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

+ CM(M) 821/2022, CM APPL. 36149/2022 (stay)

EMERALD CARS PVT LTD

..... Petitioner

Through: Mr. Sandeep Grover, Ms. Ankita Arora and Ms. Dhairya Arora, Advocates.

versus

IDEMITSU LUBE PVT LTD

..... Respondent

Through: Ms. Aakanksha Nehra and Ms. Preeti Singh, Advocates.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

ORDER

20.03.2024

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1. The present petition is filed impugning the order dated 14.03.2022 and 13.07.2022 passed by the learned District Judge, Commercial Court-02, Patiala House Court, New Delhi ("Trial Court") in suit titled as *IDEMITSU Lube India Pvt. Ltd. V. Emeralds Cars Pvt. Ltd. and Ors.* in bearing CS No. 143/2021. Whereby vide order dated 14.03.2022 the learned Trial Court proceeded ex-parte against the petitioners and vide order dated 13.07.2022 the learned Trial Court decided the application filed by the respondent herein under Order XXXVIII Rule 5 of the Code of Civil Procedure, 1908 ("CPC")
2. The petitioner is defendant in the suit pending adjudication before learned Trial Court.
3. It is submitted that respondent herein filed a Civil Commercial Suit,



bearing no. 143/2021 before the learned Trial Court on 22.03.2021 for recovery of sum amounting to Rs. 16,46,000/- at 24% interest payable to the respondent. The respondent also filed application under Order XXXVIII Rule 5 CPC seeking furnishing of security by the petitioner and application under XXXIX Rule 1 & 2 CPC seeking interim relief against the petitioner. On 22.11.2021 the petitioner herein filed his written statement to the suit.

4. The petitioners filed application under Order VII Rule 11 CPC and application under Order 1 Rule 10 CPC and both the applications were dismissed in default vide impugned order dated 14.03.2022 and the learned Trial Court proceeded against the petitioner *ex parte*. Moreover, vide impugned order dated 13.07.2022 the learned Trial Court decided the application filed by the respondent under Order XXXVIII Rule 5 CPC by directing the petitioners to furnish a bank guarantee for one year for sum of Rs. 16,46,000/- without first determining the issue of jurisdiction as raised by the petitioner.

5. A short controversy involved in the present petition is with respect to the territorial jurisdiction of the learned Trial Court.

6. The learned counsel for the petitioner submits that the learned Trial Court before issuing summons had taken *sou moto* objection with respect to the territorial jurisdiction of the Court to entertain the commercial suit and had given an opportunity to the respondent to respond to the query. The matter was listed for consideration on 06.04.2021 as request was made on behalf of the respondent to file written submissions and to show that the dispute falls within the territorial jurisdiction of the court.

7. It is submitted that on 06.04.2021, additional documents were filed on behalf of the respondent. Though part arguments pertaining to the issue of



territorial jurisdiction were addressed on behalf of the respondent and the matter was again put up for consideration/further proceedings on 14.04.2021. Eventually the matter was listed on 08.06.2021 for further arguments.

8. The learned counsel submits that after hearing the matter on the issue of territorial jurisdiction for two dates, in midway the said issue was dropped and the learned Trial Court proceeded to issue summons of settlement of issues to the petitioner herein. It is submitted that without deciding the question regarding the territorial jurisdiction the learned Trial Court could not have passed the impugned orders on the application moved on behalf of the respondent under Order XXXVIII Rule 5 CPC.

9. To support the contentions, the learned counsel has relied upon the cases titled as ***“Union of India & Ors. v. Adani Exports Ltd. & Anr. (2002) 1 SCC 567 and V.G Jagadishan v. Indofos Industries Limited (2022) 6 SCC 167”***.

10. The learned counsel further drew the attention of this Court to the order passed by the learned Predecessor Bench dated 23.08.2022 and submitted that at the time of filing of the present petition the question regarding the territorial jurisdiction was raised before the learned Predecessor Bench and in pursuant to the said order petitioner has already moved an application under Order XLVII Rule 1 CPC challenging the order dated 14.03.2022.

11. It is further submitted that as the question regarding the territorial jurisdiction is to be decided first and till this controversy is settled by the learned Trial Court, the impugned order passed on 13.07.2022 and 14.03.2022 be kept in abeyance. The learned counsel for the petitioner



submits that in such circumstances, he will press for the application already moved by him under Order VII Rule 11 CPC which was dismissed in default due to his non-appearance on the day 14.03.2022.

12. The learned counsel for the respondent submits that he has no objection if the application under Order VII Rule 10 & 11 CPC is decided first.

13. In view of the submissions, the learned Trial Court is directed to hear the arguments on the applications i.e. Order VII Rule 10 & 11 CPC on the date which is already fixed before it on 02.04.2024 and to pass the orders within one month from hearing of the arguments on both the applications. In meanwhile, the impugned order dated 13.07.2022 vide which the learned Trial Court decided the application filed by the respondent herein under Order XXXVIII Rule 5 CPC is kept in abeyance till both the applications are satisfied.

14. With these observations, the petition stands disposed of.

SHALINDER KAUR, J.

MARCH 20, 2024/MR