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

+ TR.P.(C.) 52/2018 & CM Nos. 12677/2018

M/S KUMAR IRON & STEEL WORKS Petitioner

Through: Mr. Ramesh Kumar, Adv.

versus

M/S RIGHT HOSPITALITY INC & ORS Respondents

Through: Mr. Sandeep Gupta, Adv.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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04.04.2018

The suit (suit no. 613197/16) of the petitioner against the respondents is presently pending in the Court of Additional District Judge-07, West, Delhi. On objections being raised, as to the jurisdiction, by application under Order VII Rule 10 read with Section 151 of the Code of Civil Procedure, 1908 moved by the defendant, the trial Judge considered the issue and, by her order dated 14.03.2018, has found that the court does lack pecuniary jurisdiction, it having been wrongly invoked and, therefore, holding that the plaint is liable to be returned in terms of Order VII Rule 10 CPC for it to be presented in the court of competent jurisdiction. While recording such view, the Additional District Judge has stayed her hand for the time being, giving to the petitioner (plaintiff) an opportunity to invoke the jurisdiction of the court under Order VII Rule 10-A CPC.

Instead of exercising an option under Order VII Rule 10-A CPC, the petitioner has come up to this Court seeking transfer of the case from the court of Additional District Judge to the commercial division of this Court on the ground that it would be the court of competent jurisdiction to entertain the suit. Reliance is placed on Section 24 (5) CPC which confers on this Court the power to transfer a suit from court which has no jurisdiction to try it.

The provision contained in Section 24 (5) CPC has been the subject matter of consideration in the past in ruling of the Supreme Court reported as *Harshad Chiman Lal Modi vs. D.L.F. Universal Ltd. & Anr.* AIR 2006 Supreme Court 646 and of this Court in *Rail Chand vs. Atal Chand & Ors.* 13 (1977) DLT 153, *Pushpa Kapal vs. Shiv Kumar*, 35 (1998) D.L.T. 187, *Vogel Media International GMBH & Anr. vs. Jasu Shah & Ors.* 115 (2004) Delhi Law Times 679 and *Hawkins Cookers Ltd. Vs. Citizen Metal Industries (India)* 133 (2006) Delhi Law Times 281, the distinguishing feature here is that the Court where the suit was presented initially and by which the plaint has been ordered to be returned lacked jurisdiction at the very inception and, therefore, was not a competent court. It is not a case where a lot of progress has been made, the case having reached the stage of recording of evidence after completion of pleadings, but one of the initial stages.

The petition, therefore, cannot be allowed. Dismissed.

R.K.GAUBA, J

APRIL 04, 2018/nk

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