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

+ CM(M) 949/2016 & CM Nos.34723-34725/2016

SANCHETI ELECTRICALS & ELECTRONICS
PVT LTD.

.... Petitioner

Through Mr.Mohit K.Sharma, Adv.

versus

ADITYA INFOTECH LTD
Through

..... Respondent

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER

22.09.2016

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1. By the present petition the petitioner seeks to impugn the order dated 19.2.2016 by which an application filed by the respondent under Order 39 Rule 10 CPC was allowed and a direction was passed to the petitioner to deposit the sum of Rs.3,24,000/- in the Court, granting liberty to the respondent to withdraw the same upon moving of an appropriate application. Yesterday, when the matter was heard, the learned counsel for the petitioner had submitted that the main contention was that the issue of territorial jurisdiction ought to have been adjudicated first by the trial court before exercising powers under Order 39 Rule 10 CPC.

2. Today, however, learned counsel for the petitioner presses that he did not mean to give up his submission that there are no clear admissions made by the petitioner in the written statement which would warrant passing of any order under Order 39 Rule 10 CPC.

3. Be that as it may, as far as the first contention of the petitioner is concerned, it may be noted that in the present case the issues were framed by the court on 9.9.2014. Issue No.1 reads as follows:-

“1. Whether this Court does not have the territorial jurisdiction to entertain and try the present suit? OPD”

4. Hence, the trial court has framed the issue of territorial jurisdiction and has put the onus of proving the same on the petitioner.

5. A perusal of the copy of the plaint filed today by the petitioner shows that as per the plaint it is stated that the territorial jurisdiction of the trial court arises as follows:-

“16. This Hon’ble Court has the territorial jurisdiction to entertain and try the present suit as cause of action has arisen at Delhi within the jurisdiction of this Hon’ble Court. Part of the goods were dispatched to the defendants from the plaintiff’s Delhi Office. To the same effect “C” forms were also issued by the defendant. The cheques which were issued by the defendant meant as interim/part payment got dishonoured at Delhi. The plaintiff as well as the defendant had agreed for Delhi to be the jurisdiction in the event of any dispute between the parties. The registered office of the plaintiff is at Delhi.”

6. Hence, it is the case of the respondent that apart from other facts that a part of the cause of action arose in Delhi on account of the fact that payments have been received in Delhi by cheque, which cheque has been dishonoured.

7. The question is as to whether based on this contention of the petitioner the issue of territorial jurisdiction should be tried first. The Division Bench of this court in *State Trading Corporation of India Ltd. v. Government of Peoples Republic of Banladesh*, 63(1996)DLT971/

(*MANU/DE/0465/1996*), held as follows:

“38. To sum up, our conclusions are as under:

.....

(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;”

8. In the light of the above, the issue of territorial jurisdiction is a mixed question of law and facts and can be adjudicated upon only after the evidence is over.

9. Powers under Order 39 Rule 10 CPC are to be exercised by the Court

when the subject matter of the suit is money and the party admits that he holds such money and is due to the other party. Obviously, direction under Order 39 Rule 10 CPC cannot be stalled till pending adjudication of the issue of territorial jurisdiction which could only have been dealt with after evidence of the party has been completed.

10. As far as the second contention of the petitioner, namely, that there is no admission which would warrant a direction under Order 39 Rule 10 CPC is concerned, we may have a look at the written statement filed by the petitioner. In para 13 of the written statement it is averred by the petitioner that the cheque that was issued by the petitioner was in discharge of the agreed sum of Rs.3,94,000/-. To the same effect is an averment in para 15 of the written statement which states that after the cheques were dishonoured, the plaintiff again agreed to reconcile the matter and agreed to receive Rs.3,94,000/- as full and final settlement. Hence, there is no dispute to the fact that dues of Rs.3,94,000/- were agreed upon by the parties as payable by the petitioner. The trial court in its discretion has passed the aforesaid directions based on these averments in the written statement. In my opinion, there is no material irregularity and illegality in the impugned order to warrant any interference by the Court.

11. Petition stands disposed of. All pending applications, if any, also stand disposed of accordingly.

JAYANT NATH, J

SEPTEMBER 22, 2016

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