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

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Date of Order: 25.02.2019

C.R.P. 56/2019

HANSA PLACE ART FURNITURES PRIVATE LTD

..... Petitioner

Through: Mr. Ronak Karanpuria, Advocate

versus

DILIP KUMAR SHARMA

..... Respondent

CORAM:

HON'BLE MR. JUSTICE VINOD GOEL

C.M. No. 8942/2019 (for exemption)

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

C.R.P. 56/2019 & CM No. 8941/2019 (for stay)

3. The impugned order dated 03.11.2018, passed by the Court of Civil Judge, West District, Tis Hazari Courts, Delhi dismissing the application of the petitioner/defendant under Order VII Rule 11 of the Code of Civil Procedure (CPC), is the subject matter of challenge in this revision petition.
4. The brief facts of the case are that the respondent/plaintiff has filed a suit for recovery of Rs.1,08,000/- with interest against the petitioner on account of selling them wooden items/furniture. The respondent is carrying its business of manufacturing and selling the wooden items/furniture at B-60,

Second Floor, W.H.S. Kirti Nagar, New Delhi-15. The petitioner filed its application under Order VII Rule 11 CPC on the ground that the contract between the parties was entered into at Udaipur; they placed the order with the respondent at Hiran Magri, Udaipur for supplying of wooden items and furniture; they made the payment to the respondent vide cheque bearing No.980581 dated 13.04.2014 at the said place; and subsequent payments were made to the respondent at Udaipur either by way of cash or NEFT bank transfer. The petitioner/defendant pleaded that since cause of action accrued at Udaipur and no cause of action has accrued in Delhi, the Courts in Delhi have no jurisdiction to try the suit.

5. It is a well settled principle of law that while deciding an application under Order VII Rule 11 of CPC, the averments made in the plaint are germane and plea taken by the defendant in the written statement would be wholly irrelevant at that stage.
6. In para 3 of the plaint, the respondent pleaded "*the defendant company approached the plaintiff with his representative/Director to supply the wooden items/furniture in the month of April 2014 at the above said office of the plaintiff situated at Kirti Nagar, Delhi-15*". The respondent has also pleaded that they have supplied goods to the petitioner vide Bill dated 22.05.2014 for Rs.2,64,134/-, bill No.407 dated 02.06.2014 for Rs.2,20,256/-, bill No.408 for Rs.1,25,052/-, bill No.409, dated 14.06.2014 for Rs.1,69,371/- and same were

received by the petitioner through its representative from their office. The above said pleadings of the respondent unambiguously indicate that a part of cause of action has accrued within the local limits of Delhi which certainly provides privilege to the respondent to file the suit in the Courts of Delhi.

7. Very recently in **Chhotanben and Another. Vs. Kirtibhai Jalkrushnabhai Thakkar and other, (2018) 6 SCC 422**, the Hon'ble Supreme Court has held that what is relevant for answering an application under Order VII Rule 11(d) CPC, is to examine the averments made in the plaint as a whole. The defence available to the defendants or plea taken by them in the written statement or application cannot be the basis to decide the application under Order VII Rule 11 CPC. Para 15 of the said judgment reads as under: -

“15. What is relevant for answering the matter in issue in the context of the application under Order 7 Rule 11(d) CPC, is to examine the averments in the plaint. The plaint is required to be read as a whole. The defence available to the defendants or the plea taken by them in the written statement or any application filed by them, cannot be the basis to decide the application under Order 7 Rule 11(d). Only the averments in the plaint are germane.”

8. In **Ramesh B. Desai and Others. Vs. Bipin Vadilal Mehta and Others, (2006) 5 SCC 638**, the Hon'ble Supreme Court, while considering Order VII Rule 11 CPC, held “16..... to

attract application of Order 7 Rule 11 CPC. The principle is, therefore, well settled that in order to examine whether the plaint is barred by any law, as contemplated by clause (d) of Order 7 Rule 11 CPC, the averments made in the plaint alone have to be seen and they have to be assumed to be correct. It is not permissible to look into the pleas raised in the written statement or to any piece of evidence.....”

9. The Hon’ble Supreme Court in **Saleem Bhai and Ors. Vs. State of Maharashtra and Ors., 2003 (1) SCC 557**, held that *“the trial court can exercise its power under Order 7 Rule 11 CPC at any stage of the suit before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial and for the said purpose averments in the plaint are germane and the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage.”*
10. While considering the present facts as pleaded in the plaint on the touchstone of the law, laid down by the Hon’ble Supreme Court, it is clear enough that part of the cause of action has accrued to the respondent/plaintiff against the petitioner in Delhi. The determination of the jurisdiction is a mixed question of law and fact, which can be adjudicated only after the parties adduce their respective evidence.
11. In view of the discussions, I do not find any illegality or infirmity in the impugned order. Accordingly, the petition along

with application, being C.M. No. 8942/2019, is dismissed with no order as to costs.

VINOD GOEL, J.

FEBRUARY 25, 2019

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