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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(OS) No.1185/2006
THE INDIAN PERFORMING RIGHT SOCIETY LTD..... Plaintiff
Through: Mr. Himanshu Bagai, Adv.

versus

MR. ADITYA PANDEY AND ANR. Defendants
Through: Mr. Angad Dugal, Mr. Rijul Taneja,
Adv. for Mr. Abhishek Malhotra,
Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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29.09.2016

IA No.11203/2016 (of the plaintiff under Order VII Rule 10 of the CPC).

1. The plaintiff seeks return of the plaint for institution in the Court of appropriate jurisdiction.
2. The counsel for the plaintiff has argued that as per the judgment of the Supreme Court in *Indian Performing Rights Society Ltd. Vs. Sanjay Dalia* (2015) 10 SCC 161 the plaintiff has realised that this Court does not have territorial jurisdiction and hence this application.
3. The counsel for the defendants opposes the application.
4. I find that in the issues framed in this suit on 28th July, 2009, issue no.1 pertains to the territorial jurisdiction of this Court.
5. I have enquired from the counsel for the defendants that the defendants having objected to the territorial jurisdiction of this Court and having got issue framed thereon, cannot oppose the application inasmuch as even if this suit were to be decided on merits, in the event of the plaintiff

losing on the issue of territorial jurisdiction the consequence would be of dismissal of the suit and the plaintiff would have liberty to institute the suit in the Court of appropriate territorial jurisdiction.

6. The counsel for the defendants then contends that the suit claim even otherwise is not maintainable.

7. I have however enquired from the counsel for the defendants whether the defendants are willing to give up the issue as to the territorial jurisdiction.

8. The counsel for the defendants states that he will give up the issue on territorial jurisdiction and since the plaintiff has failed to lead any evidence and the evidence of the plaintiff has been closed, the suit be dismissed as the plaintiff has failed to prove the issues.

9. The counsel for the plaintiff contends that as per *Sanjay Dalia* supra this Court does not have territorial jurisdiction and notwithstanding the defendants giving up the issue as to territorial jurisdiction this Court cannot dismiss the suit on merits.

10. As per my understanding, unless there is an inherent lack of territorial jurisdiction in this Court, in the absence of any objection as to the territorial jurisdiction, this Court would not lack power to dismiss the suit on merits. Reference in this regard can be made to Section 21 of the Code of Civil Procedure, 1908 (CPC). It cannot also be lost sight of that the plaintiff has pursued this suit in this Court for the last over ten years notwithstanding the said objection of the defendants.

11. The counsel for the plaintiff then states that he is not prepared to argue on the said aspect.
12. List on 30th September, 2016.
13. No further adjournment shall be granted.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 29, 2016

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