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

+ **TR.P.(C.) 31/2017**

DELHI DEVELOPMENT AUTHORITY

..... Petitioner

Through: Mr.Dhanesh Relan and Ms.Isha Garg,
Advocates.

versus

M/S TARA CHAND SUMIT

CONSTRUCTION COMPANY

..... Respondent

Through: Mr.S.K.Jain, Advocate.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

02.05.2017

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1. This transfer petition has been filed by the petitioner /DDA with the prayer that OMP No.135/2015 which was originally filed in the High Court at Delhi and now pending in the District Court at Dwarka may be transferred to District Court at Rohini to a Court having territorial jurisdiction to try, entertain and adjudicate upon the same.

2. The ground for seeking transfer of OMP No.135/2015 from District Court, Dwarka to District Court at Rohini are given in para 8 of the petition as under:-

'8. That since the project site is situated within the territorial jurisdiction of District Court of Rohini, the matter ought to have been transferred to the Rohini District Court and not to the Hon'ble Dwarka District Court. In case the present petition is allowed, no prejudice shall be caused to the respondent. However, if the present petition is disallowed by this Hon'ble Court, it would vitiate the whole proceeding.'

3. Mr.Dhanesh Relan, learned counsel for the petitioner/DDA has submitted that the OMP No.135/2015 has wrongly been transferred to District Court at Dwarka though the District Court at Rohini has the

jurisdiction to try, entertain and adjudicate upon OMP No.135/2015. It has further been submitted that a Division Bench of this Court in OMP No.150/2014 titled as ION Exchange (India) Ltd. vs. Panasonic Electric Works Co. Ltd. decided on 4th March, 2014 has held that the Courts at the seat or place of arbitration would have territorial jurisdiction to entertain an application under the Arbitration and Conciliation Act, 1996 subject to the provisions of Section 42 thereof, irrespective of the fact that the cause of action arose elsewhere and/or the respondent resides elsewhere.

4. OMP No.135/2015 was filed in the High Court at Delhi wherein I.A.No.3740/2015 (condonation of delay) filed by the petitioner/DDA was allowed on 21st January, 2016 and following order was passed:-

I.A.No.3740/2015 (for condonation of delay) by petitioner

The petitioner has filed the objections against the impugned Award dated 26th September, 2014 published by the sole Arbitrator on 29th September, 2014. The same was received by the petitioner on 1st October, 2014. The present objections were filed on 5th January, 2015. There is a delay of 6 days in filing the same. In the application for condonation of delay, it is stated that the counsel for the petitioner was suffering from acute viral infection since the last week of December, 2014 and the same was earlier suspected to be Dengue. Counsel had undergone medical examination from 22nd December, to 27th December, 2014. The medical certificate is placed on record along with the application. He was advised bed rest.

It is the admitted position that the said delay in filing the objections was after 90 days and the same is before the expiry of 20 days. For the reasons stated in the application, the prayer is allowed and the delay in filing the objection petition under Section 34 of the Arbitration and Conciliation Act, 1996 is accordingly condoned.

The application is disposed of.

OMP No.135/2015

As per the petitioner, the claim before the Arbitrator was for approximately Rs.30 lac. In view of Section 4 of the Delhi High Court (Amendment) Act, 2015 and the order passed on 24th November, 2015, the petition is transferred to the jurisdiction of District Judge (South-West), Dwarka, New Delhi. Parties to appear before the concerned Court on 2nd March, 2016.

January 21, 2016

MANMOHAN SINGH, J. '

5. Though the order was passed on 21st January, 2016, for a period of more than a year, no objection about lack of territorial jurisdiction with the District Court at Dwarka was taken. DDA failed to file any application seeking modification/review of the order dated 21st January, 2016 for more than a year after transfer of OMP No.135/2015 to District Court at Dwarka on the ground of lack of jurisdiction. Even on the date when this order was passed though Mr.Shashank Garg and Ms.Rekha Dwivedi, Advocates for DDA were present, no such objection was ever taken.

6. This transfer petition is an attempt to get the order passed by Co-ordinate Bench of this Court set aside, which is not permissible. If after passing of the order on 21st January, 2016, DDA had any objection about lack of jurisdiction at District Court at Dwarka, necessary steps could have been taken soon after passing of the order dated 4th March, 2014 in OMP No.150/2014.

7. The petitioner/DDA has not challenged the order dated 21st January, 2016 whereby the OMP No.135/2015 was ordered to be transferred to

District Court at Dwarka. Rather by contesting the said petition for more than a year, the objection with regard to territorial jurisdiction is deemed to have been waived, which can be waived under Section 21 of Code of Civil Procedure.

8. This Court is not sitting in an appeal against an order passed by Co-ordinate Bench of this Court and on this ground also, this transfer petition is liable to be dismissed.

9. Even otherwise also, in exercise of supervisory power, the High Court can assign a case to a Court having no territorial jurisdiction.

10. The petition is dismissed.

PRATIBHA RANI, J.

MAY 02, 2017

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