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

+ **FAO(OS) (COMM) 149/2018**

MOTHER DAIRY ,CALCUTTA & ANR Appellants

Through: Ms.Madhumita Bhattacharjee with
Ms.Urmila and Mr.Vidur Kamra,
Advocate

versus

MOTHER DAIRY FRUITS & VEGETABLES PVT LTD & ORS

..... Respondent

Through: Mr.Sanchit Shivakumar, Advocate.
Mr.Vijay Kumar Singh with
Mr.Gaurav Kumar, for R-4 with
respondent No.4 in person

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

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14.09.2018

Issue notice. Mr.Sanchit Shivakumar, Advocate accepts notice on behalf of the respondent.

With the consent of the parties, we have heard this appeal. This appeal is by the defendant Nos.3 & 4 in a suit for claiming trademark, infringement and seeking permanent injunction and damages. The pleadings were completed long back in the year 2011 and on 13.02.2014, issues were framed. In this background, the appellant-defendant applied for amendment of issues by way of two additional issues arising out of the pleadings of the parties. The first additional issue pertained to the question of territorial jurisdiction – which the learned Single Judge by the impugned order rejected on the objection that it stood waived under Section 21 of the CPC and the

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second pertained to the *locus standi* of the plaintiff to institute the suit.

Having heard the counsel for the parties and considering the pleadings, this Court is of the opinion that the first additional issue with respect to the territorial jurisdiction can be urged by the defendant-appellant. The cause of action in this case, which occasioned the filing of the suit, occurred in Jharkhand. However, the plaintiffs claim for filing the suit in Delhi is premised upon Section 134 of the Trademark Certificate. It is agreed by the counsel for the parties that there is no necessity for leading any additional evidence on this issue since the issue is dependent upon the interpretation of Section 134 and does not call for any fresh evidence, other than what is on record. As far as the second issue goes, the Court notices that defendant-appellant had never urged it in the written statement. No additional issue on the question of law on the *locus standi* therefore could have been framed. In these circumstances, following issue shall be considered:

"Whether the Court has territorial jurisdiction to try and adjudicate the present suit ?"

The appeal is partly allowed in the above terms.


S. RAVINDRA BHAT, J.


A. K. CHAWLA, J.

SEPTEMBER 14, 2018
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