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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **C.R.P. 142/2018 & CM APPL. 27957/2018**

M/S ALIANCE MARINE AGENCIES PVT LTD Petitioner
Through: Mr. Pramod Kumar, Advocate.

versus

M/S SSMP INDUSTRIES LTD Respondent
Through: None.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER
% 18.07.2018

CM.No.27959/18 (Ex.)

Exemption allowed subject to all just exceptions.

The application is disposed of.

C.R.P. 142/2018

Initial submissions made on behalf of the petitioner.

Vide the present petition, the petitioner assails the impugned order dated 15.02.2018 of the learned ADJ-01, South East, Saket in CS No.7596/16, vide which an application under Order VII Rule 11 of the CPC filed by the defendant, i.e., the present applicant seeking rejection of the plaint on the ground that the Court at New Delhi does not have territorial jurisdiction to try the suit, was declined.

Vide the said impugned order it has categorically been observed to the effect that the contentions raised on behalf of the applicant/defendant seeking the rejection of the plaint on the ground

that there existed no territorial jurisdiction with the Court at New Delhi could not be accepted, taking into account the factum that the plaintiff of the suit, i.e., the respondent to the present petition had relied upon an agreement placed as Annexure-IV to the plaint dated 29.01.2010 which was admittedly executed in New Delhi and within the jurisdiction of the District South East the execution of which is also not refuted on behalf of the applicant/petitioner, i.e., the defendant to the said Civil Suit.

It has also been categorically observed to the effect that in Para 10 of the plaint, it had been averred to the effect that on 01.02.2010, the defendant company had been informed about the re-import of a consignment vide Annexure-V and a reply to the same dated 13.02.2010 was also received through e-mail which was received in the office of the plaintiff at Delhi and on the basis of the same, the cause of action for institution of the suit had accrued. The plaintiff's registered office is also indicated to be at New Delhi as stated in Para 30 of the plaint. During the course of the submissions that have been made now on behalf of the petitioner and as also averred through the averments made in the petition, it is sought to be submitted that the cause of action qua which the suit had been filed, related to the transactions for the aspect as detailed to the effect that on 01.02.2010, the defendant company, i.e., the petitioner herein was informed by the plaintiff about the re-import of a consignment 10X20 FCL Totapuri Mango Pulp reaching at Chennai port in February 2010 from Hodeidah and that the plaintiff had requested the petitioner/defendant to clear the said cargo within a stipulated period of time from the

Customs to avoid the demurrage and detention charges and it was thus sought to be submitted on behalf of the petitioner herein that the alleged cause of action in the instant case pertains to Chennai and that the defendant, i.e., the present petitioner was running its business operations from its office situated at Chennai and Mumbai and that the defendant, i.e., the present petitioner is not situated in Delhi and does not have any business operations in Delhi and that the no cause of action had arisen in New Delhi.

On a consideration of the record as observed hereinabove, without any observations on the merits or demerits of the case apparently, the said transaction in relation to the re-import of the consignment 10X20 FCL Totapuri Mango Pulp reaching at Chennai port in February 2010 from Hodeidah cannot be termed to be *de hors* the agreement executed between the petitioner herein, i.e., the defendant and the plaintiff which was executed in New Delhi admittedly as observed vide the impugned order on 29.01.2010.

Furthermore, the aspect of territorial jurisdiction has also been considered vide the impugned order dated 15.02.2018 to be a matter of trial in relation to which issue no.3 has already been framed to the effect:-

“Whether this Court is not having territorial jurisdiction to try this suit with the onus having been laid on the defendant? OPD.”, i.e., on the present petitioner.

Learned counsel for the petitioner seeks that this issue be tried as a preliminary issue. On a consideration of the submissions made and on a perusal of the impugned order and on a perusal of the agreement

dated 29.01.2010 placed on the record between the parties, the said prayer is declined.

The petition and all accompanying applications are declined.

Nothing stated hereinabove shall however amount to an expression on the merits of the case.

Copy of this order be sent to the learned Trial Court.

ANU MALHOTRA, J

JULY 18, 2018/NC