Suit filed against the defendants for use of ‘OBEROI’ in conjunction with Trademark "Three Sixty" and “Three sixty one”

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The suit was filed for infringement of trademark, passing off, dilution and damages, etc. against defendants’ use of the mark ‘THREE SIXTY WEST’ for their hotel-cum-residential project infringes the plaintiffs’ statutory rights in the marks ‘three sixty’ and ‘three sixty one’ and use by the defendants of ‘OBEROI’ in conjunction with ‘THREE SIXTY’ infringes the plaintiffs’ rights in the trademark ‘OBEROI’. Rejecting the application under Order VII Rule 10 of the CPC, 1908 the Court held that the plaintiffs herein have pleaded effect of the action of the defendants within the territorial jurisdiction of this Court and sale of the project at Delhi through third party websites. All the said pleas in the plaint if proved would confer territorial jurisdiction on this Court and the plaintiffs cannot be ousted treating the averments in the plaint to be false. The Court further held that though there can be no estoppel against statute and no conferment of jurisdiction by consent but it cannot also be lost sight of that CS(OS) No.892/2005 was filed by the plaintiffs against the defendants, who then also were carrying on business at Mumbai, restraining them from carrying on the said business of real estate, construction, hotels, spas and/or any cognate or allied business under the name and style ‘OBEROI’, ‘OBEROI SPAS’ and ‘OBEROI GROUP’. The plaintiffs in the plaint in the suit aforesaid also, invoked the jurisdiction of this Court on the basis of the plaintiffs carrying on business at Delhi and the cause of action having accrued at Delhi owing to the defendants having advertised under the impugned mark in the ‘Times of India’ newspaper having a circulation at Delhi. The plaintiffs and the defendants, during the pendency of the said suit, entered into an Agreement dated 27th November 2009 at Delhi where under the defendants agreed to use the mark ‘OBEROI’ in respect of its real estate, construction and infrastructure business only in conjunction with the qualifier ‘construction’.

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