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

Date of Decision: August 03, 2016

+ **FAO 43/2012**

SUNITRANS LOGISTICS PVT LTD Appellant
Through: Mr. P.K.Misra & Mr. B.K.Pandey,
Advocates

versus

CORNELL OVERSEAS PVT LTD & ORS Respondents
Through: Mr. Nalin Tripathi & Ms. Sampa
Sengupta, Advocates

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

% **JUDGMENT**
(ORAL)

In a suit for recovery of ₹12 lac odd, appellant-defendant No.2 had filed an application under Order 7 Rule 10 of CPC asserting lack of territorial jurisdiction while relying upon Clause 21 of the Bill of Lading, which has been reproduced in the impugned order and as per Clause 21, any claim or dispute arising out of Bill of Lading is to be determined by the courts in United States of America. Appellant's application under Order 7 Rule 10 of CPC has been dismissed by trial court vide impugned order of 15th November, 2011 holding that exclusive jurisdiction does not lie with the District Court in New Jersey, United States of America as the Appellant-defendant No.2 and respondent No.1/plaintiff are the

companies in Delhi and the entire transaction took place in Delhi and even the Bill of Lading was issued in Delhi and, so there is concurrent jurisdiction of more than one court and thus, Delhi courts have the territorial jurisdiction to entertain the suit.

The facts of this case are not required to be gone into while dealing with the application under Order 7 Rule 10 of CPC. However, it is pertinent to note that in paragraphs No.6 and 7 of the plaint, the contractual obligation between the parties has been spelt out and in terms thereof, appellant-defendant No.2 was to send the consignment of goods on behalf of respondent-plaintiff to the consignee i.e. respondent No.2/ defendant No.1 and appellant had defaulted in doing so and thus, appellant is liable to pay the price of the goods entrusted to the appellant by respondent-plaintiff.

At the hearing, learned counsel for appellant assailed the impugned order while relying upon Supreme Court's decision in *Swastik Gases Private Limited Vs. Indian Oil Corporation Limited* (2013) 9 SCC 32 to submit that the very existence of a jurisdictional clause in the Agreement makes the intention of the parties quite clear and, so on a bare reading of Clause 21, as contained in the Bill of Lading, the jurisdiction lies with the courts in United States of America and not with the Delhi courts. Reliance was also placed upon Supreme Court's decision in *British India Steam Navigation Co. Ltd. v. Shanmughavilas Cashew Industries and Ors.* (1990) 3 SCC 481 by appellant's counsel to submit that the Bill of Lading is a negotiable instrument in the sense of carrying with it, the right to demand and to have possession of the goods described in it and, so Clause 21 contained in the Bill of Lading in question is clearly attracted

and trial court has erred in misconstruing this Clause and, so the impugned order deserves to be set aside and appellant's application under Order 7 Rule 10 of CPC ought to be allowed.

On the other hand, learned counsel for respondent-plaintiff submits that the impugned order is perfectly justified as the case of the respondent-plaintiff is not based on the Bill of Lading and is based on the principle of Bailment. In this regard, attention of this court was drawn to paragraphs No.6 and 7 of the plaint to submit that there is an evasive reply to these paragraphs and since the goods were entrusted by respondent-plaintiff to appellant-defendant No.2 in Delhi were not delivered against original invoices as required, therefore, the appellant-defendant is liable to pay the price of the goods. To assert so, attention of this Court was drawn to Section 55 of *the Sale of Goods Act, 1930* and Sections 151 and 154 of *the Indian Contract Act, 1872*.

While relying upon the aforesaid provisions, it was asserted by learned counsel for respondent-plaintiff that appellant-defendant No.2 had failed to secure the original invoices before supplying the goods to the consignee and, so Sections 149 and 151 of *the Indian Contract Act, 1872* are clearly violated and thus, the suit for recovery is very much maintainable in the Delhi courts.

Upon considering the submissions advanced by both the sides and on perusal of the impugned order, the trial court record and the decisions cited, I find that to decipher as to whether territorial jurisdiction exists, the averments made in the plaint alone are to be seen. A bare perusal of paragraphs No.6 and 7 of the plaint or rather, the entire plaint reveals that the suit is not based on Bill of Lading on which much emphasis has been

laid by learned counsel for appellant. No doubt, the Bill of Lading relied upon, contains the jurisdictional clause and the Supreme Court's decisions in *Swastik Gases (supra)* and *British India (supra)* which talk of endorsement on the Bill of Lading makes it clear that the words 'exclusive', 'alone' or 'only' are not necessary to convey the intention of the parties to choose the jurisdiction by agreement. Pertinently, the other two parties to the suit, who are located outside India, are not challenging the territorial jurisdiction of the Delhi courts and appellant-defendant No.2, who is in Delhi, is challenging it although respondent-plaintiff is also in Delhi. Trial court in the impugned order has rightly concluded that substantial cause of action has arisen in Delhi as the goods were entrusted by respondent-plaintiff to appellant in Delhi

In the considered opinion of this Court, there is no illegality or infirmity in the impugned order warranting any interference in this appeal as the case of the respondent-plaintiff is not based on the Bill of Lading. Consequently, this appeal is dismissed while not commenting on the merits of this case.

Trial court record be remitted back forthwith.

(SUNIL GAUR)
JUDGE

AUGUST 03, 2016
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