



2024:DHC:5853



\$~74

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of decision: 06th August, 2024***+ **FAO 67/2024 & CM APPL. 44614-44616/2024****REACH INFOCOM TECHNOLOGY PVT LTD**

.....Appellant

Through: Mr. Nitish Messeey with Mr.
Prabhakar Mishar, Advocates.

versus

SHRI GIRISH KUMAR BHASIN

.....Respondent

Through: Mr. Avinash Kumar Tyagi with Mr. M
P Singh, Advocates.**CORAM:****HON'BLE MR. JUSTICE MANOJ JAIN****J U D G M E N T (oral)**

1. The next date in the present appeal is 12.09.2024.
2. However, in the interregnum, the appellant has moved an application praying that the impugned order may be stayed. It is contended that the case is already at final stage and if the suit is finally adjudicated, the present appeal would become rather infructuous.
3. Learned counsel for the respondent appears on advance notice.
4. With the consent of both the parties, the entire appeal as such has been taken up today itself.
5. The respondent has filed a suit seeking recovery of Rs. 23,96,194/- and



2024:DHC:5853



is also seeking permanent injunction.

6. According to plaintiff, the entire cause of action had arisen at Delhi. However, an application was moved by the defendant (petitioner herein) before the learned Trial Court under Order VII Rule 10 CPC in which it was contended that the cause of action had arisen at Calcutta and the Courts at Calcutta, alone, had the exclusive jurisdiction to adjudicate upon the dispute arising *inter se* the parties, particularly, in view of one agreement dated 23.02.2017.

7. The above application was considered by learned Trial Court on 27.07.2019 and it was observed that the issue related to territorial jurisdiction was a mixed question of fact and law and could not have been decided without taking evidence of the parties and, therefore, the learned Trial Court directed framing of *preliminary issue* to said effect and the parties were given opportunity to lead evidence on said issue so that the Court can then determine whether it had territorial competence to try the present suit or not.

8. The evidence was led before the learned Trial Court and the learned Trial Court vide impugned order dated 10.01.2024, decided the preliminary suit in favour of the plaintiff while holding that cause of action had arisen in Delhi also and, therefore, the Court at Delhi also had territorial domain.

9. According to learned counsel for the petitioner (defendant), there is no dispute that the part of the cause of action had arisen in Delhi but it is contended that the cause of action had also, simultaneously, arisen at Calcutta and in view of the aforesaid agreement, both the parties had, consciously and knowingly, conferred the jurisdiction at Calcutta Courts alone. The attention



2024:DHC:5853



of the Court is drawn specifically to Clause 24 of the above said agreement.

10. It is argued that said aspect has not been considered by the learned Trial Court and in view of the settled legal position, the preliminary issue should have been rather decided in favour of the defendant.

11. It is also argued that it is not a case where there was no jurisdictional domain with respect to the Courts at Calcutta and since, part of the cause of action had arisen at Calcutta and part at Delhi, in view of the specific agreement between the parties, the Court should have either returned the Suit or should have decided the preliminary issue with respect to the territorial jurisdiction in favour of the defendant. It is argued that when any such contract or agreement specifies jurisdiction of the Courts at a particular place and such Courts have jurisdiction as well to deal with the matter, inference would be that parties intended to exclude all other Courts.

12. Fact remains that, in the impugned order, there is no discussion with respect to the above said agreement which was even duly proved by the defendant when it entered into the witness box and made reference to said agreement as Exhibit DW 1/2.

13. Learned counsel for the respondent (plaintiff) has, in all fairness, admitted that the above said fact was not discussed, but at the same time, he contends that even if there was any discussion to that effect, the result would have been still the same.

14. Be that as it may, since, a material aspect, going to the root of the matter has not been touched by the learned Trial Court, the impugned order



2024:DHC:5853



dated 10.01.2024 is hereby set aside and the learned Trial Court is requested to re-hear the arguments with respect to the above preliminary issue and decide the same afresh in view of the above said observations and in accordance with law.

15. The next date stands cancelled.

16. It is made clear that nothing mentioned in the present order would be taken as expression on the merits of the case and the learned Trial Court would be at liberty to pass appropriate order with respect to the territorial jurisdiction aspect after hearing both the sides.

17. The petition stands disposed of in the aforesaid terms.

(MANOJ JAIN)
JUDGE

AUGUST 6, 2024/sw