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

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Judgment delivered on: 11.03.2020

+ CM(M) 1511/2018 and CM APPL. 51704/2018 (Stay)

M/S MEYER APPAREL LTD

..... Petitioners

versus

M/S PANCHANAN INTERNATIONAL PVT LTD

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Subrat Deb and Mr. Ranjeet Mishra, Advocates

For the Respondents : Mr. Rakesh Mukhija and Mr. Siddharth Rawat,
Advocates

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 09.10.2018, whereby the trial Court, while framing the issues has not framed an issue with regard to the territorial jurisdiction of the Court and has also recorded that no other issue arises or is pressed.

2. Learned counsel for the petitioner submits that admittedly, petitioner/ defendant is operating its office in Gurgaon and not within the territorial jurisdiction of the trial Court.

3. Learned counsel submits that the jurisdiction was sought to be vested in the trial Court by an averment in the plaint that the officers of the petitioner had approached the respondent/ plaintiff at their office and

the entire transaction had taken place in the office of the respondent at Delhi.

4. Learned counsel submits that in the written statement, it was specifically denied that any transaction took place in Delhi rather it was averred that no part of cause of action had arisen in Delhi and in fact, the officers of the respondent/ plaintiff had approached the petitioner at their office in Gurgaon and the entire transaction had taken place at Gurgaon.

5. Learned counsel further submits that though a specific objection as to territorial jurisdiction was raised in the written statement, no issue qua the same has been framed.

6. Learned counsel for further submits that when the petitioner had filed an application under Order 7 Rule 10 CPC seeking return of the plaint, same was dismissed on the ground that the averments in the plaint alone with regard to territorial jurisdiction were to be considered and the defence of the petitioner/defendant was not to be considered at that stage.

7. Learned counsel for the respondent submits that since petitioner had withdrawn his challenge to the order rejecting his application under Order 7 Rule 10 CPC, petitioner is now precluded from raising an objection qua territorial jurisdiction and as such, the Court has rightly declined to frame an issue.

8. It is a settled position of law that an application under Order 7 Rule 10 CPC is disposed of by considering the plaint with a demur. The defence of the Defendant in the Written Statement is not to be taken into account.

9. No doubt that respondent in the plaint had made an allegation that the entire cause of action arose in Delhi and transaction was finalised in the office of the respondent at Delhi and the officers of the petitioner had visited the office of the respondent at Delhi, but this fact has been specifically denied by the petitioner in the written statement. Petitioner had categorically stated that the officer of the petitioner had never visited the office of the respondent at Delhi and no part of cause of action arose within the territorial jurisdiction of the trial Court.

10. The plaintiff seeks to confer jurisdiction on the trial Court by making an averment that a part of cause of action arose at Delhi which is disputed by the petitioner.

11. Under Order 14 CPC, where one fact is averred by one party and denied by the other and such fact is material for the adjudication of the Suit, an issue is required to be framed by the Trial Court.

12. Since the plaintiff had averred that cause of action had arisen within the territorial jurisdiction of trial Court and the defendant/petitioner had specifically denied the same, an issue was accordingly liable to be framed on the question of territorial jurisdiction of the trial Court.

13. The mere fact that the application under Order 7 Rule 10 CPC, filed by the petitioner, was rejected by the trial Court and there was no further challenge to the same, would be of no consequence in as much as the parameters for considering an application under Order 7 Rule 10 CPC are different and distinct from the parameters for framing an issue.

14. An application filed Order 7 Rule 10 CPC is to be disposed of by taking the averments in the plaint with a demur. The defence of the defendant is not taken into account at that stage. Clearly, the order dismissing the application under Order 7 Rule 10 CPC will not come in the way of trial Court while framing an issue on territorial jurisdiction.

15. Accordingly, the impugned order dated 09.10.2018 is modified and the following additional issue is framed:

2A *‘Whether this Court has no territorial jurisdiction to try the Suit? If so, its effect?’ OPD*

16. Learned counsel for the Plaintiff/respondent submits that since the onus has been placed on the petitioner/defendant and the evidence of the plaintiff is already underway, he does not need to file any additional affidavit at this stage and reserves his right to lead rebuttal evidence on the said issue, in case the petitioner lead any evidence on the same.

17. The statement is taken on record.

18. Petition is accordingly allowed in the above terms.

19. Order *dasti* under signatures of the Court Master.

SANJEEV SACHDEVA, J

MARCH 11, 2020

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