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

+ **FAO(OS) (COMM) 35/2016**

HSIL LTD

..... Appellant

Represented by: Mr.Manav Gupta, Advocate
with Ms.Prabhsahay Kaur,
Mr.Animash Kr.Sharma,
Advocates

versus

ORACLE CERAMIC & ORS

..... Respondents

Represented by: Mr.Jagjit Singh Chhabra,
Advocate with Mr.Saksham
Maheshwari, Advocate

+ **FAO(OS) (COMM) 36/2016**

HSIL LTD

..... Appellant

Represented by: Mr.Manav Gupta, Advocate
with Ms.Prabhsahay Kaur,
Mr.Animash Kr.Sharma,
Advocates

versus

VISHWAS CERAMIC & ANR

..... Respondents

Represented by: Mr.Jagjit Singh Chhabra,
Advocate with Mr.Saksham
Maheshwari, Advocate

+ **FAO(OS) (COMM) 38/2016**

HSIL LTD

..... Appellant

Represented by: Mr.Manav Gupta, Advocate
with Ms.Prabhsahay Kaur,
Mr.Animash Kr.Sharma,
Advocates

versus

SIMANDHAR CERAMIC & ANR

..... Respondents

Represented by: Mr.Jagjit Singh Chhabra,

Advocate with Mr.Saksham
Maheshwari, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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08.07.2016

1. Respondents have been served.
2. Learned counsel as above appears for the respondents. Vakalatnamas have been received in Court.
3. With respect to the impugned order dated May 11, 2016, having heard learned counsel for the parties we find that the law culled out by the learned Single Judge with respect to the decision of the Supreme Court reported as AIR 2015 SC 3479 Indian Performing Rights Society Ltd. vs. Sanjay Dalia & Anr.
4. As per said decision if plaintiff has no presence in the territory where the offending activity is carried on, remedy of territorial jurisdiction with reference of Section 134 of the Trade Marks Act, 1999 can be availed of. Though there is no positive view of a negative fact in the plaint, but there is no admission that the plaintiff i.e. the appellant has presence in Rajkot (Gujarat), where the alleged offending activity is being carried on.
5. Accordingly, we set aside the impugned order dated May 11, 2016. We declare that the three suits, the plaints where of have been directed to be returned, shall continue in Delhi for the reason as pleaded in the plaint, there would be territorial jurisdiction in this Court. Of course, if the defendants plead and can prima-facie show that the plaintiff has presence in Rajkot, of the kind contemplated by law, plea of lack of territorial jurisdiction can be raised.

6. We transpose the interim injunction granted in appeal in the three suits. It would be open for the defendants to file written statements and reply to the applications filed under Order 39 Rule 1 and 2 of the Code of Civil Procedure by the plaintiff. Needless to state in said eventuality learned Single Judge shall take the decision as per law.

7. With respect to the local commissions which have been executed, two reports have been filed. The third may be filed with the Registry.

8. As per the three reports infringing goods have been seized and custody entrusted to a representative of the defendant on superdari. The order appointing a local commissioner is also transposed in the suit. Parties may file appropriate applications in the suits concerning the seized infringing goods.

9. Appeals are disposed of.

10. CS(Comm) 339/2016, CS(Comm) 340/2016 and CS(Comm) 341/2016 shall now be listed for directions before the learned Joint Registrar on August 12, 2016.

11. At this stage learned counsel for the parties state that the subject matter of the suit may be referred to mediation. Accordingly, we refer the three suits to the Delhi High Court Mediation and Conciliation Centre.

12. Notwithstanding dispute being referred to mediation written submissions by the defendants in the three suits may be filed within four weeks.

13. No costs.


PRADEEP NANDRAJOG, J.


PRATIBHA RANI, J.

JULY 08, 2016/skb