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

+ **FAO 540/2016 and C.M. Appl. Nos. 19210/2017, 19229/2017,
43315/2016**

CENTRE FOR MEDIA STUDIES

THR ITS AUTHORIZED SIGNATORY

..... Appellant

Through: Mr. Sudanshu Batra, Sr. Advocate
with Mr. Pradeep Dhingra and Mr.
Mohit Nandwani, Advocates.

versus

ALKA TOMAR & ORS

..... Respondents

Through: Mr. Ravinder Singh and Ms. Raveesha
Gupta, Advocates.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

% **25.05.2017**

1. This appeal is disposed of as not pressed as it is stated on behalf of the appellant/plaintiff that the suit itself be allowed to be withdrawn on account of lack of requisite pleadings of a cause of action for the reliefs claimed in the present suit, but liberty is prayed for and which is granted to the appellant/plaintiff to file a fresh suit stating therein entire facts as required for a cause of action in law for claiming of the reliefs of infringement of the copy right, injunction and any other relevant relief which the appellant/plaintiff may seek in

accordance with law.

2. It is, however, clarified and as per the request made on behalf of the respondent no. 1/defendant no. 1 that since respondent no. 1/defendant no. 1 has filed a counter claim, and counter claim is an independent suit, such counter claim of the respondent no. 1/defendant no. 1 will continue in case the respondent no. 1/defendant no. 1 so wants and which will be contested by the present appellant as a defendant of the counter claim.

3. In the present suit which was filed by the appellant/plaintiff, Local Commissioner was appointed and who has given his report with respect to the data being used by the respondent no. 1/defendant no. 1, and it is observed at the request made on behalf of the appellant/plaintiff that such report of the Local Commissioner can also be used as a documentary evidence or any other evidence as per law in the fresh suit which is allowed to be filed by the appellant/plaintiff, without of course in any manner opining one way or the other finally with respect to the merits of the respective cases of the parties as also the finality one way or the other of the contents of the Local Commissioner's report dated 1.7.2016 and the annexed

evidence thereto.

4. In case an interim application is moved in the fresh suit which the plaintiff proposes to file, then in case the cause of action and facts which are stated in the fresh suit to be filed are those after overcoming the shortcomings as stated in the impugned order dated 25.7.2016 then the interim injunction application to be filed which will be filed by the appellant/plaintiff in the fresh suit, will be examined independently by the concerned court without in any manner being affected by any factual observations made in the order dated 25.7.2016. Of course, it will be open to the respondent no. 1/defendant no. 1 to oppose the injunction application on all available factual and legal grounds in the suit which will be filed by the appellant/plaintiff.

5. The appeal is accordingly disposed of in terms of the aforesaid observations and liberty.

6. *Dasti* to counsels for the parties.

VALMIKI J. MEHTA, J

MAY 25, 2017

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