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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Judgment: 21th February, 2018

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FAO(OS) (COMM) 228/2017

RAJESH KUMAR & ANR

..... Appellants

Through: Mr.Rakesh Kumar, Mr. Anil Kr. Sahu,
Mr.Trilochan P. Ram, Mr. Avik Mukherji
and Mr.Shishir Raj, Advocates.

versus

MICROSOFT CORPORATION & ANR

..... Respondents

Through: Ms. Safia Said, Advocate.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. (ORAL)

1. This is an appeal under Section 13 of the Commercial Courts Commercial Division and Commercial Appellate Division of High Courts Act, 2015 read with Section 104, Order 43 Rule 1 and Section 151 of Code of Civil Procedure, 1908.
2. The challenge in this appeal is an order dated 17.10.2017 passed by the learned Singh Judge of this Court by which I.A. No.14114/2014 (under Order 7 Rule 10 Code of Civil Procedure) filed by defendants/appellants herein for return of the plaint has been dismissed.

3. Learned counsel for the appellants submits that the Courts at Delhi do not have the territorial jurisdiction to try and entertain the civil suit filed by the plaintiffs/respondents herein for permanent injunction restraining infringement of Copyright on the ground of profit, damages etc.
4. In support of his submissions, learned counsel for the appellant submits that in the entire body of the plaint, there is no averment that the appellants are carrying out their trade and business in Delhi. It is submitted that in fact, to the contrary in paragraphs 19 and 21 specific averments have been made that the respondents are carrying on their business from Gurgaon and Hyderabad.
5. While relying on a decision rendered by a Division Bench of this Court in case of “*Ultra Home Construction Pvt. Ltd. vs. Purushottam Kumar Chaubey & Ors.*” reported in Volume 227 (2016) DLT 320, more particularly paragraph 13, Mr. Kumar, counsel for the appellants contends that having regard to the fact that the Copyright has not been assigned to the plaintiff No.2 by plaintiff No.1 and the plaintiff no.2 has a branch office at Hyderabad as also Gurgaon, the present suit would lie at either of the two places but not in Delhi. He submits that while deciding the application under Order 7 Rule 10 Code of Civil Procedure (CPC) the averments made in the plaint and the documents annexed are alone to be considered.
6. It is also contended by Mr.Kumar, learned counsel for the appellant that the learned Single Judge has erred in observing in the impugned order that there is no specific denial to the averments made in paras

19, 21, 27 and 28 of the plaint whereas reading of the written statement would show that in fact, a specific denial has been made to the extent “that the defendants have been serving their clients in Delhi is a speculation and such speculation cannot confirm territorial jurisdiction in the present case”.

7. Counsel for the respondents/plaintiffs who enters appearance on an advance copy submits that there is no infirmity in the order passed by the learned Single Judge in view of the fact that in the printout taken from the website of the plaintiffs, there is a clear and categorical admission that *“Tekriti Software is a high-growth IT services company, with significant operations both in USA (New Jersey and Washington DC Metro area) and India (New Delhi/Hyderabad area). Further, at its page No.46, it notes the governing laws “the foregoing are subject to the laws of the Republic of India and the Courts in New Delhi, India shall have the exclusive jurisdiction on any dispute that may arise out of the use of this site.”*
8. Learned counsel submits that the presence of the defendants/appellants herein is also established from the fact that the defendants/appellants have conferred the jurisdiction at Courts at New Delhi to decide the disputes which may arise out of the said website. Counsel submits that in case the defendants did not have any presence in Delhi such a clause would not have been included on their website which conclusively proves their presence at Delhi.
9. Mr. Kumar, counsel for the appellants submits that the documents produced by the plaintiffs were not filed along with the plaint but were

filed subsequently and the same could not have been relied upon by the Court.

10. It has been brought to the notice of the Court by the counsel for the appellants that in the concluding part of the order of the learned Single Judge, the learned Single Judge has observed that the issue needs to be undergone elaborately at the stage of evidence.
11. Mr. Kumar, counsel for the appellants submits that in case, the order dated 17.10.2017 is not set aside or clarified serious prejudice would be caused to the rights of the appellants for the reasons that the impugned order would stand in the way of the appellants/defendants at the stage of framing of issues.
12. Counsel for the plaintiffs/respondents herein submits that the plaintiffs would have no objection if an issue is framed by the learned Single Judge with regard to the territorial jurisdiction leaving all objections of both the parties open to be decided by the Court.
13. We have heard the learned counsel for the parties, having regard to the stand taken we dispose of the appeal with a clarification that at the stage of framing of issues as agreed an issue with regard to jurisdiction shall be framed by the learned Single Judge and the aforesaid issue would be decided unaffected by any observation made in the order dated 17.10.2017.
14. Counsel for the appellants submits that preliminary issue should be framed. We leave this question to be decided by the learned Single Judge who would consider the request of the appellants.

15. With these observations, the present appeal is disposed of.

G. S. SISTANI, J.

SANGITA DHINGRA SEHGAL, J

FEBRUARY 21, 2018
afa/ssc

