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

% Judgment delivered on: 02.02.2023

+ CM(M) 1077/2022

M/S. ANTRIKSH DEVELOPERS &
PROMOTERS PVT. LTD & ORS. Petitioners

versus

SHRI SURESH KHURANA & ORS Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Rahul Kadyan, Adv.

For the Respondent : Mr. Rakesh Kumar Garg, Adv. for R-1

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

1. The petitioners challenge the order dated 31.05.2022 passed by learned Commercial Trial Court (Commercial Court) in CS (COMM)29/2019 titled as “*Suresh Khurana Vs. M/S. Antriksh Developers & Promoters Pvt. Ltd. And Ors.*” whereby the learned Trial Court while concluding that the subject matter of the lis does not fall within the ambit of Section 2(1) (c) of Commercial Courts Act, 2015, however, simultaneously also dismissed the application under Order I Rule 10 of Code of Civil Procedure, 1908, filed by the petitioners.

2. Mr. Rahul Kadyan, learned counsel appearing for the petitioners submits that once the learned Trial Court concluded that it did not have the jurisdiction to decide the dispute or have jurisdiction over the subject

matter of the suit and resultantly, concluding that it is Coram non judice, the simultaneous adjudication of the application under Order I Rule 10 CPC, 1908 one way or the other, was beyond its jurisdiction.

3. Learned counsel submits that the decision to transfer the matter for being placed before the Court of competent civil jurisdiction, ought to have been extended also to the application under Order I Rule 10 CPC, 1908.

4. Learned counsel submits that the conclusion of the learned Trial court, that it did not have jurisdiction and yet proceeding with the decision in respect of application under Order I Rule 10 CPC would be mutually destructive. In that, the Court having no jurisdiction to decide the suit, obviously could not have jurisdiction to decide even the application under Order I Rule 10 CPC, 1908.

5. In continuation of the above submissions, learned counsel submits that the impugned order in respect of the dismissal of the application Order 1 Rule 10 CPC, 1908 may be struck off and expunged from the impugned order.

6. Mr. Rakesh, learned counsel appears on behalf of respondent No.1 and submits that the respondent would not have any objection in case the application under Order I rule 10 CPC, 1908 is decided by the ordinary Civil Court protecting their rights and interests and without prejudice to their contentions to be urged before the ordinary Civil Court qua the said application.

7. This Court has considered the submissions made by Mr. Kadyan, learned counsel for the petitioners as well as those of Mr. Rakesh, learned counsel appearing for the respondent No.1 and has perused the

impugned order.

8. In the considered opinion of this Court, once the learned Trial Court came to the conclusion that the subject matter of the suit itself was not falling within the ambit of Section 2(1) (c) of the Commercial Courts Act, 2015, it would automatically become Court without jurisdiction to deal with any matter relating or arising out of such suit.

9. In view of the above, once the Trial Court itself concluded that it did not have the jurisdiction, the only recourse left for it was to transfer the suit to the Competent Authority to mark the suit to the Court of Competent Jurisdiction for further adjudication.

10. In view of the above, the impugned order in respect of the decision taken on the application under Order 1 Rule 10 CPC, 1908 filed by the petitioner is concerned, shall be eschewed and expunged from the impugned order leaving the remaining part of the order untouched.

11. In view of the above directions, the present petition is disposed of with no order as to costs.

12. That the transferee Court shall rehear the application under Order I Rule 10 CPC, 1908 in accordance with law and provide an adequate opportunity to the respondent herein to file their replies, objections and other pleadings to oppose the same.

TUSHAR RAO GEDELA, J .

FEBRUARY 2, 2023/ms