

JURISDICTION IN TRADEMARK AND COPYRIGHT INFRINGEMENT ACTIONS IN INDIA
POST-IPRS: INTERPRETATIONS AND CONCLUSIONS

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I. Introduction: The *WWE* Breaking Point

In October 2014, a Delhi appeals court in *World Wrestling Entertainment (WWE) v. Reshma Collection*¹ found that a Plaintiff located in one jurisdiction could, against a Defendant located in a second jurisdiction whose activities invited a cause of action in a third jurisdiction, sue for trademark and copyright infringement in a *fourth* jurisdiction under Indian law. Even adjusting for the liberal position endorsed by the Indian trademark and copyright statutes on jurisdiction, this was an extraordinary outcome.

In effect, a corporate Plaintiff with no place of business in India had succeeded in sustaining an infringement suit in Delhi against Mumbai-based Defendants selling products locally. The court upheld the Plaintiff's claim – made *ex parte* and unverified by evidence – that *its own website hosted in the United States* could theoretically be used by a person in Delhi to purchase *the Plaintiff's products*, and so demonstrate that the Plaintiff has business interests in Delhi, in order to have jurisdiction.² In principle, it permitted a rightsholder under the Indian trademark or copyright statutes located anywhere in the world, with very few qualifications, to sue for infringement anywhere in the country.

Two trends have dominated this furrow of the Indian law on jurisdiction in intellectual property cases in recent years. The first has been a notable rise in the number of trademark and copyright infringement actions filed by and against corporations. This has meant that, for a large corporation with multiple offices, determining where it 'carries on business' – a sufficient condition under Indian law for a Plaintiff to sustain an infringement action – has become an increasingly important inquiry.

The second trend has been of a large number of trademark and copyright infringement actions being triggered by causes of action occurring online. In such cases, determining where 'the

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¹ *World Wrestling Entertainment v. Reshma Collection*, 2014 (60) PTC 452 (Del)(DB).

² While this finding was limited to the sustainability of the Plaintiff's suit, WWE would ultimately get their permanent injunction – and a damages award of ₹500,000 for good measure – *ex parte* against the same Defendant in October 2016. See *World Wrestling Entertainment v. Reshma Collection*, (2017) 70 P.T.C. 550 (Del.).

cause of action, in whole or in part' arose – another condition available to Plaintiffs for sustaining infringement actions – can be tough to ascertain.

Therefore, it is tempting, in hindsight, to see the *WWE* decision as the precise moment when these two trends were finally stretched to the breaking point. Going strictly by the *WWE* position – one which continues to be followed sporadically in Delhi³ – Defendants could be compelled to answer trademark and copyright infringement claims at any jurisdiction in India, to be determined entirely at the discretion of the Plaintiff.

The Indian Supreme Court was offered the opportunity to inject some balance into this position in *IPRS v. Sanjay Dalia*⁴ (*'IPRS'*) in July 2015. Here, the Supreme Court was confronted with another instance of a corporate Plaintiff filing a suit at a jurisdiction tactically favourable to it, in a manner that was legally compliant in form but not in spirit. The Supreme Court in *IPRS* succeeded in marking out some constraints within which the law on jurisdiction must operate in such suits.

In nearly two and a half years since then, Indian courts have grappled with these constraints, with statutory language, with diverse factials and even more diverse interpretations. The overall effect is one of overwhelming disarray. It is this disarray that I shall endeavour to navigate through and resolve in this Article.

§2 and §3 of this Article set out the statutory provisions available to Plaintiffs seeking to set up jurisdiction for trademark and copyright infringement actions in India. In §4, I discuss the *IPRS* decision and identify fault lines in its reading of the jurisdiction statutes. Through §5, §6 and §7, I offer some thoughts on the raft of case law generated by Indian High Courts in the months following *IPRS*, and the manner in which they have followed, modified and extended the core propositions set out by the Supreme Court. §8 focuses on two post-*IPRS* talking points that have dominated Indian law in this area in 2017 – *quia timet* jurisdiction claims and the inconsistent judicial scrutiny visited on challenges to jurisdiction. I conclude in §9 with a call to return to the objective behind the incorporation of the Plaintiff-friendly jurisdiction provisions under Indian trademark and copyright law.

³ See *Icon Health & Fitness v. Sheriff Usman*, CS(COMM) 216/2016, Delhi High Court order dated September 14, 2017; *Lotus Green v. Renowned Buildtech*, CS(COMM) 400/2017, Delhi High Court order dated December 4, 2017.
⁴ *IPRS v. Sanjay Dalia*, (2015) 63 P.T.C. 1 (S.C.).

In this Article, I take the position that *IPRS* has been extended far beyond its remit to crowbar words into the Indian copyright and trademark statutes that do not belong there, and that a swift reconsideration of the Indian law on jurisdiction governing copyright and trademark infringement action is necessary for this reason.

II. Jurisdiction under Section 20 of the Civil Procedure Code

Indian law follows the well-established norm that civil proceedings must ordinarily be instituted by a Plaintiff at a place where the Defendant may defend them without inconvenience. Section 20 of the Indian Civil Procedure Code, 1908 (CPC) embodies this norm of chasing the Defendant to make jurisdiction. It instructs that civil suits must be instituted where the Defendant resides or carries on business [Section 20(a)] or where the cause of action arises, wholly or in part [Section 20(c)].

Appended to Section 20 is an explanation, which dictates that the expression ‘carries on business’, as it applies to corporate Defendants, means the sole or principal office of the corporation. Alternatively, if the cause of action occurs at any place where a corporate Defendant also has a subordinate office, that place shall be presumed to be where the corporation carries on business.

The upshot of the Explanation is that a corporate Defendant may be sued *either* at the place where its sole or principal office is located *or* at a place where the cause of action coincides with a subordinate office of the Defendant. The reason for the first part of the Explanation from the standpoint of the convenience of the Defendant is clear and intuitive since presumably a corporate Defendant has sufficient resources at its disposal to defend a civil action at its sole or principal place of business.

However, the second part of the Explanation, which opens up a corporate Defendant to civil proceedings even at the location of a subordinate office, is somewhat anomalous. While a Defendant could reasonably prepare for and defend an action at its sole or principal office, doing so at any one of potentially numerous subordinate offices is certainly at odds with the convenience of the Defendant. This has been recognised by the Indian Supreme Court as far back as 1991, in *Patel Roadways v. Prasad Trading*.⁵

⁵ *Patel Roadways v. Prasad Trading*, (1991) 4 S.C.C. 270 (India).

This case determined that the intention behind the second part of the Explanation was to prevent a corporate Defendant from claiming that it does not carry on business at a place where other factors – the cause of action and the presence of its own subordinate office – strongly indicate that it does.⁶ In *Patel Roadways*, the Supreme Court reasoned that, permitting a corporate Defendant to wriggle out of a prime suing jurisdiction in this manner would have the undesirable effect of compelling the Plaintiff to travel to the jurisdiction of the Defendant’s principal office to sue, where, presumably, the scales of convenience would be tilted in the Defendant’s favour.⁷

As such, *Patel Roadways* confirms a coherent and unequivocal departure from the convenience of the Defendant as the guiding intention behind the second part of the Explanation to Section 20.⁸ It merits observation, however, that *Patel Roadways* was insistent that the word “or” separating the two limbs of the Explanation meant that a corporate Defendant could be presumed to be carrying on business at either its principal office or its subordinate office where any cause of action also coincides, but not at both.⁹

III. Jurisdiction under Sections 62(2) and 134(2)

On top of the jurisdiction framework set out by Section 20 of the CPC, the Indian Copyright Act and Trade Marks Act offer Sections 62(2) and 134(2) respectively.¹⁰ These provisions capture the exceptional rule that, over and above the rules for jurisdiction provided under Section 20, a Plaintiff retains the freedom to bring an infringement action where the *Plaintiff* resides or carries on business. The reason for this is to ensure the convenience of the Plaintiff in instituting proceedings for copyright or trademark infringement, as the case may be.¹¹

⁶ “The clear intendment of the Explanation,” said the Supreme Court, “is that, where the corporation has a subordinate office in the place where the cause of action arises, it cannot be heard to say that it cannot be sued there because it does not carry on business at that place.” *Id.* ¶ 13.

⁷ *Patel Roadways v. Prasad Trading*, (1991) 4 S.C.C. 270 (India) at ¶ 13.

⁸ The Supreme Court felt that permitting a corporate Defendant to dodge jurisdiction in the alternative to this interpretation “would be a great hardship” to the Plaintiff, and that compelling to defend an action where the cause of action overlaps with the Defendant’s subordinate office would be fair since “that place should be convenient to the Plaintiff”. *Id.* at ¶ 13.

⁹ *Id.* at ¶ 12.

¹⁰ The two provisions are *in pari materiae* and references hereinafter to Section 134(2) in relation to trademark infringement actions apply with equal force to Section 62(2) in relation to copyright infringement actions, and *vice versa*.

¹¹ The Supreme Court in *IPRS* offered the most detailed discussion yet for the legislative intent informing what I will call the Plaintiff-option jurisdiction provision under Section 62(2) of the Copyright Act. The short point is that it was intended to be for the benefit of copyright holders who would be deterred from pursuing civil proceedings

Two further points may be made at this stage. First, it is clear that a Section 62(2)/134(2) claim for jurisdiction in a copyright/trademark infringement action has nothing to do with Section 20. Sections 62(2)/134(2) open with non-obstante language to underscore this very point. If a Plaintiff carries on business at a place, it can file a suit there, regardless of where the Defendant is or where the cause of action arises, and without the slightest concern for any of the *Patel Roadways*-infused trappings of Section 20 or its Explanation.

Second, a Plaintiff seeking to make jurisdiction under Sections 62(2)/134(2) may be a corporation, and the words ‘carries on business’ under Sections 62(2)/134(2) are identical to those under Section 20(a). While the Explanation to Section 20 is not appended to Sections 62(2)/134(2), it is clear from Supreme Court case law in recent years that the expression ‘carries on business’ under Sections 62(2)/134(2) is to be read in a like manner as under Section 20.¹²

IV. The Supreme Court Decision in *IPRS*

A. Context

It is in this context that the Supreme Court decision in *IPRS* must be interpreted. Here, a Mumbai-based corporate Plaintiff had sued a Mumbai-based Defendant for copyright infringement in Delhi on the strength of the Plaintiff carrying on business out of its subordinate office in Delhi. The jurisdiction claim, therefore, was formally within the Plaintiff-option jurisdiction clause in Section 62(2). Equally, any finding in favour of the Plaintiff regarding the sustainability of the suit at Delhi would have to make peace with the fact that it would also authorise a similarly placed Plaintiff to sustain such a suit at the same location as any of its numerous subordinate offices.

Further, *IPRS* came to be decided around nine months on from the remarkable judgment in *WWE*, where a Delhi appeals court had extended the term “carries on business” under Sections 62(2)/134(2) to the mere *possibility* of the Plaintiff having a commercial presence in a given

for infringement of their rights if the law required them to chase Defendants into other jurisdictions. *IPRS v. Sanjay Dalia*, (2015) (63) P.T.C. 1 (S.C.) at ¶ 10-11.

However, the reasons for extending an identical provision under the Trade Marks Act in 1999 in service of trademark rights holders remain unclear. Today, trademark rights holders have little in common with their copyright brethren who were supposed to benefit from the incorporation of Section 62(2) into the Copyright Act in the 1950s. I have argued elsewhere that the reasons for this extension to trademark rights holders are *prima facie* unconvincing. See Eashan Ghosh, *A Recovery Plan for the Indian Law on Maintainability of Trade Mark Infringement Actions after WWE’s Knockout Punch*, 37(5) EUR. INTELL. PROP. REV. 320, 321-322 (2015).

¹² See *Dhodha House v. S.K. Maingi*, (2006) 32 P.T.C. 1 (S.C.) at ¶ 46-50.

jurisdiction *via* the internet. This was a far lower threshold than the presence of a physical subordinate office, which had traditionally been the requirement for an entity to meet the “carries on business” condition. *WWE* had inarguably tilted the scales too far in favour of Plaintiffs.¹³ Thus, the Supreme Court in *IPRS* was under pressure to address the relative convenience of the parties to a copyright infringement suit. As a result, the Supreme Court ruled against the Plaintiff on jurisdiction and made three key determinations:

First, it bluntly stated that the extension of Sections 62(2)/134(2) to infringement actions initiated in far-flung places on the pretext that a corporate Plaintiff carries on business at such place through its subordinate office was an abuse of the Plaintiff-option jurisdiction provision.¹⁴ To check such abuse, the Supreme Court recommended a balancing act. It said that courts should consider the mischief sought to be addressed by Sections 62(2)/134(2) – *i.e.* permitting Plaintiffs to bring infringement actions at locations more convenient to them – and the counter-mischief that could hit Defendants if Sections 62(2)/134(2) were to be applied liberally – *i.e.* forcing Defendants to defend infringement actions at extremely inconvenient locations.¹⁵

B. Addressing the Mischief

Second, while it recognised that jurisdiction under Sections 62(2)/134(2) was untethered to Section 20, it said that this freedom to sue exclusively under Sections 62(2)/134(2) was not absolute.

“In case the Plaintiff is residing or carrying on business at a particular place/having its head office and at such place cause of action has also arisen wholly or in part,” said the Supreme Court, *“the Plaintiff cannot ignore such a place under the guise that he is carrying on business at other far-flung places also.”*¹⁶

The framing here is critical. The highlighted portion clarifies that if the Plaintiff’s residence or principal place of business coincides with the location of the cause of action, the Plaintiff *cannot* sue elsewhere.¹⁷ The only uncertainty is lent by the words *“Plaintiff is residing or*

¹³ It is curious but not unexpected that the *IPRS* Supreme Court makes no direct reference to *WWE*.

¹⁴ *IPRS v. Sanjay Dalia*, (2015) 63 P.T.C. 1 (S.C.) at ¶ 16.

¹⁵ *Id.* ¶ 23-24.

¹⁶ *Id.* ¶ 16. Edits and emphasis in all direct quotations hereinafter is mine alone.

¹⁷ Similarly, it concluded that, given an option between suing at a place where it resides or carries on business coupled with the cause of action arising there and a place where it carries on business through a subordinate

carrying on business at a particular place/having its head office". At first glance, this suggests that the restriction holds only where the cause of action overlaps with the Plaintiff's place of residence, principal office or principal place of business. This is confirmed at later points in *IPRS* itself.¹⁸ However, other points in the judgment hint that the restriction is broader, and would attach where the cause of action overlaps with a place where the Plaintiff merely 'carries on business'.¹⁹

It is a point that commands substantial attention since its consequence, especially on corporations, is profound. If the operation of the restriction is confined to the Plaintiff's residence, principal office or principal place of business, a corporate Plaintiff with a principal office at location A and ten subordinate offices around the country would only be limited by *IPRS* to filing suit at A if the cause of action arises there. However, if the restriction applies to any place where the Plaintiff carries on business, a cause of action arising at the same place as, say, the seventh of its ten subordinate offices would *compel* the Plaintiff to sue at that place, to the exclusion of its principal office.

The former view is more appealing. This is because the anti-mischief objective, at its core, should only weed out suits filed by Plaintiffs at far off places unconnected to either party or at places where Plaintiffs perceive a lopsided advantage in their favour. The latter view, in a sense, amounts to importing a *Patel Roadways*-style exposition on the Explanation to Section 20 into the phrase 'carries on business' in Sections 62(2)/134(2). The difficulty that arises on both views, of course, is that, although *IPRS* has used the words 'carrying on business at a place/having its head office', the two phrases separated by the punctuation slash have entirely different connotations in this context.

Under either connotation, however, the Supreme Court eliminates the possibility of suing under Sections 62(2)/134(2) solely on the strength of the location of the Plaintiff's subordinate office in the target jurisdiction. At a pinch, this specific passage can also be read to cover instances where a Section 62(2)/134(2) invocation of jurisdiction is sought to be defended where the Plaintiff's subordinate office is located along with what is realistically a trivial or

office but where no cause of action arises, a Plaintiff must institute an infringement suit at the former location only. *Id.* at ¶¶ 16-20.

¹⁸ *Id.* ¶ 17, for instance, uses the words "ordinary residence/principal place of business"; *Id.* ¶ 24, 47.

¹⁹ *Id.* ¶ 23, 47.

insignificant part of the cause of action. These are the true mischiefs sought to be stamped out by *IPRS*.²⁰

However, the very next sentence in the same passage – to the effect that the intention of the Copyright and Trade Marks Acts is to secure the convenience of the *Plaintiff* – runs counter to the tenor of *restricting* the *Plaintiff*'s options.²¹ The same paragraph also speaks amorphously of the need to budget for the convenience of the parties in determining jurisdiction, which only creates confusion.

C. Duplicity on the Applicability of Section 20

Finally, the Supreme Court's observations on the interplay between Sections 62(2)/134(2) and Section 20 require to be addressed. Though the non-obstante language at the top of Sections 62(2)/134(2) suggests that the uncoupling of these provisions from the influence of Section 20 is absolute, the *IPRS* Supreme Court took divergent stances on this point.

At paragraph 12, the Supreme Court said:

"In our opinion, the expression 'notwithstanding anything contained in the Code of Civil Procedure' does not oust the applicability of the provisions of Section 20 of the Code of Civil Procedure and it is clear that [an] additional remedy has been provided to the Plaintiff so as to file a suit where he is residing or carrying on business etc, as the case may be. Section 20 of the Code of Civil Procedure enables a Plaintiff to file a suit where the Defendant resides or where the cause of action arose."

However, at paragraph 20, it said:

"There is no doubt [that] the words used in [Sections 62(2)/134(2)], 'notwithstanding anything contained in the Code of Civil Procedure or any other law for the time being in force', emphasise that the requirement of Section 20 of the CPC would not have to be complied with by the Plaintiff if he resides or carries on business in the local limits of the court where he has filed the suit but, in our view, at the same time, as the provision providing for an additional forum, cannot be interpreted in the manner that it has authorised the Plaintiff to institute a suit at a different place

²⁰ *Id.* ¶ 22.

²¹ The Supreme Court said: "The very intendment of the insertion of provision in the Copyright Act and the Trade Marks Act is the convenience of the Plaintiff. The rule of convenience of the parties has been given a statutory expression in Section 20 of the CPC as well. The interpretation of provisions has to be such which prevents the mischief of causing inconvenience to the parties." *Id.* ¶ 16.

other than the place where he is ordinarily residing or having principal office and incidentally where the cause of action wholly or in part has also arisen.”

These two passages point at drastically different conceptions of the space occupied by Sections 62(2)/134(2) and Section 20 relative to each other. Paragraph 12 appears to advocate that Section 20 continues to be the *grundnorm* from which Sections 62(2)/134(2) are merely deviations. Paragraph 20, conversely, suggests a view more faithful to the copyright/trademark statutes, subject only to the anti-mischief condition that the coincidence of the Plaintiff’s principal office and the cause of action at a place limits the freedom under Sections 62(2)/134(2) to that place alone.

Both conceptions also suffer from clear objections. The first view negates the very meaning of the non-obstante opening of Sections 62(2)/134(2). The second view, in sum, declares that there is ‘no doubt’ that the first view is incorrect.²²

Overall, though, it is the first passage that rankles. To say that a non-obstante clause ‘*does not oust the applicability*’ of the very provision it is aimed at neutralising is, on any view, extremely poor framing. Its appearance in this context prompts one of two possibilities.

The first possibility is that Sections 62(2)/134(2) are envisioned by the *IPRS* Supreme Court as the smaller of two concentric circles, with Section 20 supplying the larger circle. Under this interpretation, Paragraph 12 prescribes the rule that the ‘additional remedy’ under Sections 62(2)/134(2) is only available where one (or more) of the Section 20 conditions are present in the target jurisdiction.

Even so, this only ought to apply in the specific instance that is described in Paragraph 12 *i.e.*, where the Plaintiff brings a suit at a place that is *not* a place where the Plaintiff resides or carries on business. Under this formulation, the first port of call in a jurisdiction inquiry would be under Section 20, to establish whether or not the Defendant resides or carries on business [Section 20(a)], or whether there is a cause of action in the target jurisdiction [Section 20(c)].

The second possibility – a formally unattractive one – is that ‘does not oust the applicability’ is simply an error by the Supreme Court, and that Sections 62(2)/134(2) enable a Plaintiff to bypass Section 20, as is suggested by the non-obstante opening words. A Plaintiff would thus

²² The frustrating inconsistency between these views is heightened by the fact that the remainder of the discussion of the jurisdiction possibilities arising out of Section 20 by the *IPRS* Supreme Court is limited and unobjectionable. *Id.* ¶ 12-15.

be able to maintain a suit simply by demonstrating that it carries on business within the target jurisdiction, with no reference to the Defendant or the cause of action whatsoever. Should it be unsuccessful in establishing jurisdiction in this manner, the fate of its action would be determined by whether it can meet Section 20 in the same target jurisdiction.

The availability of Section 20 as a backup in such cases is implied by the use of the words “shall...include” in Sections 62(2)/134(2), which suggests that the Plaintiff-option jurisdiction under Sections 62(2)/134(2) is in addition to, and not in derogation of, the Section 20 conditions. This is suggested even in Paragraph 12 by the use of the words “Section 20 of the Code of Civil Procedure enables” a Plaintiff to sue where the Defendant resides or carries on business, or where the cause of action arises.

Crucially, under this interpretation, an inquiry into jurisdiction would commence from the question of whether the Plaintiff qualifies for jurisdiction under Sections 62(2)/134(2). It is only if the Plaintiff fails to make jurisdiction there that Section 20 would be considered. This would leave the option open to the Plaintiff to choose between pressing its case under Section 62(2)/134(2) alone, or pressing it under Section 20 alone, or pressing it under both, in the alternative, so long as it does not inconvenience the Defendant.

D. Initial Judicial Reactions to IPRS

Less than three weeks after *IPRS*, the Delhi High Court in *Ultra Home Construction v. PK Chaubey*,²³ found against the sustainability of a trademark infringement suit in Delhi in a case where the cause of action had arisen at a place where the Plaintiff also carried on business. In this case, though Mr. Justice Mehta recognised that Sections 62(2)/134(2) were meant to offer a convenient option to Plaintiffs to file a suit where they have an office or are carrying on business, he said that “no right was intended to be created in favour of the Plaintiff to file the suit at the place where the cause of action has not arisen.”²⁴

The same judge was presented another opportunity to discuss jurisdiction in early September 2015 in *Foundry Visionmongers v. Satyanarayana Reddy*.²⁵ The question before him was whether ‘carries on business’ would cover an exclusive reseller in India when the Plaintiff itself

²³ *Ultra Home Construction v. PK Chaubey*, (2015) 64 P.T.C. 119 (Del.).

²⁴ *Id.* ¶ 6.

²⁵ *Foundry Visionmongers v. Satyanarayan Reddy*, (2015) 64 P.T.C. 108 (Del.).

was located abroad. He found that it would not,²⁶ reasoning that having an Indian proxy of this nature was insufficient since “*carrying on business has necessarily to be only through an office of a company.*”²⁷

Mr. Justice Mehta’s engagement with *IPRS* here attached great importance to the fact that *IPRS*, while drawing its limitation around Sections 62(2)/134(2), used the phrase ‘carries on business’ alongside a punctuation stroke with the term ‘head office’. To him, this indicated that ‘carries on business’ was intended by the *IPRS* Supreme Court to be read synonymously with a company’s principal or head office. Since, in this instance, there was clearly no office at all in contemplation in India, a finding of no jurisdiction was obvious.²⁸

Mr. Justice Mehta would then get a third opportunity at interpreting *IPRS* just five months after his first, this time in *Bigtree Entertainment v. Saturday Sunday Media Internet*.²⁹ On this occasion, the Plaintiff ignored a judicial suggestion to amend their case to claim jurisdiction based on cause of action rather than on Sections 62(2)/134(2).³⁰ They opted instead to rely on *WWE* to establish that they were carrying on business in the target jurisdiction *via* the internet alone. Mr. Justice Mehta disagreed,³¹ and once again tied the presence of the Plaintiff to the presence of a physical office, in terms of Section 20(a) and the Explanation to Section 20.³² This set up a ruling against the sustainability of the Plaintiff’s suit, not because of the absence of the Defendant’s infringing activities in the jurisdiction but because the *Plaintiff’s assertion of jurisdiction* based on Sections 62(2)/134(2), rather than Section 20, was misguided – an oddly technical ground for a rejection of this nature but one entirely justified by the letter of the law.

V. The *Ultra Home* Appeal

A. Extension of the Section 20 Explanation to Sections 62(2)/134(2)

²⁶ *Id.* ¶ 18.

²⁷ *Foundry Visionmongers v. Satyanarayan Reddy*, (2015) (64) P.T.C. 108 (Del.) at ¶ 17.

²⁸ However, some residual uncertainty persists on account of Mr. Justice Mehta’s previous finding that “carrying on business has *necessarily* to be only through *an* office of a company”. His reading of *IPRS* seems to indicate that carrying on business could be at a subordinate office as well, not just principal or head office; *see also* *Micro Labs v. Eris Life Sciences*, (2015) 64 P.T.C. 9 (Mad.).

²⁹ *Bigtree Entertainment v. Saturday Sunday Media Internet*, (2016) 66 P.T.C. 329 (Del.).

³⁰ “Before the commencement of dictation of this judgment, and even right at the inception, I put it to the [Plaintiff] that it is advisable, of course subject to discretion of the Plaintiff, that [it] can amend the suit so that the territorial jurisdiction is claimed on the ground of arising of part of cause of action in Delhi not on account of Section 134”, said Mr. Justice Mehta. *Id.* ¶ 3.

³¹ “In law, unless a company has an office at a place,” he stated, in a categorical distancing from the *WWE* position, “it cannot be said to be carrying on business at that particular place.” *Bigtree Entertainment v. Saturday Sunday Media Internet*, (2016) (66) P.T.C. 329 (Del.) ¶ 5.

³² To this end, he also revisited *Patel Roadways* at length. *Id.* ¶ 5.

The simmering confusion over whether Sections 62(2)/134(2) could be pressed into service by a Plaintiff independent of Section 20 ultimately came to a head before the Delhi High Court in January 2016 in the *Ultra Home* appeal.³³

Mr. Justice Ahmed, speaking for the appeals court, began its review of Mr. Justice Mehta's decision with an elaboration on the Explanation to Section 20.³⁴ This discussion was broadly in line with §1 above. It ended with the binary that, under Section 20, a corporation can be presumed to carry on business either at its principal office or at its subordinate office (provided the latter overlaps with the cause of action), but not at both places.³⁵

However, the appeals court proceeded to extend the Explanation to Section 20 to apply to Sections 62(2)/134(2) as well,³⁶ on the basis that the expression 'carries on business' under Section 134(2) receives the same meaning as under Section 20.³⁷ Even leaving aside the obvious objection of making a transposition of this nature for which there is no statutory basis, the extension is mystifying because the *IPRS* Supreme Court, which reviewed the same legal position, did not feel it necessary. Mr. Justice Ahmed, however, claimed that *IPRS* does authorise such a transposition.

At Paragraph 12, he said:

"[T]he Explanation [to] Section 20 has not been expressly incorporated in [Sections 62(2)/134(2)]. But, the Supreme Court has, in [IPRS], given the expression "carries on business" used in relation to a corporation in the context of a Defendant in Section 20 the same meaning when it is used in relation to a Plaintiff under [Sections 62(2)/134(2)]. It would be instructive to note the following observations of the Supreme Court in [IPRS]."

This was followed by a reproduction of Paragraphs 14, 15, 18-22 and 52 of *IPRS*.

Then, at the top of Paragraph 13, Mr. Justice Ahmed simply said:

"It is evident from the above observations that the interpretation given to the expression 'carries on business' in the context of a Defendant under Section 20 has also been employed in the context of a Plaintiff under [Sections 62(2)/134(2)]."

³³ *Ultra Home Construction v. PK Chaubey*, (2016) 65 469 (Del.).

³⁴ *Id.* ¶ 10 (discusses *Patel Roadways v. Prasad Trading*, (1991) 4 S.C.C. 270 (India) & *New Moga Transport v. United India Insurance*, (2004) 4 S.C.C. 677 (India) along similar lines in detail).

³⁵ *World Wrestling Entertainment v. Reshma Collection*, (2017) (70) P.T.C. 550 (Del.) ¶ 11.

³⁶ *Id.* ¶ 12.

³⁷ *Id.* ¶ 13.

Going purely by the sequence of the words used by Mr. Justice Ahmed, the Explanation to Section 20 has been used by the *IPRS* Supreme Court in relation to a Plaintiff under Sections 62(2)/134(2), and that this is evident from *IPRS* itself.

B. Objections to the Ultra Home Extension

From any point of view, this is a remarkably lax manner to make a leap of this magnitude. Following Mr. Justice Ahmed's reading of *IPRS* to find an endorsement for this extension to the paragraphs in question,³⁸ sheds little light. The Explanation to Section 20 is referenced three times in these *IPRS* paragraphs, each time in a descriptive context, and clearly chained to Section 20 alone. It may, at best, be possible to read parts of Paragraphs 18³⁹ and 52⁴⁰ of *IPRS* as Mr. Justice Mehta did in *Foundry Visionmongers* and *Bigtree Entertainment* previously, to make a Plaintiff file suit where its place of business, principal or subordinate, overlaps with the cause of action.

Further, even if the meaning of 'carries on business' under Section 20 is to be read in a like manner under Sections 62(2)/134(2) this does not, by itself, mean that the Explanation to Section 20, which references the principal and subordinate offices of a corporate *Defendant* would apply seamlessly to a corporate *Plaintiff* in an entirely different statute.

The Explanation to Section 20 imposes a condition that corporate Defendants must be sued at the place of their subordinate office, if the cause of action can be set up there by the Plaintiff. Transposing this into Sections 62(2)/134(2) would mean that a corporate *Plaintiff* would be *forced* to sue where the cause of action coincides with a subordinate office, even though it may, for its own convenience and for other perfectly legitimate reasons, actually *prefer* to bring the action where it has its principal place of business.

The principle of convenience – defended at length by *IPRS* – would immediately get submerged if the Explanation to Section 20 were to be read into Sections 62(2)/134(2) in this manner. The

³⁸ *IPRS v. Sanjay Dalia*, (2015) 63 P.T.C. 1 (S.C.) ¶ 14, 15, 18-22, 52.

³⁹ *Id.* ¶ 18 "In our opinion, in a case where the cause of action has arisen at a place where the Plaintiff is residing [or carries on business] would oust the jurisdiction of [any] other place where the cause of action has not arisen though at such a place, by virtue of having subordinate office, the Plaintiff instituting a suit or other proceedings might be carrying on business or personally works for gain."

⁴⁰ *Id.* ¶ 47 "In our opinion, [Sections 62(2)/134(2)] have to be interpreted in [a] purposive manner. No doubt about it that a suit can be filed by the Plaintiff at a place where he is residing or carrying on [business]. [The Plaintiff] need not travel to file a suit [at] a place where the Defendant is residing or cause of action, wholly or in part, arises. However, if the Plaintiff is residing or carrying on business [at] a place where the cause of action, wholly or in part, has also arisen, he has to file a suit at that place, as discussed above."

words “*in respect of any cause of action arising at any place where it has also a subordinate office, at such place*” in the Explanation, while perfectly acceptable in their applicability to corporate Defendants under Section 20, would leave corporate Plaintiffs with nowhere to go under Sections 62(2)/134(2).

Mr. Justice Ahmed then held that, even if the Explanation to Section 20 was *not* imported into Sections 62(2)/134(2) in the case before it, this would not have altered the factual finding on ‘carries on business’.⁴¹ The *Ultra Home* appeals court then set out four possible factual combinations for generating jurisdiction outcomes in different scenarios.⁴² However, having already read the Explanation to Section 20 into Sections 62(2)/134(2), the court’s conclusion that the Plaintiff would have to sue at a subordinate place of business clearly inconvenient to it was virtually a *fait accompli*,⁴³ and one which was in line with Mr. Justice Mehta’s finding⁴⁴ six months prior.

VI. RSPL, Manugraph, and Beyond

A. Judicial Disagreements with Ultra Home

In April 2016, Mr. Justice Sanghi of the Delhi High Court, in *RSPL v. Mukesh Sharma*,⁴⁵ took issue with the ruling in the *Ultra Home* appeal. His disagreement was rooted in what he saw as a misreading by *Ultra Home* of the facts before *IPRS* Supreme Court. This was to the extent that, in *IPRS*, not only were both parties based in Mumbai but the cause of action had also arisen there, and that the Plaintiff had filed suit in Delhi *solely* on the strength of it carrying on business in Delhi through its subordinate office.⁴⁶

Mr. Justice Sanghi therefore argued that the *IPRS* restriction applied only to the facts before it and to other identical situations *i.e.* where the cause of action and the Plaintiff’s principal office are in the same location and yet the Plaintiff seeks to file suit elsewhere on the basis of a subordinate office only.⁴⁷ It did not, in his opinion, restrict the freedom of Plaintiffs under

⁴¹ This raises the exasperating question of why the Explanation was forced into Sections 62(2)/134(2) to begin with. *World Wrestling Entertainment v. Reshma Collection*, (2017) (70) P.T.C. 550 (Del.) at ¶ 16.

⁴² *Id.* ¶ 13.

⁴³ *Id.* ¶ 14.

⁴⁴ *Id.* ¶ 10.

⁴⁵ *RSPL v. Mukesh Sharma*, (2016) 66 P.T.C. 225 (Del.).

⁴⁶ *Id.* ¶ 54.

⁴⁷ *RSPL v. Mukesh Sharma*, (2016) (66) P.T.C. 225 (Del.) at ¶ 57.

Sections 62(2)/134(2) to file suit at the location of their principal office *even if* the cause of action coincided with a subordinate office at another location.⁴⁸

Mr. Justice Sanghi framed his reading of *IPRS* along three propositions.⁴⁹ First, he said that Sections 62(2)/134(2), when used to sue at the primary location of a Plaintiff, liberate the Plaintiff from having to establish a cause of action at that location. In the case of a corporation, the primary location shall be where its registered office is situated.⁵⁰

Second, as I have noted at §2 above, Mr. Justice Sanghi confirmed that Sections 62(2)/134(2) merely offer an *option* to Plaintiffs, and Plaintiffs are perfectly entitled to attempt to fulfill the Section 20 conditions in order to make jurisdiction, if they so wish.

Third, he stated that Plaintiffs cannot sue at the location of their subordinate office under Sections 62(2)/134(2) unless one of the Section 20 conditions is also met. This is a rather circuitous way of saying that, in such a situation, Section 20 alone must be considered.⁵¹

These observations by Mr. Justice Sanghi would then receive wholehearted endorsement by the Bombay High Court in *Manugraph India v. Simarq Technologies*⁵² in June 2016.

Mr. Justice Patel in *Manugraph* distinguished the facts before him, where the cause of action had arisen at a venue different from the Plaintiff's principal office, from those in *IPRS*. He found that, in *IPRS*, the cause of action had arisen at the same place as the Plaintiff's principal place of business and the Plaintiff had, nevertheless, brought a suit elsewhere.⁵³ The option to the Plaintiff to sue under Sections 62(2)/134(2) was unavailable for this reason. However, in the

⁴⁸ *Id.* ¶ 57.

⁴⁹ *Id.* ¶ 22.

⁵⁰ As useful as this formulation would be in resolving *Ultra Home*-style facts, a fair appraisal of this view requires me to point out that there is no warrant for this 'carries on business equals registered office only' interpretation in *IPRS* itself.

⁵¹ Mr. Justice Sanghi himself would, in effect, confirm this view a few weeks later, dismissing a Plaintiff's jurisdiction claim unsupported by a principal office, Defendant's place of business *or* cause of action in *HSIL v. Oracle Ceramic*, (2016) 66 P.T.C. 511 (Del.). This was a judgment in which, interestingly, he also hinted at a possible divergence between the Supreme Court decisions in *Dhodha House* and *IPRS* on the substance of what "carries on business" means;

"So far as the judgment in *Dhodha House* is concerned," he said at ¶ 12, "it is seen that the said decision has been considered by the Supreme Court in *IPRS*. *IPRS* being the later decision [would] therefore, prevail."; On the same subject, the Madras High Court has, on at least one notable occasion since *IPRS* applied the traditional meaning to "carries on business" to find jurisdiction in favour of the Plaintiff under Sections 62(2)/134(2). See *Mankind Pharma v. Sun Pharma Laboratories*, (2016) 68 P.T.C. 241 (Mad.).

⁵² *Manugraph India v. Simara Technologies*, (2016) 67 P.T.C. 254 (Bom.).

⁵³ *Id.* ¶ 16.

facts at hand in *Manugraph*, the option to file a suit at the Plaintiff's principal place of business under Section 62(2)/134(2) was a real one.

In the same case, Mr. Justice Patel neatly resolved the *IPRS* findings into three propositions, which I reproduce below:⁵⁴

“(a) A Plaintiff can always file a suit in a court within the local jurisdiction of which its registered office or principal office is located. This is a ‘pure’ [Section 62(2)/134(2)] invocation of jurisdiction. The location of the Defendants and the place of accrual of the cause of action is inconsequential. [Sections 62(2)/134(2)] do not refer to the situs of the cause of action or the situs of the Defendants’ location at all.

(b) Where a Plaintiff also has a [subordinate] office elsewhere, it may bring suit in a court in that location, but this is no longer a [Section 62(2)/134(2)] jurisdictional invocation. The jurisdiction is governed by [Section 20]; and hence, one of the Defendants must be found there; [or] it must be shown that the cause of action has arisen, wholly or in part, in that jurisdiction. This option does not oust or limit the Plaintiff’s right to move under [Sections 62(2)/134(2)].

(c) A Plaintiff can always travel to where the Defendant is located or where the cause of action arises and bring suit there. This again is purely a [Section 20] invocation of jurisdiction. It has nothing at all to do with [Sections 62(2)/134(2)]. The Plaintiff need not have any office in that location.”⁵⁵

Mr. Justice Patel also noted, crucially, that the Explanation to Section 20 applies only to corporate Defendants, and not corporate Plaintiffs.⁵⁶ Going further still, he pointedly disagreed with the appeals court in *Ultra Home* and sided with the findings of Mr. Justice Sanghi in *RSPL*.⁵⁷ Indeed, his disavowal of Mr. Justice Ahmed’s opinion in *Ultra Home* appeal was

⁵⁴ *Manugraph India v. Simara Technologies*, (2016) 67 P.T.C. 254 (Bom.) at ¶ 6.

⁵⁵ *Id.* ¶ 36(d). The court also entered a separate conclusion speaking to the mischief sought to be addressed in *IPRS*. It said “The [Section 62(2)/134(2)] privilege or advantage attaches to the registered office or principal place of work. It is a privilege not to be used by abandoning the registered office *situs*, abandoning the Section 20 *situs* options, and travelling to some remote location where there is neither Defendant nor cause of action. That is the mischief addressed in [*IPRS*]. To illustrate: the Plaintiff has its registered office in Mumbai. The defendant is in Delhi. The cause of action arose in Delhi. The plaintiff also has another branch office in Port Blair. A Plaintiff can sue in Mumbai or in Delhi, but not in Port Blair”.

⁵⁶ *Id.* ¶ 13.

⁵⁷ On this subject, Mr. Justice Patel observed “Mr. Justice Sanghi’s judgment sets out several passages from [*IPRS*] and he, too, concludes, as have I, that the Supreme Court [recognised] that an additional forum had been provided under [Sections 62(2)/134(2)] by including the District Court within whose limits a Plaintiff actually and voluntarily resides or [carries on business] as a possible place for such a Plaintiff to bring a trademark or

absolute,⁵⁸ and it is worth mentioning that the Delhi High Court is yet to disagree with *Manugraph* in a contested judgment, at the time of writing.

However, on RSPL's motion against Mr. Justice Sanghi's findings in August 2016,⁵⁹ Mr. Justice Ahmed, speaking once again for the Delhi appeals court, not only restored the position he had authored in *Ultra Home*⁶⁰ but also, without reference to *Manugraph*, launched a quite extraordinary attack on Mr. Justice Sanghi's disagreement with the *Ultra Home* decision.⁶¹

B. Delhi Cases after the Ultra Home Reinstatement

Following this emphatic reinstatement of *Ultra Home*, Delhi judges in particular have broadly gravitated towards a restrictive reading of Sections 62(2)/134(2). In December 2016, Mr. Justice Gauba in *Piruz Khambatta v. RR Modi*,⁶² had, on remarkably *IPRS*-like facts, interpreted *IPRS* to mean that it is incumbent on the Plaintiff claiming jurisdiction under Sections 62(2)/134(2) to sue at its principal place of business if the cause of action arises there, and "not at other places".⁶³ He found that the presence of the Plaintiff's agents or certain promotional activities of the Defendant having effects in Delhi was insufficient to sustain a suit in Delhi since speculative links to the target jurisdiction in this manner were the precise mischief sought to be curtailed by *IPRS*.⁶⁴ He ruled against the Plaintiff.⁶⁵

copyright action...I am in most respectful agreement with the views expressed by Mr. Justice Sanghi. In my view, his reading of [*IPRS*] is correct on all counts." *Id.* ¶ 34-35.

⁵⁸ "I am, with regret, unable to accept the interpretation of [*IPRS*] in the decision of [*Ultra Home*]," began Mr. Justice Patel on this issue in *Manugraph*. "I would ordinarily have been loathe to stray too far from the decision of [an appeals court] of another High Court," he continued, "but this view seems to me to be plainly incorrect. I believe [*Ultra Home*] was in error [in saying] that the deeming provision of Section 20, *i.e.*, the Explanation, had been 'read into' [Sections 62(2)/134(2)] (for isolating the place where the Plaintiff can be said to be carrying on business... [That] was not the issue before the Supreme Court at all, nor did the Supreme Court read down the provisions of either of these two sections." *Id.* ¶ 33.

⁵⁹ *RSPL v. Mukesh Sharma*, (2016) 68 P.T.C. 178 (Del.).

⁶⁰ *Id.* ¶ 7, 25.

⁶¹ Mr. Justice Ahmed said "[It] is indeed unfortunate that [Mr Justice Sanghi] has embarked upon an adventure to disagree with [*Ultra Home*], albeit, 'as a student of law'. It is not open to a single judge [as a trial court] to differ from or critically appraise a decision of [an appeals court]...there is no need to express any difference of opinion or disagreement or purport to give reasons for the said difference of opinion, or to even suggest that the decision of the [appeals court] may need re-consideration.

...[With] some anguish, we may observe that we find it difficult to comprehend [why Mr Justice Sanghi] went to such lengths to record his difference of opinion with [*Ultra Home*] when, according to [Mr Justice Sanghi] himself, the so-called difference of opinion...had 'no relevance', to the [case before him]. Such an unnecessary pursuit and adventure has been undertaken by the [judge] while, at the same time, [he] rued [the fact] of overflowing dockets and heavy workloads of courts. Why was such a fruitless and futile 'academic' exercise undertaken by the [judge]? This would remain a mystery." *Id.* ¶ 31-32.

⁶² *Piruz Khambatta v. RR Modi*, CS (OS) 3694/2014, Delhi High Court order dated December 20, 2016.

⁶³ *Id.* ¶ 27.

⁶⁴ *Id.* ¶ 28.

January 2017 saw another opinion by Mr. Justice Ahmed in *PK Sen v. Exxon Mobile*,⁶⁶ this time shutting out foreign Plaintiffs from invoking Sections 62(2)/134(2) on the ground that they were *prima facie* disentitled from claiming that they have a principal place of business in India.⁶⁷ This is, yet again, a difficult view to stand behind. Not only do Sections 62(2)/134(2) authorise no distinction of the sort but it simply cannot be that the words “or carries on business” which appear in Sections 62(2)/134(2) are restricted in their application on the lines of nationality.

Finally, in March 2017’s *Radico Khaitan v. Nakshatra Distilleries & Breweries*,⁶⁸ Mr. Justice Endlaw considered the heretofore undiscussed question of whether a Plaintiff’s subordinate office needs to be in exactly the same place as the cause of action arises or if it is permissible for it to merely be in the same state/province for the Explanation to Section 20 to attach (Under *Ultra Home*, the Explanation would, of course, limit a Plaintiff claiming jurisdiction under Sections 62(2)/134(2) to the place where the cause of action arises.). Mr. Justice Endlaw ruled that a direct, place-for-place correlation between the subordinate office and the cause of action was unnecessary since it would negate the anti-mischief purpose built into *IPRS*.⁶⁹

Even apart from the objections to *Ultra Home*, there is a difficulty with this ruling to the extent that extremely localised Defendant businesses – for instance those with offices/operations in place A in a given province but not in place B in the same province – will still be dragged to inconvenient forums in place B. However, as Mr. Justice Endlaw correctly observed, both A and B would likely be more convenient jurisdictions for such Defendants relative to a jurisdiction outside the province.⁷⁰

VII. Post-*Ultra Home* Trends and their Consequences

A. *The Quia Timet Craze*

⁶⁵ *Id.* ¶ 30-31. Mr. Justice Gauba threw out a composite suit for trademark infringement and passing off the very next day for similar reasons. See *Pepsico v. Sagarnil Enterprise*, CS (OS) 960/2016, Delhi High Court order dated December 21, 2016.

⁶⁶ *PK Sen v. Exxon Mobile*, (2017) 69 P.T.C. 271 (Del.).

⁶⁷ “Plaintiff No. 1 is a company registered in USA and, therefore, it cannot take advantage of [Section 134(2)] which is available only to suits under the Trade Marks Act, 1999 filed in India,” said Mr. Justice Ahmed. The other bases for connecting the suit to Delhi were based on cause of action, which the court found had arisen at Kolkata, and not at Delhi. *Id.* ¶ 22.

⁶⁸ *Radico Khaitan v. Nakshatra Distilleries and Breweries*, (2017) 70 P.T.C. 316 (Del.).

⁶⁹ *Id.* ¶ 17-18.

⁷⁰ *Id.* ¶ 19.

So entrenched has the *Ultra Home* view become in Delhi courts that the Plaintiffs in *Allied Blenders & Distillers v. Prag Distillery*⁷¹ in January 2017 themselves invited Mr. Justice Bakhru to conclude that their subordinate office in Delhi was insufficient to confer jurisdiction.⁷² He ultimately ruled against the Plaintiffs because the cause of action that they argued had arisen in Delhi *quia timet* (i.e. prior to any physical act(s) by the Defendants but on the basis of a threat of imminent and irreversible harm) was not actually so, since the Defendants had commenced operations elsewhere in the country.⁷³

As such, this *Allied Blenders* decision marks a reasonable starting point for a recent glut of *quia timet* claims by trademark and copyright proprietors. Hamstrung by the *Ultra Home* limitations to Sections 62(2)/134(2),⁷⁴ such proprietors have seemingly migrated to instituting *quia timet* actions seeking to base infringement actions on the whole or part of an as-yet unmaterialised cause of action *via* Section 20(c) of the CPC.⁷⁵

This *quia timet* craze⁷⁶ is far from the only impact that *Ultra Home* has had on the post-IPRS jurisdiction landscape. Two issues in particular are of considerable interest.

The first is that, with the Explanation to Section 20 now judicially tacked onto Sections 62(2)/134(2), there arises the issue of whether further standalone interpretations of the Explanation – notably but not limited to patent infringement jurisdiction cases – must now be read into Sections 62(2)/134(2).

For instance, Mr. Justice Gauba in *AIA Engineering v. BHEL*⁷⁷ and *Federal Express v. Fedex Securities*⁷⁸ dove deep into Supreme Court case law on Section 20⁷⁹ to return fairly restrictive,

⁷¹ *Allied Blenders & Distilleries v. Prag Distillery*, (2017) 69 P.T.C. 609 (Del.).

⁷² *Id.* ¶ 9.

⁷³ *Id.* ¶ 25.

⁷⁴ This is not to say, of course, that Section 62(2)/134(2) invocations have disappeared from view, even in Delhi. For instance, in January 2017, Mr. Justice Endlaw found, in line with *IPRS*, that where the cause of action arises at neither principal nor subordinate places of business of the Plaintiff, Sections 62(2)/134(2) only offer the Plaintiff the option of filing suit where its principal office is situated. He was offered an opportunity in this case to consider Mr. Justice Rao's July 2016 opinion in *Allied Blenders & Distillers v. RK Distilleries*, (2017) 69 P.T.C. 493 (Del.) but declined. See *HSIL v. Marvel Ceramics*, (2017) 69 P.T.C. 514 (Del.) ¶ 12, 15; A March 2017 Gujarat appeals court decision in *Vimal Dairy v. Kaira District Co-Operative Milk Producers Union*, (2017) 71 P.T.C. 386 (Guj.) offers another recent illustration of a faithful, if unremarkable, application of Sections 62(2)/134(2).

⁷⁵ *Shree Nath Heritage Liquor v. Octaga Green Power & Sugar*, (2017) 71 P.T.C. 241 (Del.).

⁷⁶ I use this expression in the context of the number of copyright/trademark infringement suits of this nature inviting rulings on jurisdiction post-*Ultra Home*. India does, of course, have a rich recent history of *quia timet* jurisdiction rulings in patent infringement cases. See *Bristol Myers Squibb v. V.C. Bhutada*, (2013) 56 P.T.C. 268 (Del.); *Teva Pharmaceutical Industries v. Natco Pharma*, (2014) 210 D.L.T. 591 ; *United Phosphorous v. Ajay Garg*, (2015) 63 P.T.C. 188 (Del.).

anti-Plaintiff findings.⁸⁰ These could well have significant effects on the scope of the Plaintiff-option jurisdiction provisions in the future. It remains to be seen how Indian judges will approach them.

B. How Much Scrutiny Should Jurisdiction Claims Invite?

The second, more sizeable point of interest is that jurisdiction claims made by Plaintiffs are quickly becoming the site of a pitched battle – not on their substance but on the level of judicial scrutiny they should invite.

This issue has its roots in the CPC, Order 7, Rules 10 and 11 which provide grounds for rejecting suits at the threshold, even prior to admission. In such cases, either upon an application by the Defendant or *suo moto*, a court can examine whether the Plaintiff's written claim discloses sufficient material regarding jurisdiction to sustain the suit. This is typically a preliminary inquiry, and one in which courts treat the Plaintiff's claim on demurrer.⁸¹

The Delhi appeals decisions in the *Allied Blenders & Distilleries v. RK Distilleries*⁸² and *Allied Blenders & Distilleries v. Prag Distillery*⁸³ in February-March 2017 have controversially softened the trigger on this scrutiny. These cases now offer judicial imprimatur to Plaintiffs to bring *quia timet* actions for infringements of intellectual property held up by vague threats of the Defendants commencing business within the target jurisdiction, and very little else.⁸⁴

⁷⁷ AIA Engineering v. BHEL, (2017) 69 P.T.C. 476 (Del.).

⁷⁸ Federal Express v. Fedex Securities, (2017) 71 P.T.C. 155 (Del.).

⁷⁹ See ONGC v. U.K. Basu, (1994) 4 S.C.C. 711 (India); South East Asia Shipping v. Nav Bharat Enterprises, (1996) 3 S.C.C. 443 (India); D.R. Rathod v. State of Maharashtra, (2014) 9 S.C.C. 129 (India).

⁸⁰ *Inter alia*, he has variously held that a corporation can only be sued at its subordinate office if the cause of action arises there; that jurisdiction cannot be asserted based on an insignificant or trivial part of the cause of action, and that a cause of action cannot accrue in favour of a Plaintiff if the Defendant does not commit some positive act. The latter, in particular, may seem like a bit of smoke and mirrors. However, it was emanates from the rather benign standpoint that, if the Defendant is one hundred percent passive and commits no act, a cause of action cannot arise. See AIA Engineering v. BHEL, (2017) (69) P.T.C. 476 (Del.) ¶ 37, 40, 42; Federal Express v. Fedex Securities, (2017) (71) P.T.C. 155 (Del.) ¶ 20.

⁸¹ The demurrer rule itself is not free from incongruence. It asks courts to evaluate a Plaintiff's case essentially in a vacuum, even though a claim of lack of jurisdiction in several cases is initiated by the Defendant.

⁸² *Allied Blenders & Distilleries v. RK Distilleries*, (2017) 69 P.T.C. 493 (Del.).

This decision arose from Allied Blenders' appeal against Mr. Justice Rao's opinion that the Plaintiffs did not make jurisdiction owing to the absence of a cause of action in Delhi. See *Allied Blenders & Distillers v. RK Distilleries*, (2016) 67 P.T.C. 563 (Del.) ¶ 24.

⁸³ *Allied Blenders & Distilleries v. Prag Distillery*, (2017) 70 P.T.C. 1 (Del.).

⁸⁴ *Supra* note 83, at ¶ 12, 14, 21-22;

In a development that would foreshadow the same court's decision in *Allied Blenders v. Prag Distillery* the following day, there was nothing demonstrated by the Plaintiff to support its apprehension of an imminent cause of action apart from its own statement that it apprehended the Defendant would commence business in Delhi. The absence of anything substantial in the Plaintiff's own case to sustain jurisdiction would constrain Mr. Justice Endlaw to carefully tiptoe around the flimsy level of inquiry supported by the *Allied Blenders* appeals in order to

Even more startlingly, the Delhi appeals court has endorsed the view that, at the stage of filing/admission, the *only* inquiry that a court needs to make is of whether an averment has been made by the Plaintiff with regard to a material fact, without looking into whether such an averment is substantiated.⁸⁵ This goes well beyond the traditional justification that a lower threshold for scrutiny is acceptable at the admissions stage because jurisdiction is merely a preliminary inquiry, not to be decided with the same rigour as an application for interim injunction (after arguments by both parties) or permanent injunction (after trial).⁸⁶

This is an extremely hard position to defend. It implies that not only must anything stated by the Defendant challenging jurisdiction be ignored, but literally everything in support of the Plaintiff's *own case*, filed by the Plaintiff with full knowledge of the rest of its case, must also be discarded in a preliminary jurisdiction inquiry. The *only* thing a court must look for is *the mere presence of a statement in support of the target jurisdiction*. The question of whether such a statement is accurate or confirmed by supplementary material of any description appears to be off-limits. It requires no great imagination to foresee the far-reaching consequences a finding of this nature could have on the Indian law on jurisdiction in such cases.

As such, the *Allied Blenders* appeals have also had the ramification of splitting rejections of jurisdiction claims by Plaintiffs into two, based on whether or not they appear to be trending towards endorsing less rigorous judicial inquiries into such claims. The post-*IPRS* trend had understandably been towards examining jurisdiction claims more thoroughly,⁸⁷ though a lower threshold for such claims had also been upheld.⁸⁸ The *Allied Blenders* correction is a drastic one in the direction of the latter but recent experience suggests that Delhi judges are not embracing the *Allied Blenders* rulings quite as enthusiastically as they did those in *Ultra Home*.⁸⁹

reach a fair finding in *Radico Khaitan*. *Radico Khaitan v. Nakshatra Distilleries and Breweries*, (2017) (70) P.T.C. 316 (Del.) ¶ 24.

⁸⁵ Mr. Justice Ahmed in the appeals court found that Mr. Justice Bakhru was wrong to conclude that the Plaintiff's apprehension "was not substantiated by any material which would indicate a reasonable ground for the [apprehension]" since the substantiation of a written averment by the Plaintiff "is a part of evidence" and its examination "would come later". *Allied Blenders & Distilleries v. Prag Distillery*, (2017) 70 P.T.C. 1 (Del.) ¶ 9.

⁸⁶ *supra* note 80, at ¶ 22.

⁸⁷ See *Piccadilly Agro Industries v. Ashok Narwal*, (2016) 66 P.T.C. 209 (Del.) ¶ 27; *Manmohan Sharma v. Manjit Singh*, (2016) 66 P.T.C. 503 (P&H) ¶ 11; *Allied Blenders & Distillers v. Prag Distillery*, (2017) (70) P.T.C. 1 (Del.) ¶ 29; *Piccadilly Agro Industries v. Ashok Jain*, (2017) 70 596 (Del.) ¶ 10.

⁸⁸ See *Blueberry Books v. Google India*, (2016) 67 P.T.C. 1 (Del.) ¶ 15, *KRBL v. PV Kanakaraj*, (2016) 68 P.T.C. 341 (Del.) ¶ 9, 11.

⁸⁹ A few recent illustrations will suffice to make the point

In July 2017, Ms. Justice Sharma found against the Plaintiffs on jurisdiction after judging the correctness of their averments and examining the documents supporting them. "It is apparent that the [Plaintiff's claim] does not disclose that any part of the cause of action has arisen in Delhi," she said. "The Plaintiffs seem to be indulging in

VIII. Conclusion: Returning to the Objective of Sections 62(2)/134(2)

In conclusion, I am compelled to revisit the biggest source for confusion in the area of Indian law post-*IPRS* – the decision to extend the Explanation to Section 20 of the CPC to Sections 62(2)/134(2) by the Delhi appeals court in *Ultra Home*.

It brooks no argument that the purpose of Section 20 is to define where it is legally permissible to sue a Defendant, keeping in view the convenience of the Defendant. Nowhere in the literature on Section 20 is the Plaintiff's convenience considered a dominant consideration. Indeed, within this range of possibilities, the only scope for limiting the Defendant's convenience is to be found in the second part of the Explanation under Section 20.

This portion of the statute functions to shut out a corporate Defendant from accessing an extremely specific defence. It blocks a corporate Defendant from claiming that it does not do business – and, *ergo*, cannot be forced to defend a civil suit – at a place where it has a subordinate office and where some positive action by it has set up a cause of action for a Plaintiff. The length of the preceding sentence and the relevance of all its conditions alone suggests the singular circumstances needed to trigger it. Taken in this sense, the objective of the Explanation to Section 20 is, therefore, very much *preventative*. It operates for the limited

forum shopping by resorting to clever drafting.” See *Shree Nath Heritage Liquor v. Octaga Green Power & Sugar*, (2017) 71 P.T.C. 241 (Del.) ¶ 21, 22, 26, 29;

In April 2017, Mr. Justice Gauba, after a detailed examination of the documents filed by the Plaintiff, found against the sustainability of their suit in Delhi. He came down hard on the Plaintiff, decrying what he saw as a trend of suits being filed with voluminous supporting documentation, in which material relevant for determining jurisdiction was being hidden, possibly intentionally, by Plaintiffs. “The Plaintiff [cannot] expect the court to go through the voluminous documents to find out the facts, particularly such facts as deserve to be mentioned upfront in clear terms,” he said. See *Federal Express v. Fedex Securities*, (2017) (71) P.T.C. 155 (Del.) ¶ 25, 26, 28.

This stricture was very similar to one issued by Mr. Justice Endlaw on different facts about three months earlier. Disapproving of the manner in which the Plaintiff arranged and presented its documents in support of its case, he had said: “In this regard, it may be stated that the [Plaintiff's] documents run into 895 pages and it is not possible while reading the file before the hearing to run through each and every page and an inkling of the documents is taken from [their] description in the [index] which is filed. The Plaintiff, describing the documents in the index as advertising brochures, cannot file other documents. Had the document been described [as it has by the Plaintiff], it is well-nigh possible that, while so reading the file, the [document] may have been perused [by the judge], [and] the suit may not have been entertained.” See *HSIL v. Marvel Ceramics*, (2017) 69 P.T.C. 514 (Del.) ¶ 24, confirmed on appeal in *FAO (OS)(COMM) 45/2017 HSIL v. Marvel Ceramics*, Delhi High Court order dated November 3, 2017; See *Radico Khaitan v. Nakshatra Distilleries and Breweries*, (2017) 70 P.T.C. 316 (Del.) ¶ 22, where Mr. Justice Endlaw demanded a detailed perusal of jurisdiction claims to ensure that they were not “merely a play of words [by the Plaintiff] so as to initiate the legal process.” “The words ‘dynamic effect’ and ‘credible and imminent threat’ [in reference to a proposed *quia timet* cause of action] sound impressive,” he continued, “but are without any particulars and hollow.”

Meanwhile, several other Delhi decisions including *Indovax v. Merck Animal Health*, (2017) 71 P.T.C. 647 (Del.); *Microsoft Corp v. Rajesh Kumar*, CS(COMM) 444/2016, Delhi High Court order dated October 17, 2017; *Bajaj Resources v. Goyal Herbals*, CS(COMM) 1564/2016, Delhi High Court order dated November 24, 2017, *Travellers Exchange v. Celebrities Management*, CS(COMM) 51/2016, Delhi High Court order dated December 7, 2017 have returned outcomes which can safely be characterized as unenthusiastic about following the *Allied Blenders* position.

purpose of foreclosing a line of defence that the law considers circuitous, oblique, and therefore impermissible.

By contrast, the purpose of Sections 62(2)/134(2) is diametrically opposite to Section 20. Under these provisions, the Plaintiff is given an option to sue where it resides or carries on business, keeping in view the convenience of the Plaintiff. The distortion of this right in recent years, exemplified by *WWE*, was, as I outlined in §1, imputable largely to the ubiquity of internet transactions and the geographical expansion of corporations lately which applies to the bulk of Plaintiffs in copyright and trademark infringement cases in India. The latter trend, which was the subject of the Supreme Court deliberations in *IPRS*, certainly merited intervention.

However, the *IPRS* pushback against this trend, as I explained in §4, is a limited one, and seeks to cut out only a specific category of abuse by the Plaintiff. *IPRS* simply says that, if the Plaintiff has a principal place of business and that principal place of business intersects with the cause of action in a given jurisdiction, there ends the inquiry into jurisdiction under Sections 62(2)/134(2). The Plaintiff must sue there. On these facts, the Plaintiff cannot sue instead at a place where it has a subordinate office by claiming that it “carries on business” where such subordinate office is located.

To be clear, such a Plaintiff may well have a case to say that it *does* carry on business at such subordinate office as well. Be that as it may, a jurisdiction where the Plaintiff’s principal place of business and the cause of action are both found cannot be bypassed in favour of another jurisdiction. Despite its unhappy use of language that both tangles and untangles Sections 62(2)/134(2) from the influence of Section 20, the core and spirit of the *IPRS* finding travels no further than this.

Therefore, stapling the Explanation to Section 20 onto Sections 62(2)/134(2) as the *Ultra Home* appeal and the line of cases following it have done is fundamentally at odds with the objective of these Plaintiff-option jurisdiction provisions. According to this view, corporate Plaintiffs have no option but to file suit where their subordinate office is if the cause of action also arises there. It does not matter that their principal office is located elsewhere or that their commercial influence predominates in another jurisdiction. The second part of the Explanation to Section 20 operates to confine their suit to the location of their subordinate office to the exclusion of the place where their principal office is located.

From the standpoint of the convenience of a corporate Plaintiff, there are likely to be several instances where this convenience will be best preserved by permitting it to sue where its principal office is. Naturally, it is also possible that a corporate Plaintiff would find it convenient to sue where it has a subordinate office. However, there is little dispute that, in the majority of cases, the purpose of the Plaintiff suing in the same jurisdiction as its subordinate office was only because, in its assessment, it would enjoy a great advantage by doing so relative to the Defendant. This, of course, is because the Defendant would often have no way of assessing where such an action would be filed, let alone being able to summon the resources to defend such an action effectively. It is clear that the *IPRS* Supreme Court considered this an abuse of the Plaintiff-option jurisdiction provision. There is no disagreement with such an assessment.

By the same token, it is undeniable that reading the Explanation to Section 20 into Sections 62(2)/134(2) pushes the scales too far in the other direction. It goes beyond the mandate for stepping in to cut out the mischief caused by the abuse of Sections 62(2)/134(2). This is because, over and above the Section 20 possibilities (which, *IPRS* and *Ultra Home* agree, exist for the convenience of a prospective Defendant), there is now only one scenario exclusive to Sections 62(2)/134(2) which such a Defendant must defend against.

This scenario is the pure *IPRS* prohibition *i.e.* where the Plaintiff's principal office is in the same jurisdiction where the cause of action arises. However – and I cannot emphasise this enough – *this is no different from forcing a Plaintiff to comply in all such cases with Section 20(c), which provides for jurisdiction based solely on cause of action.* If the cause of action in this scenario were to be relocated to another jurisdiction, what survives would no longer be the *IPRS* prohibition – it would simply be two jurisdictions; one containing the principal office and the other containing the cause of action.

Under *Ultra Home*, the only pure invocation of Sections 62(2)/134(2) *i.e.* where a Plaintiff can sue at the location of its principal office independent of Section 20, would be reliant on the cause of action arising in a *third* jurisdiction, where the Plaintiff has neither principal office (first jurisdiction) nor subordinate office (second jurisdiction).⁹⁰ In all other cases, the Plaintiff would have to chase the cause of action or the Defendant. Therefore, to exercise its 'option', a

⁹⁰ *World Wrestling Entertainment v. Reshma Collection*, (2017) 70 P.T.C. 550 (Del.) ¶ 14.

corporate Plaintiff would have to hope for an outcome entirely outside its control – the chance occurrence that the cause of action arises where it has no place of business to speak of.

I maintain that, absurdities and impossibilities apart, this cannot be the objective of Sections 62(2)/134(2). Indeed, this is hardly an ‘option’ in the hands of a corporate Plaintiff in any meaningful sense. It is hard to see how this set of outcomes puts the Plaintiff at any sort of advantage, convenience-based or otherwise, relative to the Defendant. Apart from the rarity of a third jurisdiction factual, the Defendant, under the *Ultra Home* view, is defending itself in the exact same jurisdictions as it would under a law (Section 20) that has been constructed almost entirely for its benefit. On the contrary, reading the Explanation to Section 20 into Sections 62(2)/134(2), at its sharpest point, eliminates the forum most likely to be convenient and comparatively advantageous to the Plaintiff. It displaces this forum in favour of one where a corporate Plaintiff’s convenience, apart from being *ex facie* unpredictable, is far from guaranteed.

Equally, it is clear that much of the relevance of the issues in §8 – of how much of the cause of action must arise in a particular jurisdiction in order to trigger cause of action jurisdiction, and of the degree of detail with which courts must peruse the Plaintiff’s claim while deciding maintainability on the ground of jurisdiction – rests on whether and how far Sections 62(2)/134(2) attach to a given case. It is only after this central dispute is settled that more factually complex jurisdiction inquiries can be litigated with certainty before Indian courts.

The *Ultra Home* modifications to *IPRS* have, in my view, made a bad situation worse. While *IPRS* would still predominate in case of a conflict,⁹¹ the time in hand to restore it – and the law under Sections 62(2)/134(2) – to its intended objective is dwindling with each Indian court that approves *Ultra Home* from this point forward. Reconsideration of this conundrum by the Courts would be extremely welcome, and is long overdue.

⁹¹ *Per contra*, Mr. Justice Endlaw in March 2017’s *Radico Khaitan* felt it altogether unnecessary to discuss *IPRS* in view of the *Ultra Home* appeals decision. This prompts the staggering but entirely valid conclusion that *Ultra Home*, a little more than a year into its tenure, is now actively *substituting* for *IPRS* as the last word on Section 62(2)/134(2) jurisdiction in Delhi courts. *Radico Khaitan v. Nakshatra Distilleries and Breweries*, (2017) 70 P.T.C. 316 (Del.) ¶ 11.