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

+ FAO(OS) 136/2017 & CM No.17191/2017

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Date of decision : 13th March, 2018

FEDERAL EXPRESS CORPORATION

..... Appellant

Through : Mr. Rajshekhar Rao, Mr. J.V.
Abhay, Ms. Rosalyn Malik and
Ms. Kruttika Vijay, Advs.

versus

FEDEX SECURITIES LIMITED & ORS

... Respondents

Through : Mr. Prashant Gupta and Mr.
Kanishk Kumar, Advs.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

GITA MITTAL, ACTING CHIEF JUSTICE

1. The appellant before us has filed CS(OS)No.2213/2014 complaining of infringement of a registered trademark 'Fedex' as well as passing off against the respondents. In the suit, the respondents (defendants in the suit) filed an application being I.A.No.18137/2014 under Order VII Rule 10 of the Code of Civil Procedure contending that the ld. Single Judge did not have the territorial jurisdiction to entertain and adjudicate upon the subject matter of the suit.

2. The suit was filed in Delhi by the plaintiff contending that it

was carrying on business in Delhi. So far as the jurisdiction is concerned, we extract hereunder the averments made in paras 57 and 58 of the plaint which were to the following effect :

“57. It is submitted that this Hon’ble Court has the jurisdiction to entertain and try the present suit inasmuch as defendants claim to assist large and medium-sized Indian corporate in project planning, financial structuring, sourcing of debt from banks/financial institutions, arranging working capital assistance and private placement of debt instruments such as debentures, assisting in listing of securities in recognized stock exchanges in India. Defendants offer and advertise their services all over India including in Delhi through their website www.fedsee.in. Therefore, the cause of action has arisen within the territorial jurisdiction of this Hon’ble Court. As per the documents publicly accessible and issued to the public at large inter alia an defendant’s website www.fedsec.in and www.sebi.gov.in of the Securities and Exchange Board of India, Defendants are acting as the manager/merchant bankers to and/or market intermediaries for various entities/companies and servicing clients in Delhi, and thus carrying on business and personally working for gain in Delhi. Further, according to Defendants’ letter dated February 1, 2013, Defendants have been appearing in prominent national dailies in their capacity as merchant bankers. Further, offers made by Defendants to public in the capacity of merchant bankers or manager of offer for their clients have been published inter alia in Delhi edition of national dailies with wide circulation such as Business Standard in August 2012. Documents evincing such averments/statements of Defendants’ services being propagated in Delhi have been filed as documents with the plaint. The right of Plaintiff to exclusively use the trade

mark/name FEDEX is inter alia infringed by such advertisements/activities in Delhi, and therefore, this Hon'ble Court has the jurisdiction to entertain and try the present Suit.

58. In addition to the above, it is further submitted that Plaintiff has branch and other offices and various centres, stations and locations all over Delhi for provision of its services under the trade mark/name FEDEX; widely promotes the said services and caters to customers in Delhi; and thus carries on business and personally works for gain in Delhi. Plaintiff's FEDEX trade marks, which are the subject matter of the Suit, are also registered and have their situs in Delhi. Further, Plaintiff's services are widely availed of by customers in Delhi and transactions made through its website www.fedex.com. It is thus submitted that this Hon'ble Court has the jurisdiction to entertain and try the present Suit."

3. I.A.No.18137/2014 came up for consideration on the 27th of March 2017 when it was heard. By the impugned order, which came to be passed on 11th of April 2017, Id. Single Judge concluded that this court (*Delhi High Court*) did not have jurisdiction to entertain and adjudicate upon the subject matter of the suit observing as follows :

"27. It is well settled that for adjudication on the question of territorial jurisdiction in the context of prayer for rejection or return of the plaint, the pleadings in the plaint are to be assumed to be correct and for this purpose, the defences taken in the written statement are not to be looked into and further that even if part of cause of action is shown to have arisen within the jurisdiction of the forum court, the case is bound to be entertained by it. The pleadings in the case at hand,

however, fail to make out a case that would fall within the jurisdiction of this court. The averments made by the plaintiff, based primarily on the material referred to above, do not show that the defendants are working for gain in Delhi. The advertisements published of the offers made by them to the public at large in the capacity of merchant bankers or merchant intermediaries have come with clear declarations of their location in CS (OS) 2213/2014 Page 28 of 29 Mumbai, which is the place where they have their registered offices. The reference to the website whereby commercial transactions are statedly offered do not pass the muster of Banyan Tree Holding P. Ltd. (supra), also because there is not even a single illustration given of any such commercial transaction having been entered into by the defendants with any user of their website within the territorial jurisdiction of this court.”

4. Having so concluded that it had no jurisdiction to entertain and adjudicate upon the subject matter of the suit in Delhi and having found substance in the objection of the respondents, the only course of action which remained available to the Id. Single Judge was to return the plaint under the provisions of Order VII Rule 10 of the CPC thereby granting the prayer made by the respondents by way of I.A.No.18137/2014.

5. We find that in para 29 of the order dated 11th April, 2017, the Id. Single Judge has recorded the submission made by the plaintiff during the hearing on 27th March, 2017, that in the event of the said application being allowed, the plaintiff would seek appropriate directions in terms of Order VII Rule 10 of the CPC opting to present

the plaint for further proceedings in the High Court of Judicature at Bombay.

6. The present appeal has been necessitated inasmuch as the Id. Single Judge has recorded the clear finding that it had no jurisdiction to entertain and adjudicate upon the subject matter of the suit, in para 28, the Id. Single Judge has further gone ahead to conclude that the conduct of the plaintiff would disentitle him to equitable relief from the court.

7. The present appeal does not assail the finding of the Id. Single Judge that the court had no jurisdiction. However, the rest of the observations made in para 28 of the order on the conduct of the plaintiff and disentitlement to interim relief have been assailed by way of the present appeal.

8. We have heard Mr. Rajshekhar Rao, Id. counsel for the appellant and Mr. Prashant Gupta, Id. counsel for the respondents.

9. Mr. Prashant Gupta, Id. counsel for the respondents has supported the impugned observations and findings, contending that given the fact that the plaint was placed before the court, there was no prohibition for the court to make the observations thereon, especially, given the fact that the appellant had conceded during hearing that in case the application was granted, it would seek orders under Order VII Rule 10 of the CPC.

10. It is trite that having concluded that the court had no jurisdiction at all in the matter, the court would stand divested of the jurisdiction and authority to make any observations on the merits of the matter.

In our view, therefore, the observations contained in para 28 with regard to the conduct of the plaintiff and findings recorded thereon could not have been recorded by the ld. Single Judge.

11. In the opening part of para 28, the ld. Single Judge has recorded that *“the pleadings in the plaint do not make out a case of cause of action having arisen, even in part, in Delhi”*. The rest of the observations in the said para were completely without jurisdiction.

12. Additionally, Mr. Prashant Gupta, ld. counsel for the respondents has pointed out that the ld. Single Judge in para 28 has noted that *“for invoking the jurisdiction of the court in Delhi under Section 134 of the Trademarks Act, 1999, it was incumbent upon the plaintiff to plead and show that it actually and voluntarily resides or carries on business or personally work for gain within its territorial limits. This obviously could have been shown with reference to the location of the registered office of the plaintiff in Delhi”*.

There is an error in making a reference to the *“registered office”* inasmuch as it was nobody’s case that the plaintiff had a registered office in any place in India.

14. In view of the above, it is directed that para 28 of the order dated 11th April, 2017 shall stand quashed except to the extent extracted in para 11 above.

15. The appeal is allowed in the above terms.

16. No order as to costs.

CM No. 17191/2017

17. In view of the orders passed in the appeal, the application is disposed off.

ACTING CHIEF JUSTICE

MARCH 14, 2018/aj

C.HARI SHANKAR, J



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