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

Date of decision: 11.12.2023

\+ CM(M) 2030/2023 & CM APPL. 63774/2023

RAMESH KUMAR PURI .... Petitioner
Through: Ms. Sonakshi Dhiman, Advocate

versus

DUGAR MARKETING PVT. LTD .... Respondent
Through: None

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CORAM:
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

<u>J U D G M E N T</u>

<u>MANMEET PRITAM SINGH ARORA, J (ORAL)</u>:

<u>CM APPL. 63775/2023 (For Exemption)</u>

Allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

<u>CM(M) 2030/2023 & CM APPL. 63774/2023</u>

1. The present petition under Article 227 of the Constitution of India impugns the order dated 09.11.2023 passed by the District Judge, Commercial Court, Central District, Tis Hazari Courts, Delhi ('Commercial Court') in the commercial suit, bearing CS (Comm) No. 166 / 2023, titled as ***"Dugar Marketing Pvt. Ltd. Vs. Sh. Ramesh Kumar Puri"***, whereby, the application filed by Petitioner herein under Order VII Rule 10 & 11 of the Code of Civil Procedure, 1908, ('CPC') was dismissed.

1.1. The Petitioner herein is the original defendant and the Respondent herein is the original plaintiff in the said commercial suit.

1.2. The commercial suit has been filed for recovery of a sum of Rs. 17,79,581/-. The parties are referred to as per their rank and status before the Commercial Court.

1.3. In the facts of this case, the defendant failed to file its written statement within the statutory period of 120 days and therefore, the right of the defendant to file the written statement was closed by the Commercial Court vide order dated 05.06.2023. The said order has attained finality and has not been impugned before this Court.

2. The learned counsel for the Petitioner, i.e. the defendant states that the Commercial Court has erred as it has failed to appreciate that the plaint fails to disclose any cause of action.

2.1. She states that the since the said suit has been filed under Commercial Courts Act, 2015, ('Act of 2015') the plaint is governed by the provisions of Code of Civil Procedure, 1908 as amended by the Act of 2015.

2.2. She states that the plaint does not comply with Order VI Rule 3A, CPC read with Form No. 3 in Appendix 'A', CPC. She states that as per the said Form No. 3, the plaintiff should have specifically pleaded details each of the invoices on which the claims are founded specifically in the plaint.

2.3. She states that in the absence of the mention of the details of the invoices, the plaint fails to comply with the requirements of Order VII Rule 1 CPC.

2.4. She states that in the plaint, the plaintiff has raised a claim for interest pendente lite and future interest at 18% per annum. She states that however, the particulars as required under Order VII Rule 2 A, CPC as amended by the Act of 2015, for the said claim, do not find mention in the plaint.

2.5. She states that the initially the plaint was filed with deficient Court fees and the contents of the application filed under Section 148, CPC were also misleading; and therefore, the Commercial Court by the impugned order, erred in granting an extension of time to the plaintiff to make good the deficient Court fees.

2.6. She states that in view of these defects in the plaint the said impugned order deserves to be set aside and the plaint ought to have been rejected by the Commercial Court. She relies upon the judgement of the Supreme Court in ***'Church of Christ Charitable Trust & Educational Charitable Society v. Ponniamman Educational Trust',*** reported as ***(2012) 8 SCC 706,*** to contend that a plaint, which fails to disclose a cause of action should be dismissed at the threshold.

3. This Court has heard the submissions of the counsel of the Petitioner and perused the record.

4. This Court has perused the impugned order of the Commercial Court, which reads as under: -

> *"Admittedly, the documents filed with the plaint are part and parcel of the plaint and are supposed to be read as part of the plaint. Where a document is sued upon and its terms are not set out in the plaint, but referred to in the plaint, the said document gets incorporated by reference in the plaint.* ***<u>The plaintiff in the plaint though has not given the particulars of the invoices separately, but has mentioned about the invoices in para 4 of the plaint, where it is mentioned that the defendant firm received the material against the tax invoices from the plaintiff company. The invoices were again referred in para 7 of the plaint.</u>*** *In these facts, it cannot be said that the plaint is without cause of action or necessary particulars are missing from the plaint.*
>
> *......The plaintiff is required to pay the court fees on the interest amount of Rs. 9,34,281/- which accrued as per him till filing of the suit. <u>The plaintiff cannot defer payment of the court fees only on the ground that the interest</u>*

is yet to be adjudicated. The plaintiff is directed to pay ad-valorem court fee on Rs. 9,34,281/- within 2 weeks from today"

5. It is evident from the record that the Respondent has referred to the invoices in the plaint and filed the copies of the invoice relied upon with the plaint.

6. Before this Court proceeds further, it would be relevant to refer to Section 8 of the Commercial Courts Act, 2015, which reads as under:

> ***8. Bar against revision application or petition against an interlocutory order. -*** *Notwithstanding anything contained in any other law for the time being in force, no civil revision application or petition shall be entertained against any interlocutory order of a Commercial Court,* ***including an order on the issue of jurisdiction****, and any such challenge, subject to the provisions of section 13, shall be raised only in an appeal against the decree of the Commercial Court.*
>
> *(emphasis supplied)*

7. It would be instructive to refer to the judgment of a Division Bench of this Court in ***'Black Diamond Trackparts Pvt. Ltd. & Ors. v. Black Diamond Motors Pvt. Ltd.'***, reported as 2021 SCC OnLine Del 3946, wherein it has been held that considering the mandate of Section 8 of the Act of 2015, the remedy available to a party to maintain a petition under Article 227 of the Constitution of India in interlocutory orders passed in commercial suits would lie in exceptional circumstances and the High Court must exercise this jurisdiction sparingly. The operative portion of the judgement to this aspect is read as under: -

> *"31. ... Thus, though we are of the view that gates of Article 227 ought not to be opened with respect to orders in commercial suits at the level of the District Judge against which a revision application under CPC was maintainable but which remedy has been taken away by the Commercial Courts Act, but abiding by the judgments aforesaid, hold that it cannot be said to be the law that jurisdiction under Article 227 is completely barred. However, the said jurisdiction is to be exercised very sparingly and more sparingly with respect to orders in such suits which under the CPC were*

> *<u>revisable and which remedy has been taken away by a subsequent legislation i.e. the Commercial Courts Act, and ensuring that such exercise of jurisdiction by the High Court does not negate the legislative intent and purpose behind the Commercial Courts Act and does not come in the way of expeditious disposal of commercial suits</u>.*"

(emphasis supplied)

8. The aforesaid judgment was further explained by the learned single Judge of this Court, who was also a member of the said Division Bench in ***'Ashok Kumar Puri & Anr. vs. S. Suncon Realtors Pvt. Ltd. & Anr.'*** reported as 2021 SCC OnLine Del 5220, held as under: -

> *"9. The above observations of the Division Bench are fully applicable in the facts and circumstances of the present case<u>. In the present case also, if it were not a commercial matter, the remedy of the petitioner against the impugned order would be to file a revision petition under Section 115 of the Code of Civil Procedure, 1908 (CPC).</u> However, the said remedy has been barred under Section 8 of the Commercial Courts Act, 2015 in respect of commercial matters. **<u>Therefore, the scope of interference by this Court in exercise of jurisdiction under Article 227 of the Constitution of India is extremely narrow and limited only in respect of orders that are patently lacking inherent jurisdiction.</u>** This is not a case where the impugned order was passed by the Commercial Court without inherent jurisdiction."*

(emphasis supplied)

9. The impugned order dismissing the application under Order VII Rule 11, CPC would admittedly have been amenable to revision if it would have been an ordinary civil suit. However, since the order has been passed in a commercial suit the remedy of revision has been barred by Section 8 of Act of 2015. Therefore, the aforesaid observations of the Division Bench as regards exercise of circumspection while entertaining a petition under Article 227 of the Constitution are attracted to the facts of this case. It would have to considered if the defendant has made out any exceptional circumstances, evidencing patent lack of inherent jurisdiction of the

Commercial Court, necessitating interference by this Court.

10. The Coordinate Bench of this Court in ***'Black Diamond Trackparts Pvt. Ltd. v. Black Diamond Motors'***, 2022 SCC OnLine Del 545, highlighting peripheries of the jurisdiction vested under Article 227 of the Constitution of India held as under:

> *"5. Before proceeding further, it may be noted that the power under Article 227of the Constitution of India being one of judicial superintendence cannot be exercised to upset conclusions, howsoever erroneous they may be, unless there was something grossly wrong or unjust in the impugned order shocking the court's conscience or the conclusions were so perverse that it becomes absolutely necessary in the interest of justice for the court to interfere.* ***The powers under Article 227 will be used sparingly.*** *The Supreme Court has observed in India Pipe Fitting Co. v. Fakhruddin M.A. Baker (1977) 4 SCC 587 and in Mohd. Yunus v. Mohd. Mustaqim (1983) 4 SCC 566 that the supervisory jurisdiction conferred to the High Courts under Article 227 of the Constitution of India is limited to overseeing that an inferior court or tribunal functions within the limits of its authority and is not meant to correct an error, even if apparent on the face of the record. A mere wrong decision without anything more is not enough to attract this jurisdiction."*

11. During the course of the arguments, the learned counsel for the Petitioner, fairly admits that the invoices on which the plaintiff relies upon to raise the claim in the plaint have been duly annexed with the plaint. The fact that the plaintiff relies upon the said invoices is also duly pleaded in the plaint.

11.1. In these facts and circumstances, the finding recorded by the Commercial Court that on a perusal of the record the plaint discloses a cause of action, falls within the jurisdiction of the said Court and does not suffer from any material irregularity.

12. Similarly, the direction of the Commercial Court permitting the Respondent to make good the deficiency under Court fees is also a direction,

which falls within its jurisdiction in view of the proviso to Order VII Rule 11, CPC.

12.1. The Commercial Court has exercised the jurisdiction vested in it while permitting extension of time to the plaintiff to make good to court fees and the said direction does not require any interference from this Court.

13. Keeping in view, the legislative intent of Section 8 of the Act of 2015, the caution expressed by the Division Bench in ***Black Diamond Tracks Part Pvt. Ltd.*** *(supra)* and the judgments referred above, this Court is of the opinion that the impugned order does not suffer from any infirmity warranting interreference by this Court in its supervisory jurisdiction.

14. In the opinion of this Court, the findings returned by the Commercial Court are well within the jurisdiction of the said and do not warrant any interference by this Court in its supervisory jurisdiction under Article 227 of the Constitution of India.

15. Accordingly, the present petition is without any merits stands dismissed. Pending applications, if any, stands disposed of.

MANMEET PRITAM SINGH ARORA, J

DECEMBER 11, 2023/*rhc/MG*

Click here to check corrigendum, if any