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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CS (COMM) 118/2016

MOBILE TELESYSTEMS OJSC & ANR.

..... Plaintiffs

Through: Mr. Aasish Somasi, Advocate.
(M:9910201113)

versus

MAHESH BHATTI & ORS.

..... Defendants

Through: Mr. Sumit Nagpal, Advocate for
counter claimant. (M:9911995000)

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

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05.09.2018

I.A. 1046/2018

1. The Court has perused the amendments sought which relate to the trademark 'MTS' and further facts, which have come to the knowledge of the counter claimant. Amendment to the counter claim is allowed.
2. I.A. is disposed of.

CC(COMM) 2/2018

3. Learned counsel for the Plaintiffs accepts notice qua the newly impleaded Defendant No.3 in the counter claim. The amended counter claim is taken on record. The Plaintiffs have already filed the written statement to the amended counter claim. The same is also taken on record. Replication thereto, if any, be filed within two weeks. The parties shall seek inspection of any documents that they wish from the other side. Upon inspection, the admission/denial of the documents shall be done through affidavit strictly in compliance with Delhi High Court (Original Side) Rules, 2018. Any unjustifiable denial would be liable to be burdened with cost.
4. List before the Joint Registrar on 13th November, 2018 for marking exhibits.



I.A. 18451/2015

5. The present application is not pressed by learned counsel for Plaintiffs. Same is dismissed as not pressed.

I.As. 3425/2015 (u/O XXXIX Rules 1 & 2 CPC) & 19334/2014 (u/O XXXIX Rules 1 & 2 CPC)

6. I.A. No.3425/2015 has been filed by the counter claimant seeking interim injunction and I.A. No.19334/2014 is the application filed by the Plaintiffs seeking interim injunction. Considering the nature of the dispute between the parties, the Plaintiffs claim adoption of the mark 'MTS' qua telecommunication services since 1998 in Russia. The trademark application was filed by the Plaintiffs in India in 2008. However, the Defendants claim to be the prior user in India since 2006, of the mark 'MTS'. The Defendants' trademark is registered under class 9. According to the Defendants, the Plaintiffs' mark was called 'MTC' in Russia and not 'MTS'. However, this is disputed by learned counsel for Plaintiffs. The suit is pending since 2014. There is no interim injunction in the matter. Under these circumstances, both the injunction applications are dismissed, at this stage. Trial in the matter would be expedited, if parties agree for appointment of a Local Commissioner.

I.A. 14913/2016 (u/S 124 of the Trade Marks Act, 1999)

7. By this application, the Plaintiffs seek stay of the suit on the ground that the Plaintiffs have filed a rectification petition seeking rectification/cancellation of the Defendants' trademark registration number 2404449 dated 1st October, 2012. Admittedly, the rectification petition has been filed post filing of the suit.

8. Arguments heard in part. List on 7th September, 2018.

PRATHIBA M. SINGH, J.

SEPTEMBER 05, 2018/dk