

\$~54

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 797/2017**
HARVINS CONSTRUCTIONS PVT LTD Petitioner

Through: Mr. Tatini Basu, Adv.

Versus

COMPLETE DEWATERING SYSTEMS PVT LTD..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

%

31.07.2017

CM No.26915/2017 (for exemption)

1. Allowed, subject to just exceptions.
2. The application is disposed of.

CM(M) 797/2017 & CM No.26914/2017 (for stay)

3. This petition under Article 227 of the Constitution of India impugns the order [dated 23rd May, 2017 in Civil Suit No.59414/2016 of the Court of Additional District Judge (ADJ)-03, New Delhi District, Patiala House Courts, New Delhi] framing issues in the suit filed by the respondent / plaintiff against the petitioner / defendant and posting the suit to trial.
4. The grievance of the petitioner / defendant is that the issue arising from its written statement, as to the territorial jurisdiction of the Court, was not ordered to be treated as a preliminary issue. It is also argued that an application filed by the petitioner / defendant under Order VII Rule 10 of the CPC though pending has not been decided.
5. There is nothing in the order dated 23rd May, 2017 to show that the petitioner / defendant made any such request or pressed the application under Order VII Rule 10 of the CPC.

6. The counsel for the petitioner / defendant states that the order dated 23rd May, 2017 was passed in the absence of the parties.
7. However on being asked whether the petitioner / defendant has pleaded that the petitioner / defendant appeared before the Trial Court on 23rd May, 2017, the counsel for the petitioner / defendant states it is not so pleaded.
8. The counsels, by non-appearance, cannot throttle the proceedings of the Court. In any case, the issues are to be framed by the Court and no error is found in the Court proceeding to frame the issues particularly when it is stated that the respondent / plaintiff has since already filed affidavits by way of examination-in-chief.
9. The petitioner / defendant in the petition has also stated that the petitioner / defendant filed an application under Order XIV Rule 2 of the CPC which came up before the Trial Court on 17th July, 2017 and has been dismissed. However, the copy of the order is not shown. It is stated that the same was not signed till the filing of this petition on 25th July, 2017 or even till now. The counsel for the petitioner / defendant states that she has checked up with the Court concerned last on 28th July, 2017.
10. Though ideally, I would have waited for the order dated 17th July, 2017 but the counsel for the petitioner / defendant has been asked the basis on which rejection of the plaint in the suit is sought under Order VII Rule 10 CPC or the issue of territorial jurisdiction sought to be treated as a preliminary issue.

11. This is more so in the light of the para 16 of the plaint which is as under:

“16. That the Plaintiff Company has its registered office at New Delhi and carrying on its business from its registered office. Both the parties have agreed to the jurisdiction of Delhi in respect of any dispute to the present contract. The payment of dewatering charges has been received at Delhi and hence this Hon’ble Court has territorial jurisdiction to entertain and try the present suit.”

12. The counsel for the petitioner / defendant states that the petitioner / defendant is at Hyderabad, the work order was placed by the petitioner/ defendant on the respondent / plaintiff from Hyderabad and since the petitioner/ defendant is at Hyderabad, the respondent / plaintiff should have sued the petitioner / defendant at Hyderabad.

13. However the respondent / plaintiff in the paragraph aforesaid has invoked the territorial jurisdiction of this Court on specific pleas and the counsel for the petitioner / defendant has to show material to demonstrate the said pleas to be false to have the suit thrown out at threshold on the ground of territorial jurisdiction. Else, the settled principle is that it is only the averments in the plaint which are to be seen in this regard unless falsified and which falsification does not require any investigation by evidence.

14. In this regard, para no.4 of the preliminary objections in the written statement of the petitioner / defendant may also be set out as under:

“4. That, it is denied that, the cause of action for filing the present suit against the Defendant Company accrued on 01.11.2014 when the suit amount became due. It further arose on each and every dates when the demands of payment made by the Plaintiff Company through their representatives. The cause of action is finally arose on 09.04.2015 when the first legal demand notice was sent to the Defendant Company by the Plaintiff Company. The cause of action is again arose on 23.06.2015 when the second legal notice was issued to the Defendant Company. The cause of action has also arisen on 27.08.2016 when the last legal notice was sent to the Defendant Company. The cause of action continuing in nature till the payment is made by the Defendant Company. The Cause of Action mentioned in the Plaint is false and untrue and the Plaintiff had invented the same for the purpose of filing the suit under reply.”

It is quite clear therefrom, the petitioner / defendant therein is calling the pleas in para no.16 of the plaint as reproduced above as false and invented and which will have to be put to trial as has been rightly done by the learned ADJ.

15. The counsel for the petitioner / defendant then states that the respondent / plaintiff is relying upon the e-mail which is unilateral and fabricated. However no pleadings in that regard also are shown.

16. The counsel for the petitioner / defendant does not dispute that the registered office of the respondent / plaintiff is at Delhi and the work order was placed by the petitioner / defendant upon the respondent / plaintiff at Delhi and payments have been made by RTGS at Delhi.

17. Admittedly there is nothing in the work order confining the territorial jurisdiction of disputes arising therefrom to the Courts at Hyderabad only.

18. I am therefore satisfied otherwise that no case for treating the issue of territorial jurisdiction as preliminary issue or for return of the plaint under Order VII Rule 10 of the CPC is made out.

19. The counsel for the petitioner again reiterates that the supplies were made from Chennai. The counsel for the petitioner / defendant has also drawn attention to page 32 of the paper book being a copy of the letter dated 26th May, 2009 of the respondent / plaintiff to the petitioner / defendant giving details of the Chennai works of the respondent / plaintiff and bank details of the account at Delhi.

20. That alone would not be determinative of territorial jurisdiction. The respondent / plaintiff has not pleaded that the cause of action accrued within the territorial jurisdiction of this Court for the reason of supplies having been made from Delhi. Thus the said argument has no relevance.

21. In this respect, attention can also be drawn to the principle of debtor must seek the creditor and which in (i) *Shradha Wassan Vs. Anil Goel* MANU/DE/0490/2009; (ii) *L.N. Gupta Vs. Tara Mani* AIR 1984 Del 49; and, (iii) *National Building Corporation Ltd. Vs. The Vijaya Bank Limited* ILR (1981) II Del 623 has also been held to vest territorial jurisdiction at the location of the creditor where the payments have been made and are to be made.

22. There is thus no merit in the petition.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

JULY 31, 2017

‘gsr’ ..

CM(M) 797/2017

Page 5 of 5

