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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 296/2016 & C.M. Nos.11384-86/2016
BALAR MARKETING PVT. LTD.

..... Petitioner
Through Mr. S.K. Bansal and Mr. Ajay Amitabh
Suman, Advs.

Versus

LOKESH TAYAL & ORS.

..... Respondents
Through Nemo.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **30.03.2016**

The petitioner is aggrieved by the impugned order dated 22.02.2016 wherein his application under Order 6 Rule 17 of the CPC seeking an amendment in the plaint had been declined. The contention in the application was that para 24 of the plaint was liable to be amended; the plaintiff proposed to add that the plaintiff is also engaged in the business in the area described as north-east.

Record shows that the present suit is a suit for infringement of trademark and permanent injunction. This suit was filed in the year 2011. It was pending before New Delhi Courts. On 18.03.2011, the plaint was returned under Order 7 Rule 10 of the CPC; it was noticed that the New Delhi Court is not the Court of competent jurisdiction. The plaint was thereafter filed in the Karkardooma Courts, North-East district. This was on 22.03.2011. A preliminary issue relating to the territorial jurisdiction of the Court was framed on 25.03.2011. Evidence

was in progress and the evidence on the preliminary issue was led and finally closed on 01.08.2014.

Present application came to be filed on 20.11.2014. As noted supra, the contention was that the petitioner wishes to incorporate by way of an amendment the proposed fact that the petitioner was also carrying on business in the North-East; submission being that this was only a clarificatory amendment as at the time when the plaint was returned, he had filed it in the North-East, district meaning thereby that North-East district had the territorial jurisdiction to try the suit.

The Trial Court had noted the relevant dates and had rightly held that this application has been filed only to nullify the preliminary issue which was qua the territorial jurisdiction. The question of territorial jurisdiction was open when the plaint was returned in March, 2011; thereafter in the same month, the plant was filed in the North-East district and a preliminary issue qua the territorial jurisdiction was framed on 25.03.2011. Evidence on the preliminary issue had already been led when the present application came to be filed and as noted supra, this was only to detract from what had already been led by way of evidence on the aspect of territorial jurisdiction.

The purpose of allowing or disallowing an amendment is to decide the real controversy between the parties; it should also not be to the prejudice of either party. By allowing such an amendment, it would prejudice the interest of the defendant as parties have already led their respective evidence on the question of territorial jurisdiction which was the preliminary issue and which had been framed as way back as on 25.03.2011.

Impugned order in this background suffers from no infirmity. Petition is without any merit. Dismissed with costs quantified at Rs.10,000/-.

INDERMEET KAUR, J

MARCH 30, 2016

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