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

+ **CM (M) 31/2020**

KULDEEP SINGH SAWHNEY Petitioner
Through: Mr. Gurvinder Singh, Advocate.
(M:9868873138)

versus

SATINDER BURA Respondent
Through: Mr. Vikram Singh, Advocate.
(M: 9582446735)

CORAM:
JUSTICE PRATHIBA M. SINGH

ORDER
% **15.01.2020**

CM APPL. 1216/2020 (exemption)

1. Allowed, subject to all just exceptions. Application is disposed of.

CM (M) 31/2020 & CM APPL. 1215/2020 (stay)

2. The matter was passed over in the morning as none appeared for the Petitioner/Defendant (*hereinafter, "Defendant"*). Even on second call, none appears for the Defendant.

3. Vide the impugned order dated 3rd October, 2019, the Trial Court has rejected the Defendant's application under Order VII Rule 11 CPC on the ground that the plaint is not liable to be rejected for lack of cause of action or for an error in jurisdiction.

4. Ld. counsel for the Petitioner has made his submissions. He submits that the Id. Trial Court has erroneously discussed in some paragraphs about the lack of cause of action, which was not even the case of the Petitioner. This shows that there has been non application of mind. It is further

submitted that since the suit was based on a negotiable instrument, the cause of action would arise in the jurisdiction of Court, where the cheque is dishonoured. He further submits that the imposition of costs has been completely unreasonable as the case of the Petitioner was not frivolous in any manner.

5. Ld. counsel for the Respondent/Plaintiff (*hereinafter*, “Plaintiff”) is present on advance copy and relies upon paragraphs 6 & 8 of the plaint to submit that the Dwarka Courts would have jurisdiction to entertain the suit as the amounts, of which recovery is being sought, were handed over to the Defendant at the residence of the Plaintiff at Dwarka. Paragraphs 6 & 8 of the plaint read as under:

“6. That the amount of Rs.5,00,000/- Only (Rs 5 Lac Only) was handed over to the Defendant in January, 2018 at the residence of the Plaintiff and the Defendant promised to return the amount within a month.

...

8. That the Defendant issued a cheque bearing no.047189 on 26.03.2018 drawn on HDFC Bank, Branch Shop No.85-96, Sarojini Market, New Delhi 110023 towards repayment of loan availed by him from the Plaintiff and the said cheque was handed over to the Plaintiff at his aforesaid residence.”

6. This is a factual issue which cannot be adjudicated in an application under Order VII Rule 11 CPC and would require evidence. On the basis of the averments made in paragraphs 6 & 8 of the plaint it cannot be said that the suit itself is liable to be rejected. The same can be considered at the time of final adjudication. This Court does not find any infirmity in the impugned order dated 3rd October, 2019. The same is, therefore, not interfered with. The costs imposed on the petitioner are however waived.

7. Accordingly, the petition is dismissed. All pending applications are disposed of.

PRATHIBA M. SINGH, J.

JANUARY 15, 2020/*dk*