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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

LEAVE PETITION NO.221 OF 2017

IN

COMMERCIAL SUIT (L) NO.369 OF 2017

The Phoenix Mills Limited

..Plaintiff.

V/s.

Phoenix Lotus Infrastructure Private Limited

..Defendant.

Mr.Venkatesh Dhond, Senior Advocate with Mr.Adheesh Nargulkar
and Mr.Vaibhav Keni i/b. Khaitan & Co. for the Plaintiff.

None for the Defendant.

CORAM : K.R.SHRIRAM, J.

DATED : 28 AUGUST 2017

P.C.:-

Petitioner has filed a petition for leave under clause XIV
of the Letters Patent to join the cause of action for passing off with
the cause of action for infringement.

2. The leave petition has been served upon Defendant and

Petitioner has filed an affidavit of service on 14 July, 2017 confirming service of this petition upon Defendant. No reply has been filed.

3. Petitioner has its registered office at Mumbai within the Ordinary Original Civil Jurisdiction of this Court. Petitioner's Trade Mark is registered at Mumbai. Therefore, this Court has jurisdiction to receive, try and dispose this suit as regards the infringement of Trade mark under the provisions of section 134 of the Trade Marks Act, 1999.

4. It is Petitioner's case that as Defendant's registered office is at Hyderabad / Telangana which is outside the local limits of the Ordinary Original Civil Jurisdiction of this Court, leave be granted under section XIV of the Letters Patent to combine the cause of action of infringement of Trade Mark in respect of which this Court has jurisdiction with the cause of action of passing off.

5. Heard learned senior counsel for Petitioner. The issue

involved in both causes of action are same and pertain to the Trade Mark of Petitioner. The causes of action relating to infringement of Trade Mark and passing off are intricately connected to each other. The evidence also will be common. In order to avoid multiplicity of proceedings, it will be in the interest of justice to combine the cause of action for passing off with the cause of action for infringement of Trade Mark. This would also be in favour of Defendant. They will not have to defend two separate suits in two different fora.

6. In the circumstances, leave petition is allowed and accordingly disposed.

(K.R.SHRIRAM, J.)