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

Date of Decision: August 16, 2016

+ **FAO 39/2015 & C.Ms.2482, 27254/15**

FRANKFINN AVIATION SERVICES PVT LTD Appellant
Through: Mr. J.P. Sengh, Senior Advocate,
with Mr. Ajit Nair and Ms. Shruti
Kukreja, Advocates

versus

TARA KERKAR & ORSRespondents
Through: Nemo

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

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Impugned order of 15th November, 2014 returns appellant's plaint under Order 7 Rule 10 of CPC while holding that the Delhi courts do not have the territorial jurisdiction over the subject matter of the plaint.

Appellant had filed a suit for permanent injunction and damages wherein it was claimed that respondents-defendants have defamed the appellant-plaintiff. Impugned order notes that the defendants are residing in Goa and the alleged defamation on account of which damages are being claimed, had taken place at Goa as respondents have purportedly addressed a Press Conference in Goa.

To assail the impugned order, learned senior counsel for appellant

draws the attention of this Court to the plaint to point out that it was specifically averred by the appellant-plaintiff that the Press Conference by the respondents was put on the website URL (*Uniform Resource Locator*) and the other websites on which the alleged defamation had taken place are detailed in paragraphs No.5 of the plaint. In plaint's next paragraph, it is specifically averred by the appellant-plaintiff that the head office of appellant is in Delhi where various unwarranted queries were received from all over qua the aforesaid Press Conference and the telecast of the Press Conference was seen on HCN TV through different websites on 5th March, 2014.

It is submitted that the impugned order merely notes two decisions of this Court in *Frank Finn Management Consultants v. Subhash Motwani & Anr.* 154 (2008) DLT 95 and *Indian Potash Ltd. (M/s.) v. Media Contents & Communications Services (India) Pvt. Ltd. & Anr.* 2009 IV AD (Delhi) 28, but erroneously brushes aside these two decisions by cryptically observing that the ratio of these two decisions do not apply to the facts of the instant case.

During the course of the hearing, it is pointed out by learned senior counsel for appellant that the impugned order was passed without putting respondents-defendants to notice. Even in this appeal notices sent to the respondents-defendants were received back unserved and ultimately, notice sent to respondent No.4 was served by way of publication but to no avail as none had appeared on behalf of respondent No.4 on the last date of hearing and even today. Infact, there is no appearance on behalf of the respondents. They are accordingly set *ex parte*.

It has been clearly declared in *Subhash Motwani (supra)* and

Indian Potash Ltd. (M/s.) (supra) that by putting defamatory material on internet, territorial jurisdiction does not remain confined to the place of actual defamation and in a case of defamation being telecasted, Section 20 of CPC will have no application. Even Illustration 'B' to Section 19 of CPC makes it clear that the jurisdiction would be at both the places i.e. at the place where the actual defamation takes place and the place where such defamatory material is transmitted through website, telecast, etc..

Upon hearing and on perusal of the impugned order, trial court record and the decisions cited, this Court finds that the impugned order is conspicuously silent on appellant's averment in the plaint regarding defamation taking place in Delhi as there was a telecast of the said Press Conference on HCN TV and about the alleged defamatory telecast being made on different websites, as detailed in paragraph No.5 of the plaint.

In view of the aforementioned infirmity in the impugned order, it cannot be sustained and is accordingly set aside and appellant's plaint is restored to its original position. Appellant to appear before trial court on 1st September, 2016 for proceeding with the plaint in accordance with the law.

With aforesaid directions, this appeal and the pending applications are disposed of. Trial court record be remitted back forthwith.

(SUNIL GAUR)
JUDGE

AUGUST 16, 2016

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