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

\+ RSA 69/2018 & CM APPL. 17594 & 17596/2018

M/S TODAY TEA LTD ..... Appellant

Through: Ms. Priyanka Rai, Advocate.

versus

SAI ENTERPRISES ..... Respondent

Through

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

O R D E R

% 03.12.2018

CM APPL. 17595/2018 (Ex.)

Exemption allowed subject to all just exceptions.

The application stands disposed of.

RSA 69/2018

Vide the present second appeal under Section 100 of the CPC, the appellant seeks to assail the impugned order dated 21.09.2017 of the learned ACJ-cum-CCJ-cum-ARC(E) in CS No.7759/2016 and also the impugned order dated 28.10.2017 of the learned First Appellate Court of the learned ADJ-01, East, KKD Courts, Delhi in RCA No.146/17, which upheld the order dated 21.09.2017 of the learned Trial Court vide which the plaint filed by the plaintiff i.e. the present appellant, was returned with liberty granted to the plaintiff i.e. the appellant herein to seek remedy before the appropriate Court it having been held that the Civil Courts of the East District, Delhi did

not have the territorial jurisdiction to adjudicate upon the suit inasmuch as though the suit had been filed by the plaintiff i.e. the present appellant as an unpaid seller of the goods claiming recovery of an unpaid price, the transaction of sale between the plaintiff i.e. the appellant herein and the defendant arrayed to the said suit arrayed as respondent of the present appeal had been effected from Ghaziabad to Bareilly with the plaintiff's Branch Office situated at Plot no.11/7, Anand Industrial Estate, Mohan Nagar, Ghaziabad, U.P. with the goods having been sold to the defendant i.e. the respondent herein situated at Lala Rajendar Kumar Saraff Markeet, Opposite Pilikothi, Sham Ganj, Bareilly which fact was manifest from invoices produced and that the transaction between the plaintiff i.e. the appellant herein and the defendant arrayed to the said suit arrayed as the respondent to the present appeal had taken place in UP.

It was also observed vide the impugned order dated 21.09.2017 of the learned Trial Court that the registered office of the plaintiff i.e. the appellant herein was at Delhi and that though it was recorded in the invoice that the Courts of Delhi will have the jurisdiction in case any dispute arose and the place of residence/work of the plaintiff i.e. the appellant herein i.e. the registered office was at Delhi, the same simplicitor did not confer jurisdiction on the Court and that the territorial jurisdiction could not be conferred on a Court by an agreement between the parties and that thus, the agreement that all disputes were subject to Delhi jurisdiction only did not suffice to confer territorial jurisdiction on the Courts at Delhi.

The First Appellate Court vide its impugned order dated 28.10.2017 has affirmed the observations of the learned Trial Court, placing specific reliance on the provisions of Section 20 of the CPC with reliance also placed on the verdict of the Hon'ble Supreme Court in **"BAHREIN PETROLEUM CO. LTD. VS. P.J. PAPPU AND ANOTHER"** reported in **AIR 1966 SC 634** and in **"HAKAM SINGH VS. M/S GAMMON (INDIA) LTD."** reported in **AIR 1971 SC 740**, which lay down that by agreement territorial jurisdiction cannot be conferred on a Court which has none.

Though, a submission was made during the course of hearing as also is indicated to have been made before the Appellate Court that there was an agreement between the parties executed at Delhi, a bare perusal of the invoices on the record indicate that there was no written agreement and the agreement was verbal inasmuch as the verbal orders were placed.

In terms of Section 20 of the CPC, 1908 (as amended) which provides as follows:-

> ***"20. Other suits to be instituted where defendants reside or cause of action arises.- Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction-***
>
> ***(m) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works***

for gain; or

(n) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

(o) the cause of action, wholly or in part, arises.",

it is apparent that the Courts at Delhi do not have the territorial jurisdiction to try the suit bearing no. 7759/2016 and thus there is no infirmity in the impugned order dated 21.09.2017 of the learned ACJ-cum-CCJ-cum-ARC(E) nor in the impugned order dated 28.10.2017 of the First Appellate Court of the learned ADJ-01, East, KKD Courts, Delhi in RCA No.146/17 and thus no substantial question of law arises in the matter and thus the present Regular Second Appeal No.69/2018 and the accompanying applications CM APPL. 17594 & 17596/2018 are declined.

The appellant is however, at liberty to seek redressal in accordance with law in terms of order dated 21.09.2017 of the learned Trial Court in CS No.7759/2016.

ANU MALHOTRA, J

DECEMBER 03, 2018/NC