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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CS(OS) 2414/2012 and I.A. Nos.19372/2015 (under Order 7 Rule 10 CPC by defendants) & 2309/2016 (under Section 151 CPC by plaintiffs)

AVAYA INC & ANR

..... Plaintiffs

Through: Mr. Sahil Sethi, Advocate with Mr. Shivam Sharma, Advocate.

Versus

SAURABH DESAI & ANR

..... Defendants

Through: Mr. Mohan Vidhani, Advocate with Mr. Rahul Vidhani, Advocate, Mr. Ashish Singh, Advocate and Ms. Rashi Kotwalwala, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

% **24.02.2016**

1. The present suit alleging infringement of trademark etc was filed in Delhi by invoking the provision of Section 134(2) of the Trade Marks Act, 1999 i.e of the plaintiff no.2 carrying on business in Delhi. Plaintiff no.2 also has an office at Mumbai and as per the memo of parties, the addresses of the defendants are at Mumbai.

2. Supreme Court recently in the judgment in the case of **Indian**

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Performing Rights Society Ltd. Vs. Sanjay Dalia and Ors. (2015) 10 SCC

161 has held that if the plaintiff has an office where the defendant is situated, then, plaintiff has to file its suit at the place where the office of the defendant is situated and where the plaintiff also has an office. Plaintiff cannot drag the defendant to a Court where the defendant has no office. Since in the present case, plaintiff no.2, on whose having office in Delhi territorial jurisdiction is invoked, also has an office in Mumbai and where the defendants also have an office, the ratio of the judgment in the case of ***Sanjay Dalia and Ors. (supra)*** will squarely apply and this Court would not have territorial jurisdiction by plaintiff no.2 invoking Section 134(2) of the Trade Marks Act, 1999.

3. Accordingly, the suit plaint is returned to the plaintiff for being filed before the competent court in Mumbai. Registry will follow the procedure of Order 7 Rule 10 of Code of Civil Procedure, 1908 (CPC) for returning the plaint to the plaintiff. Interim orders which have been passed in this suit on 7.12.2012 and as modified by the order dated 9.1.2014 will enure for the benefits of the plaintiffs for a period of four weeks from today to enable the plaintiffs to file the suit in the competent court at Mumbai.

4. Suit is accordingly disposed of by returning the plaint.

VALMIKI J. MEHTA, J

FEBRUARY 24, 2016

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