* **HIGH COURT OF DELHI AT NEW DELHI**

\+ **CRP 145/2015 & CM APPL.21851/2015**

Decided on: 5th October, 2015

SANMARG INFRATECH PVT. LTD. ..... Petitioner
Through: Mr. K.K Rohtagi Adv.

versus

LAFARGE AGGREGATES & CONCRETE INDIA PVT. LTD. ..... Respondent
Through:

CORAM:
HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (Oral)

CM APPL.21852/2015 (exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of.

CM APPL.21853/2015 (delay)

Delay of 35 days in re-filing the petition is condoned as sufficient cause is shown. Application stands disposed of.

CRP 145/2015

1. This is a revision petition filed against the order dated 01.06.2015, by virtue of which, the learned Civil Judge, South,

Saket Court had decided the issue of territorial jurisdiction against the petitioner/defendant.

2. Briefly stated the facts of the case are that the respondent/plaintiff herein supplied RMC to the petitioner/defendant for the purpose of some construction. For this purchase, bills/invoices were duly drawn and received by the petitioner. The total amount of money, which was due and payable by the petitioner to the respondent was Rs. 4, 58,950/-. The accounts were settled and it was found that there was an outstanding balance of Rs. 2, 21,100/- payable by the petitioner to the respondent. Since the aforesaid amount was not paid a suit for recovery came to be filed by the respondent.

3. In the said suit, the Ld. Trial court framed the issues including one as to whether the courts in Delhi have territorial jurisdiction or not and the same was treated as a preliminary issue.

4. The petitioner had contended that all the material was supplied under a tax invoice, in which it was clearly mentioned against serial No.5 in the terms of sale that disputes, if any, will be subject to jurisdiction of courts situated at seller's place of work or where the seller has registered office i.e. at Faridabad or

Mumbai respectively. Meaning thereby, as the respondent herein was the seller of RMC, therefore in the event of any dispute arising between the petitioner and the respondent, the same was to be dealt with by the court within whose jurisdiction the seller was discharging the material or having its registered office etc.

5. This contention was negated by the learned trial Judge who decided this issue against the petitioner by holding that Delhi Court has the jurisdiction on the basis that the respondent has an office in Delhi and goods were supplied in Delhi and also that there was no express agreement between the parties regarding jurisdiction.

6. The petitioner feeling aggrieved by the aforesaid order has preferred the present Revision Petition and has raised the same pleas which were raised by it before the trial court regarding lack of jurisdiction by Delhi Court.

7. The counsel for the petitioner has urged before this court that jurisdiction would be decided as per the terms of the invoice and absence of words 'only', 'exclusive' etc. would not affect the applicability of territorial jurisdiction clause. Reliance in this

regard is placed on two Supreme Court judgments *Swastik Gases Pvt. Ltd. Vs. Indian Oil Corporation Limited; (2013) 9 SCC 32* and *Hakem Singh v. M/s Gammon (India) Ltd.; 1971 (1) SCC 286* to contend that place mutually decided upon in agreement should have jurisdiction.

8. I have heard the learned counsel for the petitioner as well as the learned counsel for the respondent. I have also gone through the impugned order as well as the record. I do not find that there is anything illegal, improper or there is any jurisdictional error in the impugned order wherein the issue that the Delhi Court has the jurisdiction has been decided in favour of respondent/plaintiff. The reason for this is that a perusal of the tax invoice will clearly show that although it has been specifically mentioned that the dispute, if any, between the seller and purchaser would be subject to the jurisdiction of court at seller's place however, it is clearly laid down in Section 20 CPC that the jurisdiction for instituting a suit would lie at a place where the defendant resides, works for gain or where the cause of action either wholly or partly has arisen. As the seller is the supplier of RMC at Delhi, therefore, Delhi court has been rightly

held to be having the jurisdiction since cause of action arises in Delhi.

9. Apart from this, the fact of the matter remains that the suit is filed by the respondent for sum of only Rs. 2,21,100/-, which has not been able to make substantial progress because of these pleas, which are being raised by the petitioner.

10. The present Revision Petition in my view is totally misconceived and no fault can be found with the order passed by the learned Civil Judge. The Revision Petition is dismissed.

11. Pending application also stand disposed of.

V.K. SHALI, J.

OCTOBER 5th, 2015
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