

\$~A-7

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

+ CM(M) 1195/2015 and CM No. 29745/2015 (stay)

MOHAN LAL MITTAL

..... Petitioner

Through Mr. Anil Kumar Gupta and Mr. Kapil
Goyal, Advocates.

versus

MAMTA CHAUHAN & ANR

..... Respondents

Through None.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

13.07.2016

%

1. By the present petition, the petitioner seeks to impugn the order dated 20.08.2015. The petitioner/defendant has moved an application under Order VII Rule 10 CPC seeking return of the plaint to the respondents/plaintiffs for presentation to the appropriate court having territorial jurisdiction at Ghaziabad, U.P.

2. By the impugned order the Trial Court noted that this is the second application filed by the petitioner seeking somewhat the same relief. The order notes that earlier the petitioner had filed an application under Order VII Rule 11 CPC for dismissal of the suit on the same ground which has been urged now in the present application, namely, that the Trial Court does not have territorial jurisdiction to deal with the case inasmuch as per the receipt executed between the parties on 16.10.2011, only the courts where

the land, which was the subject of the agreement, was located would have the jurisdiction. The impugned order also notes that the said application was dismissed on 16.12.2014. Thereafter issues have been framed and one of the issues deals with the territorial jurisdiction of this court. At that stage also, the said issue was not treated as a preliminary issue. The plaintiff has also filed examination in chief through affidavit. The impugned order also notes that contentions which are now being raised by the petitioner would be adjudicated upon and decided at the time of the disposal of the suit.

3. Learned counsel appearing for the petitioner has vehemently argued that the Trial Court has no territorial jurisdiction in view of the clause in the agreement between the parties which confers exclusive jurisdiction on the court where the land in question is located. He relies upon the judgment of the Supreme Court in the case of ***Swastik Gases Pvt. Ltd. vs. Indian Oil Corporation Ltd., (2013) 9 SCC 32*** to contend that a similar clause has already been interpreted by the Supreme Court where it was held that in the eventuality an agreement having such clause, the courts which are stated in the said clause of the agreement would only have territorial jurisdiction.

4. The facts here show that the plaintiffs/respondents entered into an agreement to sell with the defendant/petitioner for the sale of a plot located in District Gaziabad, U.P. An advance of Rs.5 lacs is said to have been paid to the petitioner out of the alleged sale consideration of Rs.10 lacs. The respondents have filed the present suit for recovery of the said sum of Rs.5 lacs.

5. In my opinion, there is no infirmity in the impugned order. The interpretation of the clause relied upon by the petitioner would have to be gone into at the time of the final adjudication of the suit after evidence of the

parties is complete. Further the petitioner has filed the second application seeking relief on the same cause of action as the earlier application. The earlier application though termed under Order VII Rule 11 CPC for rejection of the plaint was dismissed. Again, no further appeal/petition was filed in this court. The petitioner cannot be permitted to repeatedly keep filing applications under different provisions of law seeking the same relief.

6. In these facts and circumstances, it would be for the Trial Court to interpret the said clause in the agreement after the evidence is complete and decide the issue of territorial jurisdiction.

7. There is no merit in the present petition and the same is dismissed.

JAYANT NATH, J

JULY 13, 2016

rb