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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CS(COMM) 876/2016 & I.A.10500/2015

M/S DARSHAN FOODS

..... Plaintiff

Through: Mr. Amit Jain, Advocate.

versus

M/S DARSHAN NAMKEEN HOUSE

..... Defendant

Through: Mr. Pranav Sarthi, Advocate.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

ORDER

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09.08.2017

I.A. 11628/2016 in CS(COMM) 876/2016

Present application has been filed by the defendant under Order VII Rule 11 CPC.

In the present application, it has been averred that neither the plaintiff nor the defendant has any office (registered or branch) in Delhi. It is further averred that defendant does not work for gain in Delhi and its products are not sold in Delhi.

Learned counsel for defendant submit that the judgment of the Supreme Court in *Indian Performing Rights Society Limited Vs. Sanjay Dalia & Another, (2015) 10 SCC 161* is clearly applicable in the present case. The relevant portion of the said judgment is reproduced hereinbelow:-

“20. In our opinion, in a case where the cause of action has arisen at a place where the plaintiff is residing or where there are

more than one such persons, any of them actually or voluntarily resides or carries on business or personally works for gain would oust the jurisdiction of other place where the cause of action has not arisen though at such a place, by virtue of having subordinate office, the plaintiff instituting a suit or other proceedings might be carrying on business or personally works for gain.

21. At the same time, the provisions of Section 62 of the Copyright Act and Section 134 of the Trade Marks Act have removed the embargo of suing at place of accrual of cause of action wholly or in part, with regard to a place where the plaintiff or any of them ordinarily resides, carries on business or personally works for gain. We agree to the aforesaid extent that the impediment imposed under Section 20 CPC to a plaintiff to institute a suit in a court where the defendant resides or carries on business or where the cause of action wholly or in part arises, has been removed. But the right is subject to the rider in case the plaintiff resides or has its principal place of business/carries on business or personally works for gain at a place where cause of action has also arisen, suit should be filed at that place not at other places where the plaintiff is having branch offices, etc.”

Learned counsel for plaintiff states that he has no objection if the present plaint is returned to the plaintiff for filing in an appropriate Court having the territorial jurisdiction.

Since admittedly, the plaintiff is carrying on business at a place where the cause of action wholly or in part has also arisen, he has to file the suit at that place. Consequently, this Court is of the view that it has no territorial jurisdiction to entertain the present suit. Accordingly, present plaint is directed to be returned under Order VII Rule 10 CPC. The plaintiff may if it so desire, move appropriate application under Order VII Rule 10A CPC.

List the matter before the Registrar on 18th August, 2017 for return of the plaint.

Accordingly, the present suit and pending applications stand disposed of.

MANMOHAN, J

AUGUST 09, 2017

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