



2024:DHC:4328



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

+ **TR.P.(C.) 19/2024**

SHERAWALI DEVELOPERS LLP

.... Petitioner

Through: Mr. Himanshu Goyal, Mr.
Chiragh Alagh, Adv.

versus

M/S MAJESTY HOMES & ORS.

..... Respondents

Through: Mr. Gaurav Agarwal, Adv.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGMENT(ORAL)

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21.05.2024

1. Despite issuance of notice, no reply to this petition has been filed by the respondent.

2. Mr. Gaurav Agarwal, learned counsel for the respondent submits that he is ready to argue the matter on the basis of the material on record and does not seek to file a reply.

3. Learned counsel have been heard.

4. This petition instituted under Section 24 of the Code of Civil Procedure (CPC) seeks transfer of a Civil Suit 21/2020, (*Sherawali Developers LLP v. M/s Majesty Homes and Ors*), presently pending before the learned Additional District Judge-03, North West District, Rohini Courts, to the concerned Commercial Court in the North West

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District, Rohini Courts, for further proceedings from the stage at which the said suit is at present.

5. Mr. Agarwal, learned counsel for the respondent does not dispute the fact that Civil Suit 21/2020 was indeed required to be filed as a commercial suit and has been field as a non-commercial suit.

6. He, however, submits that the prayer for transfer of the suit to a commercial court cannot be granted in view of the judgment of this Bench in *Virender Kumar v. Rekha Bhayana*¹, which relies, in term, a judgment of the Hon'ble Supreme Court in *Ambalal Sarabhai Enterprises Ltd v. K. S. Infraspace LLP*².

7. Mr. Himanshu Goel, learned counsel for the petitioner relies, on the other hand, on the judgment of a Co-ordinate Bench of this Court in *Namita Gupta v. Suraj Holdings Ltd*³.

8. *Virender Kumar*, was a case in which the order under challenge was passed by the Commercial Court under Order VII Rule 10 of the CPC.

9. The suit in that case was, as in the present case, a commercial suit filed as a non-commercial suit.

10. The learned Commercial court passed an order rejecting an

¹ 2022 SCC OnLine Del 2678

² (2020) 15 SCC 585

³ 2024 SCC OnLine Del 143



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application of defendant under Order VII Rule 10 of the CPC on the ground that the suit, having been filed as a non-commercial suit, was required to be returned to the plaintiff for being instituted to the commercial court.

11. This Court held that if a commercial suit was filed before the non-commercial court, it had to be returned to the plaintiff for being instituted before the appropriate court.

12. The court in *Virender Kumar*, was not concerned with exercise of jurisdiction under Section 24 of the CPC. Section 24 is an overarching provision and sub-section (1)(b)(ii) thereof empowers the High Court or the District Court at any stage to withdraw a suit, appeal or any proceeding pending in any court subordinate to it and transfer the said proceeding for trial or disposal to any other court subordinate to it, and competent to try or dispose of the proceeding. The power of this court to transfer a commercial suit, instituted as a non-commercial suit to the commercial court having jurisdiction to deal with it, therefore, inheres in it by Section 24(1)(b)(ii) of the CPC, is not diluted in any way by the judgment in *Virender Kumar*, which, at the cost of repetition, did not deal with exercise of jurisdiction under Section 24 of the CPC.

13. Mr. Agarwal, learned counsel for the respondent has raised two other issues. The first is that a plaint which is required to be filed as a commercial suit has to follow a particular protocol, which is distinct and different from that which is to be followed in non-commercial



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suits.

14. Mr. Goyal, learned counsel for the petitioner, submits that the petitioner would re-institute a plaint before the Transferee Court in accordance with the provisions of the Commercial Courts Act, including the requirement of filing a statement of truth and other such formalities. This, he points out, was also allowed by the Co-ordinate Bench in *Namita Gupta*.

15. In the present proceedings, out of the four defendants, three have already filed written statements and replications in response thereto have also been filed by the petitioner. As such, the suit is at a fairly advance stage of pleadings. It would do no good to anyone to return the suit at this stage.

16. The petitioners are, however, directed to ensure that the plaint is represented in accordance with the protocol envisaged by the Commercial Courts Act.

17. Mr. Agarwal raises, as a second contention, the argument that the suit was liable to be dismissed as having been instituted without compliance with the requirement of pre-institution mediation under Section 12-A of the Commercial Courts Act.

18. It shall remain open to the respondent to raise this issue before the Transferee Court. If the said issue is raised, the Transferee Court would deal with the issue and take a decision thereon in accordance

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with law and after giving an opportunity to learned counsel for the petitioner.

19. Subject, therefore, to the petitioner filing a proper plaint before the transferee court in accordance with the protocol envisaged with the Commercial Courts Act, this Court transfers Civil Suit No. 21/2020 (*Sherawali Developers LLP v. M/s Majesty Homes & Ors*) from the Court of Ms. Ruchika Singla (ADJ- 03, North-West District, Rohini Courts, Delhi) to the concerned Commercial Court, North-West District, Rohini Courts, Delhi.

20. The Registry of the Rohini Court is directed to take expeditious steps to transfer the record from the transferor court to the transferee court.

21. This transfer petition is allowed in the aforesaid terms.

C.HARI SHANKAR, J

MAY 21, 2024/K

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