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

+ C.R.P. 186/2017

TEAM GOAL INSTITUTE PVT LTD & ANR Petitioners

Through: Mr. Atul Kumar, Mr. Subodh Kumar,
Ms. Sweety Singh, Mr. Girish
Chandra & Ms. Archana Kumari,
Advs.

Versus

GOAL EDUCATIONAL SERVICE PVT LTD Respondent

Through: Mr. K.K. Sharma, Sr. Adv. with Mr.
Anil Kumar Sahu, Mr. T.P. Ravi,
Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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25.08.2017

CM No.30560/2017 (for exemption)

1. Allowed, subject to just exceptions.
2. The application is disposed of.

C.R.P. 186/2017 & CM No.30561/2017 (for stay)

3. This Revision Petition under Section 115 of the Code of Civil Procedure, 1908 (CPC) impugns the order [dated 9th August, 2017 in TM No.66/2017 of the Court of Additional District Judge (ADJ)-05, South-East District, Saket Courts, New Delhi] of dismissal of the application of the petitioners / defendants under Order VII Rule 11 of the CPC.
4. The counsel for the petitioners / defendants has been heard.
5. At every stage, when this Court asked the counsel for the petitioners / defendants as to how his arguments constitute the argument for rejection of the plaint under Order VII Rule 11 of the CPC, the reply of the counsel for

the petitioners / defendants is that *ex parte* injunction has been granted against the petitioners / defendants.

6. The application under Order VII Rule 11 of the CPC is not meant for having the *ex parte* order of injunction vacated and if the petitioners / defendants have any grievance with the continuance of the *ex parte* order of injunction, the remedy of the petitioners / defendants is to have the said order vacated or to have the application under Order XXXIX Rules 1&2 of the CPC disposed of at the earliest. Instead, it is found that application under Order VII Rule 11 of the CPC has been filed in a routine manner.

7. The respondent / plaintiff has instituted the suit from which this petition arises “under Sections 134 and 135 of the Trade Marks Act, 1999 for the relief of permanent injunction to restrain infringement, passing off, damages and / or rendition of accounts etc.” It is the averment of the respondent / plaintiff that it is carrying on business in Delhi at Nehru Place, New Delhi.

8. The ground on which the plaint is sought to be rejected is, of this Court not having territorial jurisdiction to entertain the suit.

9. When attention of the counsel for the petitioners / defendants is invited to Section 134 of the Trade Marks Act which entitles the plaintiff to institute a suit for infringement within the jurisdiction of the Court where the plaintiff voluntarily resides or carries on business or personally works for gain, the counsel for the petitioners / defendants contends that it has been falsely stated that the respondent / plaintiff is carrying on business in Delhi at Nehru Place and not a single document in that regard has been filed. Attention is also sought to be invited to the report of the process server to

contend that the respondent / plaintiff is not carrying out business at the address given of Nehru Place.

10. I am afraid, the aforesaid arguments of the counsel for the petitioners / defendants are totally *dehors* the scope of Order VII Rule 11 of the CPC and on misinterpretation thereof. The Court, at the stage of Order VII Rule 11 of the CPC, cannot start an enquiry into the facts as the argument of the counsel for the petitioners / defendants suggests. This was reiterated in ***M/s RSPL Ltd. Vs. Mukesh Sharma*** (2016) 232 DLT 161 also.

11. Not only so, it is the averment in para 31 of the plaint that the petitioners / defendants have an interactive website accessible at Delhi and are intending to start business in Delhi, if not already carrying on the said business.

12. Again, the said averment is denied during the hearing and which denial cannot constitute a ground for rejection of the plaint. It is not however denied that the website of the petitioners / defendants is interactive. Even otherwise, in the context of trade marks and patents, the suits in Delhi are entertained against such threatened action also, as was the case before the Division Bench of this Court in ***Teva Pharmaceuticals Industries Ltd. Vs. Natco Pharma Ltd.*** 2014 SCC Online Del 3373.

13. The counsel for the petitioners / defendants has next argued that the franchise agreement between the parties, has been terminated according to the respondent / plaintiff but not according to the petitioners / defendants and the same provides for exclusive jurisdiction of the Courts at Patna.

14. A reading of the plaint shows that the suit is for enforcement of statutory rights under the Trade Marks Act and even if there was a franchise agreement between the parties and a clause therein restricting the territorial jurisdiction to Courts at Patna, so long as, the suit is not for enforcement of rights under the franchise agreement but for enforcement of such statutory rights, the jurisdiction of the Court would depend upon the provisions of the Trade Marks Act and as per which the Courts at Delhi have jurisdiction.

15. There is no merit in the petition.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

AUGUST 25, 2017

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