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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 23rd April, 2018

+ C.R.P. 87/2018 and CM APPL.15858-15859/2018

BALBIR SINGH & COMPANY Petitioner
Through: Mr. Santosh Chaurihaa, Advocate

versus

MEX SWITCH GEARS PVT. LTD. Respondent
Through:

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioner is the defendant in the civil suit (CS No.1438/2016) instituted by the respondent (the plaintiff) in January, 2016 in the court of District Judge, South-East District at Saket Court, New Delhi, it being a case for permanent injunction to restrain it from infringement and passing off of the trademark and copyright and for recovery of damages, delivery up, etc. The plaint describes the plaintiff as a private limited company having its office in Jalandhar, Punjab and another office at 36, Pocket B, Siddharth Extension, New Delhi, within the territorial jurisdiction of the district court where the suit has been filed. It describes the petitioner (the defendant) as an entity working for gain from an office in Jalandhar, Punjab.

2. The jurisdiction of the district court in Delhi has been invoked on the basis of following averments:-

“36. That the Hon’ble Court has the jurisdiction to entertain and try the suit as the plaintiff has its branch office in Delhi and the plaintiff goods are distributed and sold in Delhi by its dealers in Delhi and NCR regions. The defendant is clandestinely selling its goods in Delhi. The plaintiff has an office in Delhi and has registered trade marks. The Hon’ble Court has jurisdiction under Section 62(2) of the Copyright Act, 1957 read with Section 134(2) of the Trade Marks Act, 1999.”

3. The defendant (the petitioner) had moved an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC) seeking rejection of the plaint on the ground that the court where the suit has been instituted lacks territorial jurisdiction. The said application was dismissed by the additional district Judge by order dated 09.02.2018 which is assailed by the petition at hand.

4. The petitioner relies on ruling of the Supreme Court in *Indian Performing Rights Society Ltd. vs. Sanjay Dalia & Anr.*, AIR 2015 SC 3479. During the course of hearing, reference also came to be made to the view taken by this court in its decision dated 20.12.2016 in CS(OS) No.3694/2014, titled *Mr. Piruz Khambatta & Anr. vs. Rajmohan Rupaji Modi & Ors.*, on similar issues concerning territorial jurisdiction involving application of Section 134(2) of the Trade Marks Act, 1999 and Section 62(2) of the Copyright Act, 1957.

5. In the considered view of this court, the averment in the plaint to the effect that the defendant is clandestinely selling the infringing

goods in Delhi itself is sufficient to confer the territorial jurisdiction on the court where the suit has been instituted. In these circumstances, there is no case made out for rejection of the plaint.

6. The petition is, thus, found wholly devoid of substance and is accordingly dismissed.

7. Pending applications also stand disposed of.

R.K.GAUBA, J.

APRIL 23, 2018

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