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

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Date of Decision: 05.09.2016

+ C.R.P. 138/2016

NATURE'S ORGANIC Petitioner
Through Mr.Anirudh Wadhwa and Mr.Vipul
Kumar, Advocates.

versus

VIJAY SETHI Respondent
Through None.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (Oral)

CM No. 32320/2016 (exemption)

Exemption is allowed subject to all just exceptions.

C.R.P. 138/2016 and CM No. 32319/2016 (stay)

1. By the present petition, the petitioner seeks to impugn the order dated 21.07.2016 by which the application filed by the petitioner/defendant under Order 7 Rule 10, 11 read with Section 151 filed was dismissed.
2. The respondent has filed the suit for recovery of Rs.3,32,721/- on account of alleged goods/cosmetic raw materials supplied to the petitioner at its factory at Haridwar.
3. As per the said application of the petitioner, it was contended that no cause of action has arisen within the jurisdiction of the trial court, namely, Rohini Courts and that the plaint be returned back to the plaintiff/respondent

to be filed in the appropriate court having territorial jurisdiction.

4. Learned counsel appearing for the petitioner has contended that the trial court has dismissed the application merely on the basis of the principles applicable to Order 7 Rule 11 CPC whereas the present application was filed under Order 7 Rule 11 and Order 7 Rule 10 CPC. He reiterates that no cause of action has arisen within the jurisdiction of the trial court. He submits that a perusal of the plaint would show that the parties had agreed upon the terms and conditions of the contract including the price before placing of the purchase order. He further submits that the goods have been delivered at Haridwar and hence, no part of cause of action arose in Azad Pur. He relies upon the judgment of this court in the case of *M/s. OK Play India Ltd. vs. Pradeep Tayal* in C.R.P. No. 139/2014 on 15.04.2015.

5. The trial court vide impugned order dated 21.07.2016 noted that the purchase order was made by the petitioner at the respondent's office at Azadpur and execution of the purchase order took place at Azadpur, various e-mails and goods were sent from the office of Bawana. Hence, part of cause of action arose within the territorial jurisdiction of the court. The trial court noted that no grounds are made out and dismissed the application.

6. A perusal of the plaint shows that it is the contention of the plaintiff/respondent in the plaint that acceptance of the contract took place at the Azadpur Office, through various correspondences and e-mails, it is also averred that all the e-mails of the petitioner were received in the office of the respondent at Azadpur and hence, it is claimed that cause of action has arisen within the jurisdiction of the Rohini Court.

7. The contention of the petitioner that the contract had been entered into prior to placing of the purchase order is again a contention that can be

adjudicated upon only after the written statement and evidence of the parties are on record. At this stage, when only the plaint and the accompanying documents are to be considered, this conclusion cannot be arrived at.

8. Reliance of the petitioner on the judgment of this court in the case of ***M/s. OK Play India Ltd. vs. Pradeep Tayal(supra)*** is misplaced. That was the case in which on the facts of the case this court had concluded that the price was finalised and the concluded contract came into force before issuance of the purchase order. Hence, stipulations in the purchase order were treated to be unilateral stipulations and the other side was not bound by the unilateral stipulations. The above order has been passed on its own facts and would not be of any assistance to the petitioner.

9. The Division Bench of this court in ***State Trading Corporation of India Ltd. v. Government of Peoples Republic of Bangladesh, 63(1996)DLT971/ (MANU/DE/0465/1996)***, summed up in its conclusion which are relevant here as follows:

“38 (IV) A court seized of a suit and a prayer for the grant of ad interim relief may be faced with a doubt or challenge as to the availability of jurisdiction to try the suit in a variety of circumstances. The court has to act as under :- (a) In the case of inherent lack of jurisdiction apparent on the face of the record, court cannot exercise jurisdiction over the suit so as to pass any interlocutory order or grant interim relief; (b) If it appears from a bare reading of the plaint that the court does not have jurisdiction to try the suit, the plaint itself may be returned for presentation to a proper court under Order 7 Rule 10 CPC; (c) If the suit appears to be barred by any law, the plaint may be rejected under Order 7 Rule 11 Civil Procedure Code ; (d) It may be a disputed question of fact or law or both- whether court has jurisdiction over the suit or not. Such a question if it be a pure question of law it can be decided on hearing the parties on a preliminary issue. Such a challenge to the

jurisdiction of the court to entertain the suit being laid by the defendant as a pure question of law, it is incumbent upon the Judge to determine that question as a preliminary issue before making absolute the rule issued earlier; (e) If the determination of jurisdiction of the Court is a question of fact or mixed question of fact and law requiring evidence to be adduced before recording a finding, the determination of the question may in appropriate, cases be liable to be postponed till after the determination of all or several other issues if the evidence to be adduced by the parties may be common on the issue of jurisdiction and such other issues;”

10. There is no merit in the present petition and the same is dismissed.
11. At this stage, learned counsel for the petitioner submits that while he was pursuing the present application, his right to file written statement was closed by the trial court.
12. In the interest of justice, in view of the fact that the petitioner was bona fide pursuing his remedy under Order 7 Rule 10, 11 CPC, the petitioner is granted two weeks time from today to file the written statement before the trial court.

JAYANT NATH, J

SEPTEMBER 05, 2016

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