



\$~9

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

%

Date of Decision: 15.03.2024+ **FAO (COMM) 26/2024****MS VDR COLOURS CHEMICALS PVT. LTD. Appellant****Through: Mr. S.B. Sharma with Mr. Ramesh Kumar, Mr. Yashwant Gahlot, Mr. Ankit Sharma, Ms. Annu Sharma, Ms. Ankita Hemant Gahlot, Mr. Jai Narain & Mr. Tushant, Advocates.****versus****MS SHREE JAGDAMBA KNITS
P. LTD. AND ORS.****..... Respondents****Through: Mr. Shashank Rai, Advocate.****CORAM:****HON'BLE MR. JUSTICE RAJIV SHAKDHER****HON'BLE MR. JUSTICE AMIT BANSAL****[Physical Hearing/Hybrid Hearing (as per request)]****RAJIV SHAKDHER, J. (ORAL):****CM APPL. 8405/2024 (for delay)**

1. This is an application seeking condonation of delay. There is a delay of 12 days in filing the appeal.
2. Having regard to the period involved, we are inclined to condone the delay. It is ordered accordingly.
3. The application is disposed of.

CM APPL. 10198/2024

4. This is an application, which seeks to bring on record the certificate of incorporation issued *qua* respondent no.1/ defendant no.1.
5. Mr. Shashank Rai, Advocate who appears on behalf of respondents/ defendants does not dispute the validity of the document.



6. Accordingly, prayer made in application is allowed. The document is taken on record.

7. The application is disposed of.

FAO (COMM) 26/2024

8. This appeal is directed against the judgment dated 11.02.2023 passed by learned District Judge, Tis Hazari Courts, Delhi. The appellant/ plaintiff had instituted a suit action for recovery of Rs.13,92,499/- along with interest @ 12%. To seek a summary dismissal of the suit the respondents/ defendants moved an application under Order VII Rule 11 of Code of Civil Procedure, 1908 [in short "CPC"]. However, via the impugned judgment, the learned District Judge returned the plaint by exercising powers under Order VII Rule 10 of the CPC.

9. Before us in appeal, it was averred on behalf of the appellant/ plaintiff based on certification of incorporation issued by Deputy Registrar of Companies that the registered office of respondent no.1/ defendant no.1 was located in Delhi.

10. Accordingly, on 12.02.2024, we had issued notice in the appeal returnable on 22.02.2024. On that date there was no representation on behalf of the respondents/ defendants even though they were served. Accordingly, we directed that the matter be listed before the court today i.e., 15.03.2024. Adverse orders qua respondents/ defendants were deferred.

11. Mr. Shashank Rai, Advocate has put in appearance on behalf of the respondents/ defendants. He concedes that the registered office of respondent no.1/ defendant no.1 is, indeed, located in Delhi, as noted in our order dated 12.02.2024.

12. To be noted the registered office of respondent no.1/ defendant no.1 is



situated at E-723, Greater Kailash-I, New Delhi.

13. Counsel for respondents/ defendants says that since the address of respondent no.1/ defendant no.1 was not mentioned in the plaint or any of the documents accompanying the plaint, the trial court had rightly returned the plaint in consonance with power conferred on it under Order VII Rule 10 CPC.

14. Undoubtedly, the aforesaid submission aligns with the principles enunciated by the courts in exercising powers under Order VII Rule 11 CPC.

15. The effect of the return of the plaint will ordinarily be that the appellant/ plaintiff would be at liberty to institute the suit in the appropriate court which would have jurisdiction. Unfortunately for the appellant/ plaintiff, due lack of sound legal advice or unavailability of the certificate of incorporation, the factum of respondent no.1/ defendant no.1 having its registered office in Delhi was not adverted to in the plaint.

16. Therefore, in our view, the best way forward would be to direct the trial court to return the plaint to the appellant/ plaintiff to be filed with the concerned court having jurisdiction over respondent no.1/ defendant no.1 bearing in mind the location of its registered office.

15.1 Relevant endorsement on the plaint will be made by the trial court and a reasonable timeframe will be accorded for filing the plaint before the concerned court. Furthermore, liberty is given to the appellants/ plaintiffs to move the concerned court for amendment of the plaint so that the memo of parties and the body of the plaint takes into account the location of respondent no.1's / defendant no.1's registered office.

17. The impugned judgement is set aside. The appeal is disposed of in aforesaid terms.



2024:DHC:2307-DB



18. The Registry will dispatch a copy of this order to the concerned court. The counsel for the parties will appear before the concerned court on 05.04.2024, so that steps in accordance with directions issued herein above are taken in the matter.

19. Pending applications are disposed of.

RAJIV SHAKDHER, J

AMIT BANSAL, J

MARCH 15, 2024/hs

Signature Not Verified

Digitally Signed By: ATUL
JAIN

Signing Date: 21.03.2024
18:53:27

FAO(COMM)No.26/2024

Page 4 of 4