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

Decided on: 1st March, 2018

+ CM(M) 444/2014 and CM APPL.7745/2014 (stay)

M/S KRBL LIMITED

..... Petitioner

Through: Mr. S.K. Bansal, Advocate with
Mr. Veerendra Kumar Sinha,
Mr. Ajay Amitabh Suman,
Mr. Kapil Giri, Mr. Rahul Sharma, &
Mr. V.K. Shukla, Advs.

versus

M/S P K OVERSEAS PVT LTD

..... Respondent

Through: Mr. Akhil Sachar Advocate with
Ms. Niharika Ahluwalia, Adv.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petition at hand challenged the order dated 14.12.2014 of the Additional District Judge (ADJ) on the file of suit (TM No.63/2011) which was instituted by the petitioner (plaintiff) to the extent thereby it was directed that the matter arising out of application under Order XLVII Rule 1 of the Code of Civil Procedure, 1908 (CPC) of the respondent (defendant) seeking a review of order dated 15.05.2013 would be considered after the issue framed by the impugned order on the question of territorial jurisdiction had been addressed.

2. The suit in question was filed by the petitioner (plaintiff) on 06.07.2010 under Sections 134 and 135 read with Section 27(2) of the Trade Marks Act, 1999 seeking reliefs in the nature of permanent injunction, restraint against infringement, passing off, besides other reliefs like rendition of accounts, etc. The respondent (defendant) had moved an application under Order VII Rule 10 CPC taking objections, *inter alia*, to the jurisdiction of the trial court to entertain the suit, such objection also touching upon the issue of territorial jurisdiction. In the wake of the said application, the plaintiff moved an application under Order VI Rule 17 CPC for amendment of the suit, the prime effect whereof was that the prayer for injunction against passing off was withdrawn. Both the applications were considered by the trial Judge by order dated 15.05.2013. The amendment to the suit was allowed with the observation that the court would have jurisdiction to entertain the prayer that remained, particularly the prayer for injunction against infringement of the trade marks. The case was taken to the stage of arguments on the pending applications for *ad interim* injunction and its modification.

3. The defendant then moved an application for review of the above order dated 15.05.2013, *inter alia*, again raising the issue of territorial jurisdiction. It is in that context that the learned trial Judge framed an issue to address the question whether the trial court has territorial jurisdiction to entertain the suit. Though the order dated 14.02.2014 would not say so expressly, it appears from the tone and tenor of the direction in the order that the trial Judge has presumed

that the question of territorial jurisdiction would be a pure question of law.

4. The petition at hand has been pressed primarily on the contention that the question of territorial jurisdiction in the present case is a mixed question of fact and law.

5. After some hearing, the counsel for the petitioner submitted that he may be allowed to withdraw the present petition and make appropriate submissions before the trial court to the effect that the issue of territorial jurisdiction in the present case is a mixed question of fact and law, though the respondent/defendant refutes this and reserves his right to oppose such a prayer.

6. The prayer for withdrawal of the petition is granted with liberty given to the petitioner to make an appropriate prayer in above light before the trial court for appropriate decision to be taken thereof.

7. Needless to add, nothing in this order will be taken as expression of opinion on the merits of the above noted contentions of the parties.

8. The petition and the application filed therewith stand disposed of with these observations.

R.K.GAUBA, J.

MARCH 01, 2018

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