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

+ CM(M) 72/2017

SHREE BAIDYANATH AYURVED

BHAWAN PVT LTD

..... Petitioner

Through Mr.D.K.Mehta, Advocate with

Mr.Naveen Kumar, Advocate

versus

SAWITRI JADI BOOTI BHANDAR

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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20.01.2017

CM No.2356/2017

Exemption allowed, subject to all just exceptions.

CM(M) 72/2017 & CM No.2355/2017

1. By the present petition under Article 227 of the Constitution of India the petitioner seeks to impugn the order dated 5.11.2016 by which two applications filed by the petitioner under Order 7 Rule 11 CPC and second application under Order 8 CPC for filing additional documents was dismissed. The respondent has filed a suit for recovery of Rs.14,06,730/- on account of sale of certain goods to the respondent.

2. As far as the application under Order 7 Rule 11 CPC is concerned the trial court by the impugned order noted that in view of the averments in the plaint it cannot be said that no cause of action has accrued within the territorial jurisdiction of this court. It noted that as per the respondent the respondent has raised invoices on the petitioner for the goods supplied and

the respondent is making payment in Delhi. Hence, the trial court concluded that at this stage, it cannot be stated that no part of cause of action has accrued within the territorial jurisdiction of this court. Learned counsel appearing for the petitioner submits that he does not press this plea, at this stage, and reserves his right to agitate this issue at the appropriate stage before the trial court.

3. By the second application filed under Order VIII Rule I CPC, the petitioner seeks to place on record five photocopies of letters allegedly sent by the petitioner to the respondent alongwith courier receipts.

4. The trial court noted that nowhere in the written statement the petitioner has said that he has made correspondence with the respondent for lifting the rejected goods. What was asserted in the written statement was that the respondent agreed to lift the rejected raw material goods from the factory of the petitioner. As no averments have been made about these documents the trial court dismissed the said application.

5. A perusal of the written statement filed by the petitioner would show that the stand of the petitioner is that the raw materials supplied by the respondent were rejected during quality control testing and the respondent was duly informed by the petitioner to collect the rejected raw material goods from the factory at Jhansi. Details of the invoice and order number are mentioned. It is further stated that respondent agreed to lift the rejected raw material. A mere reading of the written statement shows that the stand was that the respondent was duly informed to collect the allegedly rejected goods. No doubt, no specific dates are given specifically when the communication has been addressed.

6. In my opinion, the documents which are sought to be filed are in line

with the defence taken by the petitioner in the written statement. The dates of the letters have not been given as it is the case of the petitioner that the letters were not traceable at the time when the written statement was filed. Introduction of the letters does not substantially change the nature of the case of the petitioner. In my opinion, impugned order has wrongly and on account of material irregularity dismissed the application. The application is accordingly allowed and these documents may be taken on record subject to costs.

7. Learned counsel for the petitioner submits that he would not take an adjournment on the date when the matter is fixed for leading evidence on 25.1.2017 before the trial court on account of the present order.

8. Petition is allowed subject to payment of costs of Rs.5,000/-. Petition and all pending applications stand disposed of.

9. A copy of this order be given dasti under signatures of the Court Master to learned counsel for the petitioner.

JAYANT NATH, J

JANUARY 20, 2017

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