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

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Date of Decision : 03.09.2024+ **FAO (COMM) 63/2023**

M/S D OCEANIC DOLPHIN APPARELS PVT LTDAppellant
Through: Mr Vibhor Vardhan and Mr Ashish
Gupta, Advocates.

versus

M/S THE LEATHER CO & ORS.Respondents
Through: Mr. Vineet Bhagat, Ms. Manju
Bhagat, Mr. Aksveer Singh Saggu,
Advocates.

CORAM:**HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MR. JUSTICE SACHIN DATTA****VIBHU BAKHRU, J. (ORAL)**

1. The appellant has filed the present appeal under Section 13(1A) of the Commercial Courts Act, 2015 (hereafter *the Act*) impugning an order dated 27.05.2022 (hereafter *the impugned order*) passed by the learned Commercial Court in CS(COMM) No.143/2021 captioned *M/s D'Oceanic Dolphin Apparels Private Limited v. M/s The Leather Co. & Another*.

2. By the impugned order, the learned Commercial Court had allowed the respondent's application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (hereafter *the CPC*) and returned the plaint on the ground that the Court did not have the territorial jurisdiction to entertain the captioned suit.



3. The learned Commercial Court had noted that the address of respondent nos. 2 & 3 (defendants nos. 2 & 3 in the suit) was at Jalandhar, Punjab. Respondent no.2 (defendant no.2 in the suit) had also issued various invoices to the appellant (plaintiff in the suit) which specifically mentioned that the disputes between the parties would be subject to Jalandhar jurisdiction.

4. It is the appellant's case that it had supplied the leather raw material to respondent nos. 2 & 3 from its establishment at Najafgarh, Delhi. The appellant also claimed that all negotiations between the parties were conducted at its office in Najafgarh, Delhi. The parties had also entered into the agreement at the said office.

5. Although the appellant has not specifically pleaded in the plaint, the learned counsel for the appellant also states that the goods were to be supplied by respondent no.2 to the appellants at Najafgarh, Delhi.

6. The learned Commercial Court had noted that the role of respondent no.2 was to convert the leather raw material into finished goods and deliver the same to the plaintiff / appellant. Admittedly, there is no dispute in regard to the goods supplied by the defendant nos. 2 & 3 to the appellant at Najafgarh, Delhi. The appellant had filed the suit being aggrieved by the action of the defendants of selling the goods to a third party. Admittedly, there is no controversy in respect of the goods supplied to the appellant. The learned Commercial Court had found that goods may have been supplied by the defendant nos. 2 & 3 to the appellant in Najafgarh, Delhi, but it was not relevant to decide the territorial jurisdiction.



7. It is well-settled that the application under Order VII Rule 10 of the CPC is required to be decided on a demurrer. It is necessary to assume that the averments made in the plaint are correct. At this stage it is not permissible to examine the defense set up by the defendants.

8. This has been authoritatively held by the Supreme Court in *Exphar SA & Another v. Eupharma Laboratories Ltd & Anr : 2004 (3) SCC 688*.

In this decision, the Supreme Court had observed as under:-

“9. Besides, when an objection to jurisdiction is raised by way of demurrer and not at the trial, the objection must proceed on the basis that the facts as pleaded by the initiator of the impugned proceedings are true. The submission in order to succeed must show that granted those facts the court does not have jurisdiction as a matter of law. In rejecting a plaint on the ground of jurisdiction, the Division Bench should have taken the allegations contained in the plaint to be correct. However, the Division Bench examined the written statement filed by the respondents in which it was claimed that the goods were not at all sold within the territorial jurisdiction of the Delhi High Court and also that Respondent 2 did not carry on business within the jurisdiction of the Delhi High Court. Having recorded the appellants' objections to these factual statements by the respondents, surprisingly the Division Bench said:

“Admittedly, the goods are being traded outside India and not being traded in India and as such there is no question of infringement of trade mark within the territorial limits of any court in India what to say of Delhi.””



9. Following the aforesaid decision, a Coordinate Bench of this Court in ***M/s. RSPL Limited v Mukesh Kumar & Another: Neutral Citation: 2016:DHC:5482-DB*** had held as under:-

“10. It must be stated that it is a settled proposition of law that the objection to territorial jurisdiction in an application under Order 7 Rule 10 CPC is by way of a demurrer. This means that the objection to territorial jurisdiction has to be construed after taking all the averments in the plaint to be correct. In ***Expfar SA and Another v. Eupharma Laboratories Limited and Another: (2004) 3 SCC 688***, the Supreme Court observed that when an objection to jurisdiction is raised by way of demurrer and not at the trial, the objection must proceed on the basis that the facts, as pleaded by the initiator of the impugned procedure, are true. The Supreme Court further observed that the objection as to jurisdiction in order to succeed must demonstrate that granted those facts, the Court does not have jurisdiction as a matter of law. It is also a settled proposition of law that while considering a plaint from the standpoint of Order 7 Rule 10 CPC, it is only the plaint and the documents filed along with it, that need to be seen. The written statement is not to be looked into at all.”

10. A similar view has also been taken by this Court in ***M/s. Allied Blenders & Distillers Pvt Limited v R K Distilleries Pvt Limited: Neutral Citation: 2017:DHC:1183-DB*** and ***Puma SE v D.K. Arora: Neutral Citation: 2022:DHC:5203-DB***.

11. In the aforesaid view, the averments made in paragraph no.22 of the plaint are relevant. The same are reproduced below:-

“22. THAT the transaction of the present dispute



and the goods were ordered and supplied from the old registered address of the Plaintiff Company, further the several meetings between the Plaintiff Company and the Defendants were held at the old address of the Plaintiff Company in Najafgarh, New Delhi; and even otherwise the said raw skins were imported by the Plaintiff Company from the same old registered address of the Plaintiff Company and thereafter delivered the same to the Defendants from the same old registered address of the Plaintiff Company. As such this Hon'ble Court has territorial jurisdiction to try and entertain the present suit as the cause of action has arisen under the territorial jurisdiction of this Hon'ble Court.”

12. If the aforesaid averments are accepted, it would *prima facie* indicate that the Courts in Delhi would have the jurisdiction to entertain the suit. As noted above, the learned Commercial Court allowed the application under Order VII Rule 10 of the CPC, essentially, on two grounds. First, that the invoices issued by the respondent expressly provided that the disputes between the parties were “Subject to Jalandhar Jurisdiction”. Second, that the defendants resided and carried on their business at Jalandhar, Punjab.

13. Insofar as the exclusive jurisdiction clause is concerned, its application does not extend to the disputes that do not arise from or relate to the invoices – which specifically bear the said clause – issued by the respondent.

14. There is some dispute as to whether incorporating a unilateral exclusive jurisdiction clause in an invoice can be considered as an agreement between the parties. However, it is not necessary to enter into this



controversy as there is no dispute that the said exclusive jurisdiction clause does not extend to the disputes that have not arisen from or relate to the invoices in question. The said clause is necessarily required to be confined to disputes that relate to the invoices.

15. In the present case, the parties are at *ad idem* that the suit instituted by the plaintiff is not in respect of the disputes arising out of the invoices raised by the defendant.

16. As noted above, the grievance of the appellant is that the defendants had not supplied the goods, which the appellant claims ought to have been supplied by the defendants to it. The appellant's stated cause of action is that the defendants have sold the goods to third party(ies). These dispute neither arises from nor is connected with the invoices raised by the respondents. This is because goods covered under the said invoices have been supplied to the appellant.

17. Insofar as the respondent residing and carrying on business in Jalandhar, Punjab is concerned, the same would not be determinative of the issue of jurisdiction.

18. As noted above, it is the appellant's case that all the negotiations between the parties had taken place at their office at Najafgarh, Delhi and the goods were agreed to be supplied at Najafgarh, Delhi. If the goods were to be supplied in Delhi, as is contended on behalf of the appellant, non-supply of the same would give rise to cause of action in Delhi.

19. It is also stated that the goods, which were supplied by the appellant



to the respondents for being processed, were also imported at Delhi.

20. As noted above, the appellant's pleadings are required to be accepted at this stage as correct.

21. In view of the above, the impugned order returning the plaint is set aside. The suit stands restored before the learned Commercial Court. The parties are directed to appear before the learned Commercial Court on 17.09.2024 for further proceedings.

22. We, however, clarify that this order will not preclude the respondents from contesting the appellant's claim that whole or part of the cause of action has arisen in Delhi.

23. The appeal stands disposed of in the aforesaid terms.

VIBHU BAKHRU, J

SACHIN DATTA, J

SEPTEMBER 03, 2024

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Click here to check corrigendum, if any