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

+ **CS (COMM) 118/2016**

MOBILE TELESYSTEMS PJSC & ANR

..... Plaintiffs

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

versus

MAHESH BHATTI & ORS

..... Defendants

Through: Mr. A. Kaur, Advocate for D-1 (M:
9811074290).

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **12.04.2019**

I.A. 1496/2019 (Under Order XXXVIII Rule 1, 2 & 5) in the Counter Claim

1. This is an application by the Defendants seeking security of a sum of Rs. 462 crores and Rs. 175 crores against Defendant No. 2 and 3 i.e. the Plaintiff Nos. 2 and 3 in the suit. The learned counsel for the Defendants submits that the Plaintiff No. 2 i.e. Sistema Shyam Tele Services Limited has sold its telecommunication business to Reliance and has earned huge sums of revenue. Plaintiff No. 3 was the importer of the MTS products. Since they do not have any assets in India, security should be offered.

2. On the other hand, learned counsel for the Plaintiffs has handed over an affidavit of Mrs. Neera Sharma, who is the Constituted Attorney of the Plaintiffs, to the effect that Sistema Shyam Tele Services Limited has changed its name to Sistema Smart Technology Limited. The submission is



that Sistema Smart Technology Limited is still a running concern and all the liabilities of Sistema Shyam Tele Services Limited have been taken over by the Sistema Smart Technology Limited and the same are to be honoured by Sistema Smart Technology Limited.

3. The present application is completely premature in as much as the prior user rights in the mark “MTS” are yet to be determined. Issues have been framed both in the suit and in the counter claim. The Defendants are yet to establish their *bonafide* nature of the adoption and use of the mark “MTS”. The rights of the Defendants having not yet crystallised, it cannot be presumed that the Defendants are either entitled to rendition of accounts of profits or damages from the Plaintiffs. Ld. Counsel for Sistema Smart Technology Limited has undertaken to abide by any order that may be finally passed by this Court. The said undertaking is accepted.

4. The I.A. is dismissed.

I.A. 5408/2019 (Under Section 148 CPC)

5. Vide order dated 1st February, 2019, issues were framed and six weeks’ time was granted for filing the evidence. This application has been moved seeking enlargement of time for filing evidence. Last opportunity is granted for filing of evidence within four weeks subject to payment of Rs. 20,000/- as costs.

6. IA is disposed of.

I.A. 16590/2018 (under Order VI Rule 17 vol. 2)

7. This application has already been disposed of on 14th December, 2018. Let the same be not shown in the cause list.

I.A. 1046/2018 (For Amending The Counter Claim)

8. This I.A has been allowed on 5th September, 2018. Need not be shown

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in the cause list.

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9. List before the Local Commissioner on 24th April, 2019, the date already fixed for directions. Dates of recording of evidence shall be fixed by the Local Commissioner,

10. List before Court on 27th September, 2019.

PRATHIBA M. SINGH, J.

APRIL 12, 2019
MR