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

Date of decision: 15.12.2023

+ CM(M) 2069/2023

MANISH KUMAR GOEL

..... Petitioner

Through: Mr. Rakesh Kumar, Advocate

versus

SHYAM LAL GARG

..... Respondent

Through: None

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. This petition filed under Article 227 of the Constitution of India impugns the order dated 19.09.2023 passed by the Additional District Judge – 02 (N-W), Rohini Courts, Delhi in CS DJ No. 760/2023 titled as **Manish Kumar Goel v. Shayam Lal Garg** ('Trial Court') whereby the Trial Court issued directions under Order VII Rule 10 Code of Civil Procedure, 1908 ('CPC') for return of plaint alongwith the documents. The operative portion of the judgment of the Trial Court reads as under:

“ However, there is one more problem with the suit. The legal notice attached in the suit as a document shows that the plaintiff had telephonically placed purchase order and at specific request of defendant, he had paid the amount in advance but the defendant failed to supply the goods. If this is so, the dispute is clearly arising out of an oral agreement relating to sale of goods. Section 2(c) (xviii) of the Commercial Courts Act, 2015 defines the commercial dispute to mean a dispute arising out of any agreement for sale of goods. The word 'Agreement' here has not been



qualified with the expression 'written' and therefore, it shall cover an oral agreement also. The amount to be recovered in this case is Rs. 20,20,000/- which is in excess of the minimum threshold value for determination of specified value under the Commercial Courts Act. As such, the suit can only be filed under the Commercial Courts Act and not before the Court of ordinary jurisdiction. Ld. Counsel for the plaintiff however pointed out that in Order 13A (related to Commercial Courts), there is one sub-rule which indicates that if the suit is filed under Order 37 CPC, summary judgment cannot be passed. On this basis, he argued that the plaintiff has a choice of whether to file a suit U/O 37 CPC or to go for the Commercial Courts.

I am of the view that this argument cannot be accepted. Order 13A CPC as amended by the Commercial Courts Act applies only when the matter is pending before the ordinary Commercial Courts and therefore, the said Order cannot be cited before the ordinary civil jurisdiction. Even otherwise, acceptance of such an argument would amount to say that summary suit u/o 37 CPC cannot be filed before the Commercial Courts. This is not the law. The CPC as amended by the Commercial Courts Act applies to the Commercial Courts Act also and Order 37 CPC is an exception. There is no choice for the plaintiff once a dispute falls within the ambit of commercial dispute having value of minimum threshold regarding specified value

Clearly, therefore, the suit is not maintainable before this Court and could have been filed only before the Commercial Court irrespective of whether the situation falls within the ambit of summary suit or not

As such, it is held that this Court shall not have any jurisdiction to entertain the suit.

The plaint needs to be returned for want of jurisdiction U/o VII Rule 10 CPC."

2. The Petitioner is the original plaintiff and Respondent is the original defendant before the Trial Court. The suit has been filed seeking recovery of Rs. 20,20,000/-.
3. Learned counsel for the Petitioner does not dispute the facts recorded by the Trial Court in the above quoted operative portion of the impugned order to the effect that the principal amount of Rs. 20,20,000 is stated to have been paid by the plaintiff to the defendant towards purchase of goods.
4. The transaction, therefore, admittedly pertains to sale of goods and is covered by Section 2(c) (xviii) of the Commercial Courts Act, 2015 and also



the value of the transactions is for a specified value i.e., Rs. 20,20,000. In these facts, the findings of the Trial Court that the suit would be maintainable under the Commercial Courts Act, 2015 is correct in facts and law.

5. Therefore, in view of the judgment of Division Bench in *Narender Kumar v. M S Om Daily Needs Retailing Pvt Ltd & Anr.* decided on 28.08.2023 in **FAO(Commercial) 92/2023** and the judgment passed by the learned single Judge of this Court in *Virender Kumar vs. Rekha Bhayana 2022 SCC Online Del 2678*, the order of the Trial Court returning the plaint does not suffer from any infirmity.

6. It is, however, directed that upon the Petitioner filing a fresh plaint before the commercial Court, if he elects to file the same under Order XXXVII of CPC, the maintainability of the reliefs under the said provision will be decided by the concerned court uninfluenced by the observations made in the impugned order dated 19.09.2023. The Trial Court having opined that it was a Court without jurisdiction could not have proceeded to return a finding of the maintainability of reliefs under Order XXXVII CPC. The findings in the impugned order to this extent are set aside.

7. With the aforesaid directions, the present petition stands disposed of along with the pending applications, if any.

MANMEET PRITAM SINGH ARORA, J

DECEMBER 15, 2023/msh/ms

Click here to check corrigendum, if any