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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CS(COMM) 274/2018

EXXON MOBIL CORPORATION & ANR Plaintiffs

Through Ms. Anuradha Salhotra with
Mr. Sumit Wadhwa and Ms. Mallika
Ahluwalia, Advocates

versus

P K KURIAN

..... Defendant

Through Mr. Samson Corrba, Advocate

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

ORDER

% 27.07.2018

Review Petition 289/2018

Present review petition has been filed by the plaintiff/petitioner for review of the order dated 17th, July, 2018 by virtue of which the present suit was dismissed.

In the present review petition, it has been averred that this court had erred in holding that the facts in the matter of *Zenner International GMBH & Co and Anr v. Anand Zenner Company Pvt. Ltd, 2018 SCCOnline Delhi 7011* were identical to the facts of the present case. It is further stated that the suit in *Zenner International GMBH & Co. and Anr* (supra) was dismissed on the ground that the plaintiff had failed to lead its evidence in the matter. It is also averred that this court had erred in dismissing the suit

on the ground of territorial jurisdiction instead of returning the plaint to be filed before an appropriate court.

Issue notice.

Mr. Samson Corrba, Advocate accepts notice on behalf of non-applicant/respondent. He states that he has no objection to the present review petition being allowed.

Keeping in view the fact that inadvertent errors have crept into the order dated 17th July, 2018, the present review petition is allowed and the order dated 17th July, 2018 is recalled.

The Registry is directed to delete the order dated 17th July, 2018 from the website of the High Court.

CS (OS) 274/2018

With consent of parties, the present matter has been taken up for hearing and disposal. It is pertinent to mention that present suit has been filed for permanent injunction, infringement of trade mark and account of profits under the Trade Marks Act, 1999.

One of the defences taken in the present suit is that the plaintiff No.1 being the resident of United States of America and plaintiff No.2 being the licensee/permitted user of the registered trade mark of the plaintiff No.1, cannot file the present suit. In support of the said defence, learned counsel for defendant has relied upon Section 134(2) of the Trade Marks Act, 1999 as well as the Division Bench judgment of this Court in ***P.K. Sen Vs. Exxon Mobile Corporation & Anr., 2018 (73) PTC 304[Del][DB]***. Learned counsel for the defendant states that a Special Leave petition filed against the Division Bench judgment has already been dismissed by the Apex Court.

Learned counsel for plaintiffs states that a Division Bench of the High Court of Bombay in ***Harman Overseas Vs. Dongguan TR Bearing Company Limited, 2017 SCCOnLine Bom 7327*** has taken a view contrary to the view taken by the Division Bench of this Court in ***P.K. Sen Vs. Exxon Mobile Corporation & Anr.*** (supra) and a Special Leave petition against the said judgment has also been dismissed *in limine*.

Having heard learned counsel for the parties, this court is of the view that the Division Bench order of this court in ***P.K. Sen Vs. Exxon Mobile Corporation & Anr.*** (supra) is binding.

Consequently, following the binding precedent, this court holds that it does not have the territorial jurisdiction to entertain and decide the present suit.

Accordingly, the injunction order dated 18th May, 2015 is vacated and the present plaint is directed to be returned to the plaintiffs for filing before an appropriate court.

MANMOHAN, J

JULY 27, 2018

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