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

+ **FAO(OS) 232/2016**

KOHINOOR PAPER & NEWS PRINT PVT LTD Appellant
Through : Mr Sanjib Dawn with Mr Sarad Singhania

versus

SBC MINERALS PVT LTD Respondent
Through : None

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ORDER

% **05.08.2016**

CM 28030/2015

Allowed subject to all just exceptions.

FAO(OS) 232/2016

This appeal has been filed against the order dated 30.05.2016 passed by a learned Single Judge of this Court. The said order was passed on an application moved by the appellant/defendant under Order 7 Rule 11(a) of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the CPC'). The learned counsel for the appellant/defendant submits that the learned Single Judge fell into error as nothing happened in Delhi and no part of cause of action had arisen in Delhi and, therefore, this Court did not have territorial jurisdiction to entertain the present suit, yet the learned Single Judge rejected the application which was filed by the appellant under Order 7 Rule 11 CPC. The learned counsel for the appellant drew our attention to paragraph 10 of the plaint in an attempt to show that there was a clear contradiction between what is stated in paragraphs 4 and 5 of the plaint and paragraph 10 with regard to the accrual of the cause of action. It was contended that while on the one hand, the respondent claimed that the cause of action arose in February, 2012 when the alleged meeting had taken place between the plaintiff and the defendant at Delhi, on the other hand in paragraph 10 of the plaint, it is stated that

the cause of action for the first time arose on 07.03.2012 when the goods were sold and delivered. Thus, according to the learned counsel for the appellant, this would mean that no cause of action had arisen prior to 07.03.2012 and, therefore, whatever may have happened in Delhi, is irrelevant.

We are afraid that we cannot agree with the learned counsel for the appellant for the reason that when an application under Order 7 Rule 11 CPC is to be considered, it has to be considered on the basis of taking the averments on the plaint on a demurrer. This means that all the averments made in the plaint have to be taken as true for the purposes of deciding the application under Order 7 Rule 11 CPC. Although the learned Single Judge in the impugned order has not specifically noted the contents of paragraph 11, we find that the contents thereon are quite telling. Paragraph 11 of the plaint reads as under:-

“11. This Hon’ble Court at New Delhi has jurisdiction to entertain and try the suit as the offer made by plaintiff to defendant to supply the goods was accepted in the meeting held in the office of plaintiffs situated in Delhi; reimbursement of the Railway Freight was made in Delhi, part-payment of the goods sold and delivered was made in Delhi, and above all, the transaction was agreed to be ‘subject to Delhi jurisdiction’ as explicitly agreed in various invoices.”

On going through the said paragraph, if the averments made therein are taken to be true, which they have to be taken as such in view of the settled law with regard to considering an application under Order 7 Rule 11 CPC, then it cannot be said that Delhi would not have jurisdiction. We do not find any error in the impugned order. No interference is called for.

The appeal is dismissed. There shall be no order as to costs.

BADAR DURREZ AHMED, J

AUGUST 05, 2016
SR

ASHUTOSH KUMAR, J