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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 553/2018 and CM Nos. 19265-19267/2018
KOHINOOR STEEL PVT LTD Petitioner
Through: Mr. Sharad Singhanian, Adv.

versus

SBC MINERALS PVT LTD Respondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

ORDER
% **09.05.2018**

The petitioner is the defendant in the civil suit [CS (OS) No.496/2015] which was initially filed on the original side of this Court and which has since been transferred on account of change of pecuniary jurisdiction to the district court where it is registered as case No. 2558/2016 and pending in the court of Additional District Judge-03 East District, Karkardooma Court Complex. The suit is for recovery of money claimed by the respondent (the plaintiff) against the petitioner (the defendant), which having regard to its description is a company having its registered and other office at Kolkata. It is the contention of the petitioner that the goods supply of which is stated to have given rise to the cause of action were delivered in the State of Jharkhand. It is further the contention of the petitioner that, in the purchase order, there was a clear stipulation that all disputes would be subject to jurisdiction of the Courts at Kolkata. It is the submission of the counsel for the petitioner that the jurisdiction of

Court in Delhi has been invoked because the plaintiff of the case is a company having registered office in Delhi.

The application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC) was filed by the petitioner (defendant) seeking rejection of the plaint on account of jurisdictional error. The copy of the order dated 23.02.2017 which is sought to be impugned by the petition at hand indicates that reply to the said application has already come. It further reveals that the petitioner as defendant had pressed for issues to be framed in the context of contention raised in the said application under Order VII Rule 11 CPC. The trial judge, instead, has proceeded to frame issues in the suit, though including on the issue of territorial jurisdiction, and has listed the matter for trial.

The issue of jurisdiction having been raised and a prayer for rejection of the plaint on that account having being made even before the issues on merits of the case were settled, it was indeed desirable that the said issue be considered first. It appears *prima facie* to be inappropriate on the part of the trial court to relegate the said matter as an issue to be considered along with the other issues at the trial, thereby rendering the application under Order VII Rule 11 CPC virtually infructuous which is not a correct approach.

At this stage, the counsel for the petitioners submitted that he may be allowed to withdraw the present petition and the applications filed therewith and instead be given liberty to approach the trial judge with a renewed prayer for decision on the application under Order VII

Rule 11 CPC before the case is put to trial on other issues.

The petition and the applications filed therewith are dismissed as withdrawn with liberty as prayed for granted.

R.K.GAUBA, J.

MAY 09, 2018/uj

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