this Court does not subscribe to the view that the mere accessibility of the Defendants website in Delhi would enable this Court to exercise jurisdiction. A passive website, with no intention to specifically target audiences outside the State where the host of the website is located, cannot vest the forum court with jurisdiction. This Court is therefore unable to agree with the proposition laid down in *Casio*. The said decision cannot be held to be good law and to that extent is overruled.

39. India TV appears to be somewhat closer to the development of law in this regard since the decision in Casio. In India TV, the learned single Judge impliedly doubted the correctness of the decision in Casio. The learned single Judge in India TV acknowledged that a mere accessibility of website may not be sufficient to attract jurisdiction of the forum court. This, in the considered view of this Court, is the correct position in law.

40. There was no occasion for this Court even in India TV to examine the finer aspects of the question of jurisdiction based on the nature of the website, the intention of the host of the website to specifically target viewers outside its jurisdiction, and the effect of hosting such website on audiences outside such state. It appears to this Court that for the purposes of a passing off action or an action for infringement where the plaintiffs is not carrying on business within the jurisdiction of the forum court, and where there is no long arm statute, the plaintiffs would have to show that the Defendant purposefully availed itself of the jurisdiction of the forum court. It is not enough merely to show that the website hosted by the Defendant is an interactive one. It would have to be shown that the nature of the activity indulged in by the Defendant by the use of the website was with an intention to conclude a commercial transaction with the website user.

41. This Court is not able to accept the submission of the learned Counsel for the plaintiffs that the test of "purposeful availment" must be replaced by the test of "purposeful avoidance". While the Defendant may in his defence show how he avoided the forum state, the initial burden is on the plaintiffs to show that the Defendant "purposefully availed" itself of the jurisdiction of the forum court. The issue of incorporating filters to block access to the website by viewers located outside the forum state will have to be considered while deciding if the Defendant had "purposefully avoided" the forum state. However, that question will arise only if the plaintiffs have been able to show that the website of the Defendant is interactive and permits commercial transactions to be concluded by the Defendant with a user of the website.

42. This Court holds that jurisdiction of the forum court does not get attracted merely on the basis of interactivity of the website which is accessible in the forum state. The degree of the interactivity apart, the nature of the activity permissible and whether it results in a commercial transaction has to be examined. For the "effects" test to apply, the plaintiffs must necessarily plead and show prima facie that the specific targeting of the forum

state by the Defendant resulted in an injury or harm to the plaintiffs within the forum state. For the purposes of a passing off or an infringement action (where the plaintiffs is not located within the jurisdiction of the court), the injurious effect on the plaintiff's business, goodwill or reputation within the forum state as a result of the Defendants website being accessed in the forum state would have to be shown. Naturally therefore, this would require the presence of the plaintiffs in the forum state and not merely the possibility of such presence in the future. Secondly, to show that an injurious effect has been felt by the plaintiffs it would have to be shown that viewers in the forum state were specifically targeted. Therefore the "effects" test would have to be applied in conjunction with the "sliding scale" test to determine if the forum court has jurisdiction to try a suit concerning internet based disputes.

In a subsequent judgment, the Karnataka High Court, in *Presteege Property Developers Ltd. v. Prestige Estates Projects Ltd.* MFA No. 494 & 13696/2006) applied the rule indicated in *Banyan Tree*, and further held that mere "booking" or placing an order through internet is insufficient, to say that any transaction takes place, since the contract formation is not at the place of booking or ordering the product or service. Thus, it is held that the mere existence of a web site, without further proof of the effect thereof (Ref. *Banyan Tree's* formulation that the plaintiffs has "to show that an injurious effect has been felt" and it "would have to be shown that viewers in the forum state were specifically targeted.") does not clothe this Court with territorial jurisdiction to entertain the present suit. The Court is also satisfied that the solitary sale of a CD, is insufficient to say that the defendants "targeted" the Delhi markets. Concededly, both parties do not have any business or commercial office within the jurisdiction of the Court; the plaintiffs even applied to the Registrar of Companies in Chennai, for relief against the defendants. On both the factual foundation claiming that this Court has jurisdiction, the materials are insufficient to justify continuation of the suit."

32. This Court has also laid down the same proposition in the case of *(India TV) Independent News v. India Broadcast Live Llc* (2007) 35 PTC 177 Del. The relevant paragraphs are reproduced as under:—

"44. Learned Counsel referred to the provisions of Section 20 of the said code to contend that this court has jurisdiction in the present matter. The said provision reads as under:

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

Subject to the limitations aforesaid, every suit shall be instituted in Court within the local limits of whose jurisdiction-

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.

[Explanation].-A corporation shall be deemed to carry on business at its sole or principal office in [India] or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place."

"46. As regards the exercise of personal jurisdiction in cases involving Internet activities, the position appears to be that mere 'passive' posting of a website does not give jurisdiction to the court within whose jurisdiction, the complainant company is present. Thus, personal jurisdiction cannot be exercised over non-residents merely because their website is accessible within the jurisdiction of the court. There has to be something more to indicate purposeful direction of activity to the forum state in a substantial way. In Cybersell Inc. case (supra) limited interactivity of the website restricted to received browser's name and expression of interest but not signing up for the services provided was not considered to be sufficient for the exercise of jurisdiction."

33. There is no averment in the plaint to even *prima facie* show that through its website the defendants are indulging into any commercial activity within jurisdiction of this Court. To give jurisdiction to this Court, it is imperative upon the plaintiff to *prima facie* show by way of its averment in the plaint duly supported by the documents that the defendants are indulging either by itself or through their agents or distributors in the commercial activity within the jurisdiction of this Court which amounts to passing off of the goods of the plaintiff. In the present case, in para 44, the plaintiff only states that the goods of the defendants are *available for sale* in Delhi but this averment is not supported by any documentary evidence. There is no averment that the defendants are selling their products in Delhi through their authorized agent, distributors etc. On the other hand, the events of

the case clearly show that the plaintiff is indulging into the forum hunting. Initially, when it filed its plaint, it relied on one Invoice of Balvinder Medical Hall dated October 5, 2013 to *prima facie* show that the defendants' were selling their goods in Delhi."

29. Documents adduced on record by the plaintiff suggest that infringing product is listed on the website of defendant No.3, but there is nothing on record to prove that afore product has been or is being sold by defendants No. 2 and 3 in the State of Himachal Pradesh. Moreover, defendant No.3 is authorized to sell only in five States i.e. Gujarat, Maharashtra, U.P., M.P., and Rajasthan and therefore, it otherwise could not have sold this product in State of Himachal Pradesh (Document No.5 at pages 32 -41 of defendant's documents). Moreover, this Court finds that website screenshots produced by the plaintiff (Annexure M at page No.191 to 194 of plaintiff's documents) suggest that that the States selected for delivery were U.P., and Maharashtra and no order has been shown to be placed on the website from HP for delivery in Himachal Pradesh. No such evidence of transaction/delivery in H.P. has been produced by the plaintiff, therefore, mere listing of infringing product on the website of defendant No.3 may not be sufficient to invoke jurisdiction of this Court.

30. Similarly, this Court is not persuaded to agree with the submissions made at the behest of the plaintiff that listing of infringing product on Indiamart would itself confer jurisdiction upon this Court.

Though, plaintiff has not shown any sale through Indiamart within the territorial jurisdiction of this Court, but otherwise by now it is well settled that mere existence of an interactive website accessible within the territorial jurisdiction of this Court, would not be sufficient for the suit to be maintainable, rather plaintiff would be additionally required to show that some commercial transaction was concluded within the jurisdiction of this Court. Reliance in this regard is placed upon the judgment rendered by Hon'ble Delhi High Court in case titled **Helsinn Healthcare SA Vs. AET Laboratories Private Limited and Ors.** passed in CS(Comm.) 1188/2024, wherein it has been held that mere accessibility of a website including Indiamart, within the territorial jurisdiction of this Court would not amount to specific targeting of customers/consumers in territorial jurisdiction of that Court in the absence of any commercial transaction executed through the said website. Relevant paras of the judgment are reproduced as under:-

“45. In the present case, even after filing additional documents, the plaintiff has failed to show that an order for any of the products of the defendants has been placed on their website or IndiaMart and that the same has been delivered in Delhi. Mere accessibility of a website within the territorial jurisdiction of this Court would not amount to specific targeting of customers/consumers in Delhi in the absence of any commercial transaction executed through the said website. Thus, the test of 'purposeful availment' of customers/consumers within the jurisdiction of this Court, as laid down in *Banyan Tree* (supra) has not been satisfied in the present case.

46. In *New Life Laboratories v. Dr. Ilyas New Life Homoeo and Herbals* relied on behalf of the defendants, a coordinate bench of this Court declined to grant an interim injunction in favour of the plaintiff on the ground that the plaintiff has failed to place any

material on record to show that the defendants are selling their products within the jurisdiction of this Court. Hence, on a prima facie view, territorial jurisdiction of this Court was not made out and an interim injunction was denied.

47. The observations made by the coordinate bench in *New Life Laboratories (supra)* is squarely applicable in the present case. The plaintiff has failed to place on record any material to show that any of the products of the defendants are available for sale within the jurisdiction of this Court or they have any customers in Delhi.

48. Therefore, in my prima facie view, the plaintiff has failed to make out a case for the territorial jurisdiction of this Court.”

31. Though, it came to be argued at the behest of the plaintiff that evidence in the form of a lone trap order ipso-facto is sufficient to maintain the suit, but it is trite law that isolated trap purchases cannot be used to procure jurisdiction, rather sales by defendants at commercial scale within the territorial jurisdiction must be shown as has been held in **Indovax Private Limited** case (supra).

32. At this stage, it is also apt to take note of order dated 06.06.2025 passed by this Court in **SML Limited vs. Mohan & Company and another**, passed in OMP No.320 of 2023 in COMS No.6 of 2023, which was heavily relied upon by the plaintiff in the case at hand. In afore order, this Court dealt with the issue of territorial jurisdiction in para-55, but bare perusal of the same reveals that there was no admission by retailer i.e. defendant No.1 that manufacture defendant No. 2 in that case had neither authorized the retailer nor supplied the product to the retailer. Moreover, in afore case defendant No.2 was shown to have manufacturing unit in Himachal Pradesh. Most importantly in afore judgment, this Court did not deal with

provision of FCO pertaining to grant of authorization to sell to a retailer based on submissions of Certificate of Source in Form O received from the manufacturer or wholesaler. Aforesaid order was laid challenge in appeal before the Division Bench of this Court i.e. COMAP No. 2 of 2025, titled **Safex Chemicals Private Limited vs. SML Limited and another**, wherein Division Bench of this Court though did not go into the findings given by this Court with regard to alleged infringement of the patent granted in favour of the plaintiff in that case, but set aside the finding given by this Court that it has territorial jurisdiction to entertain the suit. While placing reliance upon the judgment passed by Hon'ble Apex Court in **Asma Lateef** (supra), Division Bench of this Court arrived at a conclusion that there is 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 consequences whereof, the impugned order was vacated. At this stage, it would be profitable to reproduce paras No. 36 to 43 of the judgment passed by Division Bench of this Court in **Safex Chemicals Private Limited** case(supra) herein below:-

“6. 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 **Expfar 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."

33. In view of the detailed discussion made hereinabove as well as law taken into consideration, on the parameter of territorial jurisdiction the plaintiff has failed to make a prima-facie case for grant of interim injunction, as has been held in **Asma Lateef** (supra) reproduced hereinabove. Since this Court for the reason and law taken into consideration hereinabove, is convinced that this Court has no territorial jurisdiction, there appears to be no occasion to go into the other aspects of the matter with regard to alleged infringement of suit patent.

34. Consequently, in view of the above, this Court finds no merit in the present application and accordingly same is dismissed.

35. Any observation made herein above shall not be construed to be a reflection on the merits of the case and shall remain confined to the disposal of the present application alone.

COMS No.03 of 2024

Be listed on 23.09.2026 for admission and denial of the documents before the Registrar (Judicial).

**(Sandeep Sharma),
Judge**

July 02, 2026
(shankar)