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

+ **CM(M) 988/2023**

HINDCON CHEMICAL LTD

.....Petitioner

Through: Mr. Kaushik Kr. Dey, Advocate.

versus

S.K. GHOSH AND ORS.

.....Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

ORDER

% **04.11.2024**

CM(M) 988/2023 & CM APPL. 64492/2024(early hearing)

1. Petitioner is defending a commercial suit and application has been moved seeking earlier hearing of the petition in question.
2. There is no appearance from the side of respondent despite advance service.
3. However, keeping in mind the fact that a very short point is involved in the present petition, the date is pre-poned and the matter is taken up, today itself, for the hearing.
4. The defendant had taken an objection with respect to territorial jurisdiction and had prayed for return of the suit by moving an application under Order VII Rule 10 of CPC.
5. Learned Trial Court, keeping in mind the averments made in the plaint, in particular, what had been averred in para 14, came to the conclusion that

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the Court had territorial jurisdiction as the defendant had, as per averments made in the plaint, contacted the plaintiff in Delhi.

6. According to learned counsel for defendant, such assertion is false and moreover, a preliminary objection in this regard, had already been taken.

7. It is also contended that when the matter was taken up by the learned Trial Court on 02.06.2023, the Trial Court had even observed that since the issue of the territorial jurisdiction was already seized before this Court, it would be appropriate to defer the framing of issues. However, subsequently, the issues were framed by the learned Trial Court on 15.07.2024 and there is no issue with respect to the aspect of '*territorial jurisdiction*'.

8. After hearing arguments for some time, learned counsel for the petitioner, without prejudice to his rights and contentions, states that he may be permitted to withdraw the present petition with liberty to request the learned Trial Court to frame additional issue with respect to '*territorial jurisdiction*'.

9. The case is, reportedly, fixed today before the learned Trial Court.

10. Needless to say, at times, such issue pertaining to territorial competency is a mixed question of fact and law and since a specific objection, in this regard is already stated to have been taken in the written statement, the present petition is disposed of as not pressed and liberty is granted to petitioner to move appropriate application before the learned Trial Court praying for framing of additional issue with respect to the territorial competency of the Court concerned.

11. Let the application be moved within three weeks from today and, as and when, any such application is moved, the learned Trial Court shall consider the same in accordance with law.



12. It is clarified that this Court has not made any observation, either way, with respect to the aforesaid aspect. Suffice it to say that, at times, such question of '*territorial jurisdiction*' is a mixed question of fact and law and learned Trial Court would be at liberty to decide the above said application keeping in mind the averments stated in the respective pleadings.

13. The next date stands cancelled.

14. The petition stands disposed of.

MANOJ JAIN, J

NOVEMBER 4, 2024/sw