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

Date of decision: 28.07.2023

+ **TR.P.(C.) 3/2023**

SURAJ PRAKASH Petitioner

Through: Mr.Amit Vohra, Adv.

versus

NEERAJ KUMAR & ORS. Respondents

Through: Mr.Shekhar Gupta &
Mr.Mehendra Pratap, Advs. for
R-1 to R-3.

Mr.Rachit Gumber, Adv. for R-
4 & R-5.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed seeking transfer of the suit, being CS No. 800/2021 titled ***Suraj Prakash v. Neeraj Kumar & Ors.***, pending in the Court of the learned Additional District Judge-05, Central, Tis Hazari Courts, Delhi to the Court of the learned District Judge (Commercial Court), Central, Tis Hazari Courts, Delhi. The said suit has been filed by the petitioner herein seeking specific performance of an agreement to sell dated 19.01.2023, along with other reliefs.

2. The defendant nos.3 and 4/the respondent no. 4 and 5 herein filed an application under Order XII Rule 6 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC')



‘Commercial Dispute’ within the meaning of Section 2(1)(c) of the Commercial Courts Act, 2015 (hereinafter referred to as ‘CC Act’) and, therefore, was triable exclusively by a Commercial Court. The petitioner has filed the present petition acceding to this objection of the respondent nos.4 and 5, and praying for the transfer of the suit to the concerned Commercial Court.

3. At the outset, the learned counsel for the petitioner submits that though petition professes to have been filed under Section 15(5) of the CC Act, as the said provision is not applicable in the facts of the present case, it should be treated as an application filed under Section 24 of the CPC.

4. He further submits that it is the own objection of the respondent nos.4 and 5, to which the petitioner accedes, that the suit in question raises a ‘Commercial Dispute’ of a ‘Specified Value’ and, therefore, is triable exclusively by a Commercial Court. He submits that the suit was inadvertently filed as an Ordinary Suit and, therefore, it would be in the interest of justice that the suit is transferred to a Commercial Court.

5. On the other hand, the learned counsel for the respondent nos.1 to 3 submits that the present suit was filed after the coming into force the CC Act. He submits that the suit, therefore, does not meet the rigours required under the provision of the CC Act, including with respect to the verification, statement of truth, and the affidavit. He further submits that the suit was filed without initiating the pre-institution mediation as is mandatory under Section 12A of the



CC Act. In support, he places reliance on the judgment of this Court in ***Virender Kumar v. Rekha Bhayana***, NC:2022:DHC:3343.

6. I have considered the submissions made by the learned counsels for the parties.

7. Mere reference to a wrong provision of law in the title of the petition cannot lead to the dismissal of the petition, if otherwise, the Court has jurisdiction to grant the relief prayed for. Therefore, in the present case, this petition, though filed as one under Section 15(5) of the CC Act, is treated as one under Section 24 of the CPC.

8. On the objection of the learned counsel for the respondent nos. 1 to 3 that the Suit be not transferred to the Commercial Court as it has been filed without the mandatory verification, Statement of Truth and the affidavit, this Court in its judgment in ***Riveria Commercial Developers Ltd. v. Brompton Lifestyle Brands Pvt. Ltd.***, NC:2022/DHC/005823 has held that even if there is any defect in the affidavit filed with the suit, the same is merely a curable defect; it cannot defeat the rights of the plaintiff to the relief as claimed; and, the plaintiff can be given an opportunity to rectify this defect. Therefore, in the present case, mere non-filing of the prescribed Affidavit, Statement of Truth or the Verification, cannot lead to the dismissal of the Suit filed by the petitioner herein or give a ground to reject the present petition seeking the transfer of the Suit to the Court of Competent Jurisdiction. On treating the suit



the said suit shall be entertained only when the plaintiff complies fully with the mandate of the CC Act and with respect to the filing of the Statement of the Truth, Affidavit and Verification in the prescribed form. In case the plaintiff fails to do so, the respondents shall have their own remedies challenging the maintainability of the suit.

9. In ***Virender Kumar*** (supra), relied upon by the learned counsel for the respondent nos.1 to 3, also this Court had refused to reject the plaint therein under Order VII Rule 11 of the CPC, and had directed the plaint therein to be returned to the plaintiff therein, so that it could be instituted before the appropriate forum. In the present case, the petitioner has chosen not to await the return of the plaint, but to exercise the power of this Court under Section 24 of the CPC.

10. The objection of the learned counsel for the respondent nos. 1 to 3 on the plaintiff not complying with Section 12A of the CC Act, is also without merit. The learned counsel for the petitioner has stated that in the Suit, not only an urgent relief was sought by way of an interim application, but was also granted vide order dated 30.11.2021 by the learned Trial Court. The case of the petitioner would, therefore, fall within the exception to the mandate of pre-institution mediation as provided in Section 12A(1) of the CC Act.

11. In view of the above, I see no impediment in transferring the suit, that is, CS No. 800/2021 titled ***Suraj Prakash v. Neeraj Kumar & Ors.*** from the Court of the learned Additional District Judge-05, Central, Tis Hazari Courts, to the Court of



the learned District Judge (Commercial), Central, Tis Hazari Court, Delhi. It is ordered accordingly. The plaintiff shall, however, comply with the requirements of the CC Act with respect to the plaint, failing which the respondents shall have liberty to move an appropriate application challenging the maintainability of the said suit.

12. The parties shall appear before the learned District Judge (Commercial) on 18th August, 2023.

13. The petition is allowed in the above terms.

NAVIN CHAWLA, J

JULY 28, 2023/rv/am

Signature Not Verified

Digitally Signed By: SUNIL

Signing Date: 31.07.2023

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TR.P.(C.) 3/2023