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

% *Date of decision:* 02.08.2016

+ CM(M) 259/2016

M/S SARV WEBS PVT LTD

..... Petitioner

Through

Ms.Ankita
Advocate

Chaudhary Rath,

versus

M/S STAR RURAL BUS LINKS

..... Respondent

Through

None.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.(ORAL)

CM Nos. 9479-80/2016 (*exemptions*)

Allowed subject to all just exceptions.

CM(M) 259/2016 & CM No. 9478/2016 (*direction*)

1. By the present petition, the petitioner seeks to impugn the order dated 08.01.2016 by which an application under Order XIV Rule 5 read with Section 151 CPC filed by the petitioner for framing of additional issues regarding the territorial jurisdiction of the court was dismissed.
2. A perusal of the impugned order shows that the trial court took the view that earlier the petitioner had moved an application under Order VII Rule 11 CPC which was dismissed on 18.02.2015. There were certain observations made in the said order dated 18.02.2015 that this court had the territorial jurisdiction while placing reliance on the judgment of this court. Hence, the application was dismissed.
3. A perusal of the written statement shows that the petitioner had specifically taken the plea that no part of the cause of action arose in the

territorial jurisdiction of Delhi. In para 5 of the preliminary objections, it is stated that the respondent has produced fabricated documents being an e-mail dated 02.10.2013 containing the terms and conditions which specifically mentioned that Jaipur courts would have jurisdiction for all disputes. It is urged that the respondent has deliberately removed/hidden this line while producing a copy thereof. Hence, it is the contention of the defendant that only the courts situated at Jaipur would have the territorial jurisdiction to try the suit.

4. So far as the disposal of the application of the petitioner under Order VII Rule 11 CPC is concerned, the said order cannot be said to be a final adjudication of the contention raised by the petitioner. A plaint is liable to be rejected under Order VII Rule 11 CPC in the following cases:—

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;
- (c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;
- (d) where the suit appears from the statement in the plaint to be barred by any law;

5. Reference may be had to the judgement of this court in the case of ***Tilak Raj Bhagat vs. Ranjit Kaur, 159 (2009) DLT 470*** wherein it was held as follows:-

“6. It may be worthwhile to mention here that while considering an application under Order 7 Rule 11 CPC, the

Court has to look at the averments made in the plaint by taking the same as correct on its face value as also the documents filed in support thereof. Neither defence of the defendant nor averments made in the application have to be given any weightage. Plaint has to be read as a whole together with the documents filed by the plaintiff.”

To the same effect are the judgements of the Division Bench of this Court in the case of *Indian City Properties Ltd. Vs. Vimla Singh* 198(2013) DLT 432 and in the case of *Inspiration Clothes & U vs. Collby International Ltd.*, 88(2000) DLT 769.

6. It is the settled position of law, while considering an application under Order 7 Rule 11 CPC, the court can only look at the averments in the plaint/counter claim and the accompanying documents presuming them to be correct. The defence of the defendant is not material for adjudication of the application.

7. In the light of the above legal position, the finding recorded on 18.02.2015 by the trial court while dealing with the application under Order 7 Rule 11 CPC cannot be said to have finally disposed of the contention of the petitioner about territorial jurisdiction. The contentions of the petitioner could not be gone into.

8. It may be noted that the contentions of the petitioner in the written statement is that (a) no part of cause of action has arisen in Delhi and (b) there is, in any case, an ouster clause which has been subsequently suppressed by the respondent and that as per the said ouster clause only the courts situated in Jaipur would have territorial jurisdiction to try the suit.

9. In the light of the contentions of the learned counsel for the petitioner, we may have a look at the judgment of the Supreme Court in the case of *M/s*

Swastik Gases Pvt. Ltd. v. Indian Oil Corporation Ltd., CA No.5086/2013, decided on 03.07.2013, (2013) 7 S.C.R. 581 in which the court while interpreting the ouster clause held as follows:

“31. In the instant case, the appellant does not dispute that part of cause of action has arisen in Kolkata. What appellant says is that part of cause of action has also arisen in Jaipur and, therefore, Chief Justice of the Rajasthan High Court or the designate Judge has jurisdiction to consider the application made by the appellant for the appointment of an arbitrator under Section 11. Having regard to Section 11(12)(b) and Section 2(e) of the 1996 Act read with Section 20(c) of the Code, there remains no doubt that the Chief Justice or the designate Judge of the Rajasthan High Court has jurisdiction in the matter. The question is, whether parties by virtue of clause 18 of the agreement have agreed to exclude the jurisdiction of the courts at Jaipur or, in other words, whether in view of clause 18 of the agreement, the jurisdiction of Chief Justice of the Rajasthan High Court has been excluded. For answer to the above question, we have to see the effect of the jurisdiction clause in the agreement which provides that the agreement shall be subject to jurisdiction of the courts at Kolkata. It is a fact that whilst providing for jurisdiction clause in the agreement the words like 'alone', 'only', 'exclusive' or 'exclusive jurisdiction' have not been used but this, in our view, is not decisive and does not make any material difference. The intention of the parties - by having clause 18 in the agreement - is clear and unambiguous that the courts at Kolkata shall have jurisdiction which means that the courts at Kolkata alone shall have jurisdiction. It is so because for construction of jurisdiction clause, like clause 18 in the agreement, the maxim *expressio unius est exclusio alterius* comes into play as there is nothing to indicate to the contrary. This legal maxim means that expression of one is the exclusion of another. By making a provision that the agreement is subject to the jurisdiction of the courts at Kolkata, the parties have impliedly excluded the jurisdiction of other courts. Where the contract specifies the jurisdiction of the courts at a particular

place and such courts have jurisdiction to deal with the matter, we think that an inference may be drawn that parties intended to exclude all other courts. A clause like this is not hit by Section 23 of the Contract Act at all. Such clause is neither forbidden by law nor it is against the public policy. It does not offend Section 28 of the Contract Act in any manner.

32. The above view finds support from the decisions of this Court in *Hakam Singh, A.B.C. Laminart, R.S.D.V. Finance, Angile Insulations, Shriram City, Hanil Era Textiles and Balaji Coke.*”

10. Hence, where an ouster clause is pleaded, the court will have to go into the issue and to see whether in view of the ouster clause, the courts in Delhi would not have jurisdiction to try the case. In my opinion, in view of the said legal position, it would be an appropriate case where the petitioner is permitted to move the trial court for review of the order rejecting its application under Order 14 Rule 5 CPC.

11. Accordingly, granting liberty to the petitioner to move the trial court for review of the order dated 08.01.2016 by which the application of the petitioner under Order XIV Rule 5 CPC was dismissed, the present petition is disposed of.

12. The petitioner is granted liberty to move a review petition within two weeks from today. In case such review petition is filed, the same may be considered by the trial court in accordance with law.

13. A copy of this order be given *dasti* under the signature of the court master to the parties.

JAYANT NATH, J.

AUGUST 02, 2016/v