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

+ **FAO (COMM) 43/2023**

SONAL KANODIA Appellant

Through: Mr.Akhil Sharma, Advocate.

versus

SHRI RAM GUPTA & ANR. Respondents

Through: Mr.Anil Kumar Sahu with Mr.Roshan Kumar, Advocates for R-1.

Date of Decision: 20th February, 2023

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T

MANMOHAN, J:

C.M.No.8142/2023

Exemption allowed, subject to all just exceptions.

Accordingly, the application stands disposed of.

FAO (COMM) 43/2023

1. Present appeal has been filed challenging the order dated 17th December, 2022 passed by the learned District Judge (Commercial Court)-04, Shahdara, KKD, Delhi in the Commercial Suit being CS (COMM) No.506/2021, whereby the application of the Appellant under Order VII Rule(s) 10 and 11 CPC has been dismissed.

2. Learned counsel for the Appellant states that the Trial Court lacks the territorial jurisdiction to entertain the suit as the Appellant/Defendant No.1 does not have any business within the territorial jurisdiction of this Court and no cause of action has arisen in favour of the Respondent/Plaintiff No.1 within the territorial jurisdiction of this Court. He states that the Trial Court has failed to appreciate that neither the Respondent/Plaintiff No.1 nor the Appellant/defendant No.1 have their head office in New Delhi and that both the Respondent/Plaintiff No.1 and Appellant/Defendant No.1 have their offices in Kanpur as they are running and operating their businesses from Kanpur.

3. Learned counsel for the Appellant states that the Respondent/Plaintiff No.1 has made false averments in its plaint regarding the clandestine sale of goods and products by the Appellant/Defendant No. 1 in the Shahdara District. He states that the averments made in the plaint are without any proof/documents as to the presence of the Appellant/Defendant No. 1 in the markets of Delhi especially in East Delhi, either in physical or online mode.

4. Having heard learned counsel for the Appellant, this Court is of the view that it is settled law that an application under Order VII Rule(s) 10 and 11 CPC is to be decided on a demurrer accepting all statements made in the plaint to be true (See: ***Chandra Kishore Chaurasia vs. RA Perfumery Works Pvt. Ltd., 2022 SCC OnLine Del 3529***). At the stage of considering an application under Order VII Rule(s) 10 and 11 CPC, the Court is not required to examine the merits of the averments made and to evaluate whether the Plaintiff would be able to prove or establish the same. For the purpose of an application under Order VII Rule(s) 10 and 11 CPC, the averments made in the plaint are required to be considered as correct.

5. Consequently, this Court is of the view that if the statements made in the plaint are accepted to be correct, then the Court would have the jurisdiction to entertain the present suit. Accordingly, the present appeal being bereft of merit is dismissed.

MANMOHAN, J

SAURABH BANERJEE, J

**FEBRUARY 20, 2023
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