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

+ FAO(OS) (COMM) 32/2016 & CM Nos.19651-52/2016

LAVA INTERNATIONAL LIMITED

..... Appellant

Through: Mr. A.S. Chandhiok,
 Mr.Arun Kathpalia, Senior
 Advocates with Mr. Jayant
 Mehta, Mr. Ashok K.
 Aggarwal, Advocates.

versus

TELEFONAKTIEBOLAGET L M ERICSSON Respondent

Through: Mr. Gopal Subramaniam,
 Mr.Rajiv Nayar, Mr.Sandeep
 Sethi Senior Advocates with
 Mr. Ashutosh Kumar,
 Ms.Saya Choudhary Kapur,
 Mr. Rohin Koolwal,
 Advocates.

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MR. JUSTICE I.S.MEHTA

ORDER

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24.05.2016

FAO(OS) (COMM) 32/2016 & CM Nos.19651-52/2016

1. A reading of para 43 of the impugned order dated 16th May, 2016 assailed by way of the present appeal would show that the

learned Single Judge has recorded that the final view on the prayer made in IA No. 5470/2016 of the appellant seeking permission to add fresh witnesses and proposing a fresh schedule for cross examination would be taken on 23rd May, 2016.

2. The appellant has asserted that it is gravely prejudiced by the observations made in the impugned order inasmuch as, the learned Single Judge appears to have foreclosed the appellant's right to complete its evidence in affirmative on issue nos. 4 and 5 framed on 2nd February, 2016 and completely prohibiting the appellant from leading rebuttal evidence. It is also submitted by Mr. A.S. Chandhiok and Mr. Arun Kathpalia, learned Senior Counsels for the appellant that the schedule fixed with the consent of the parties on 22nd February, 2016 could not be adhered to by both the parties and the cross-examination of the plaintiff's witness could be concluded only on 5th May, 2016.

3. It is further submitted on behalf of the appellant that even as per the appointed schedule, the parties are entitled to a period of two clear weeks, after closure of the cross examination of the evidence in affirmative by both the parties, to bring its rebuttal. The contention is that as on date, even the evidence of the appellant, in affirmative, is not over.

4. It is submitted by Mr. Arun Kathpalia that appellant's witness Professor V. Kamakoti, Department of Computer, Science and Engineering, Indian Institute of Technology, Madras, due to certain unavoidable circumstances was not able to appear before

and that the witness is available for tendering his affidavit on 1st June, 2016 as well as for cross-examination. These submissions are vehemently controverted by Mr. Gopal Subraminiam, learned Senior Counsel appearing on behalf of the respondents.

5. An objection is taken on behalf of the respondents that the present appeal is precluded by virtue of Section 13 of The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 and that the impugned order is not appealable.

6. Be that as it may, we find that we are not called upon to deal with the merits of the rival contentions for the view we are taking.

We find that learned Single Judge has not taken a final view in the matter as observed by him in para 43 of the impugned order dated 16th May, 2016 and therefore it is held that the present appeal is premature.

7. In this view of the matter, Mr. Arun Kathpalia, learned Senior Counsel for the appellant submits that without prejudice to the rights and contentions of the appellant, he may be permitted to withdraw the present appeal with liberty to assail the impugned order as well by way of fresh appeal dependent upon the final view taken up by the learned Single Judge.

8. The present appeal and applications are, therefore, dismissed as withdrawn with liberty as prayed for.

9. We make it clear that, by way of present order we have not opined on the merits of the appeal or on the objections to its maintainability.

Dasti to parties.

GITA MITTAL, J

I.S.MEHTA, J

MAY 24, 2016

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