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

+ CM(M) 1305/2016

M/S TDI INFRASTRUCTURE LTD. Petitioner
Through Mr.Anil Sapra, Sr. Advocate with
Mr.Neeraj Yadav and Mr.Siddharth Arora,
Advocates.

versus

ABHAI KUMAR JAIN@ ABHAY JAIN Respondent
Through Ms.Sneha Jain, Advocate.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% 20.12.2016

CAVEAT No. 1070/2016

Since the learned counsel for the respondent has entered appearance,
the caveat stands discharged.

CM No.46978/2016 (exemption)

Allowed subject to all just exceptions.

CM(M) 1305/2016 & CM No.46977/2016(stay)

1. By the present petition filed under Article 227 of the Constitution of India, the petitioner seeks to challenge the order of the trial court dated 19.10.2016 by which an application filed by the petitioner under Order 7 Rule 10 CPC was dismissed.
2. The respondent had applied for booking/registration of a residential plot with the petitioner in Kundli, Haryana. The case of the respondent is

that there is an ouster clause in the agreement between the parties and that the courts in Haryana only have the jurisdiction to deal with the matter.

3. Learned senior counsel appearing for the petitioner submits that the trial court while considering the application of the petitioner has not dealt with the ouster clause, namely, Clause 11 of the allotment letter. He has merely gone into the issue as to whether a part of the cause of action has arisen within the territory of Delhi. After holding that a part of cause of action has arisen within the territory of Delhi and also that the petitioner has a registered office in Delhi, the trial court has concluded that this court would have the territorial jurisdiction. There is no reasoning given as to why the ouster clause would not apply.

4. In *Swastik Gases Private LTD. VS. Indian Oil Corporation Ltd., (2013) 9 SCC 32*, the Supreme Court held as follows:-

“57. For the reasons mentioned above, I agree with my learned Brother that in the jurisdiction clause of an agreement, the absence of words like "alone", "only", "exclusive" or "exclusive jurisdiction" is neither decisive nor does it make any material difference in deciding the jurisdiction of a court. The very existence of a jurisdiction clause in an agreement makes the intention of the parties to an agreement quite clear and it is not advisable to read such a clause in the agreement like a statute. In the present case, only the Courts in Kolkata had jurisdiction to entertain the disputes between the parties.”

5. In view of the above, the appropriate interpretation of the ouster clause would have material bearing on the fact whether the trial court has the territorial jurisdiction to try the present suit. Hence, the impugned order suffers from material irregularity by ignoring the said ouster clause and not dealing with the same. Accordingly, I quash the order dated 19.10.2016.

6. The matter is remanded back to the trial court for fresh consideration. The parties are also free to press for framing of a preliminary issue on this point. In case such an application is made, the same may be dealt with as per law.
7. With the above observations, the present petition stands disposed of.
8. Copy of the order be given dasti under the signatures of the Court Master.

JAYANT NATH, J

DECEMBER 20, 2016

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