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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 111/2019 & CM APPL. 3388/2019
PURE MILK PRODUCTS PVT LTD Petitioner

Through: Mr. Rohan Thawani & Mr. Iqram
Govind, Advocate.

versus

M/S RAMSONS Respondent

Through:

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER
% **23.01.2019**

CM APPL. 3389 & 3390/2019 (Ex.)

Exemptions allowed subject to all just exceptions.

The applications stand disposed of.

CM(M) 111/2019 & CM APPL. 3388/2019

The petitioner assails the impugned order dated 05.10.2018 of the learned Trial Court of the ADJ-07, Central District, Tis Hazari Courts, New Delhi in Civil Suit no.87/17 (ID No.908/17) vide which an application under Order 7 Rule 10 r/w Order 7 Rule 10A and Section 151 of the CPC filed by the defendant i.e. the petitioner herein seeking to contend that the suit was not within the territorial jurisdiction of the Courts at Delhi was declined with it having been observed vide reasons detailed in the said impugned order that the averments made through the plaint suffice to bring forth that the Courts at Delhi would have territorial jurisdiction to proceed with the

proceedings of the suit.

It has been sought to be contended on behalf of the petitioner by the learned counsel present for the petitioner that no part of cause of action has arisen at Delhi at all and that the averments made in the plaint are wholly vague.

A bare perusal of the plaint indicates that it has been stated in Para 3 of the plaint to the effect that:-

“3. The defendant was in need of Amul Ghee 15 kg tins. Accordingly, the Defendant approached the Plaintiff in the month of September, 2016, at their office at New Delhi, inquiring about supply of Amul Ghee 15 kg tins. Upon the said inquiry of the Defendant, the Plaintiff had informed the Defendant, that they could supply the same, directly from AmulFed, situated at Ahmedabad, but only against a concrete order.”

It has further been stated in Para 4 and 6 of the plaint, which read to the effect:-

“4. Being satisfied with the repute and capabilities of the Plaintiff, the Defendant placed an order of 1000 tins of Amul Ghee- 15 kg tins @ Rs.5,827.50 per tin, upon the Plaintiff on 24.09.2016 at their office at New Delhi. The Defendant had agreed to make payments for the goods to be supplied, upon the delivery of the same by the Plaintiff. Accordingly, the same resulted in the formation of a legally binding contract of sale between the Plaintiff and the Defendant.

6. The Plaintiff upon the receipt of the said order, immediately placed an order for the said quantity upon Gujarat Co-Operative Milk Marketing Federation Limited on 25.09.2016 from their office at New Delhi.”

It has been submitted on behalf of the petitioner by the learned

counsel present that the averments made in the plaint vide paragraphs 7, 8, 9 & 10 which read to the effect:-

“7. That Gujarat Co-Operative Milk Marketing Federation Limited, in terms of the order placed by the Plaintiff, supplied the said quantity of Amul Ghee (1000 tin) in two batches namely comprising of Batch No. GAA2681 and GAA2691 against Invoice No.165689666 dated 27.09.2016, against the name of the Plaintiff. The copy of the invoice issued by Gujarat Co-Operative Milk Marketing Federation Limited for the said consignment is annexed with the Plaint.

8. The said consignment, was arranged to be delivered, to the Defendant, by the Plaintiff, at the office of the Defendant by truck bearing No. PB 23G 5637 of M/s Yatayat Corporation of India, Ahmedabad, against Consignment Note No. 19660. The consignment note issued by M/s. Yatayat Corporation of India, is annexed with the Plaint.

9. The consignment reached the office of the Defendant on 30.09.2016 at around 5.30 A.M, the receipt of which was duly admitted by the Defendant.

10. Upon the receipt of the consignment by the Defendant, it was the duty of the Defendant to pay for the said consignment, in terms of Section 31 of the Sales of Goods Act, 1930.”

all bring forth that the Courts at Delhi would not have territorial jurisdiction to proceed with the case. It is essential to observe that the averments in Para 4 & 6 of the plaint are categorical in relation to the defendant having placed the order of 1000 tins of Amul Ghee on 24.09.2016 at the office of the plaintiff at New Delhi.

It is submitted on behalf of the petitioner i.e. the defendant of the suit that the said averments are wholly vague and that there was

no such placement of any order at the office of the plaintiff at New Delhi by the defendant and that the placement of such order was only through an email and not by any presence of any representative of the defendant at the office of the plaintiff at New Delhi and there is no name of any person specified in the plaint as to who had come to place the order at New Delhi. The aspect as to whether or not the order of the supply of 1000 tins of Amul Ghee by the plaintiff to the defendant was not placed at New Delhi, cannot be determined at this stage without trial.

In view thereof, it is presently not considered essential to counter the aspects qua which the impugned order dated 05.10.2018 is challenged qua observations of the trial Court in relation to place of payment being fixed by the defendant.

In these circumstances, the prayer made by the petitioner through the present petition cannot be allowed. The present petition and the accompanying application are thus declined.

Nothing stated hereinabove, however, shall amount to any expression on the merits or demerits of the contention raised by the petitioner that the Court at Delhi would have no territorial jurisdiction which would be subject to outcome of the said aspect on leading of evidence by either side.

ANU MALHOTRA, J

JANUARY 23, 2019/NC