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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Date of decision: 15th July, 2024*

+ CM(M) 1507/2023
RAJEEV MITTAL

.....Petitioner

Through: Mr. Sanjay Rathi with Mr. Ajeet Singh, Mr. Yoginder Singh, Mr. Rishabh Jakhar and Mr. Amit, Advocates.

versus

THE COMMISSIONER, NORTH DELHI MUNICIPAL CORPORATION

.....Respondent

Through: Ms. Latika Malhotra, ASC for MCD.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT (oral)

1. Petitioner herein is plaintiff before the learned Trial Court.
2. The suit was initially filed as a regular suit. However, thereafter a request was made before the learned Trial Court i.e. Court of learned ADJ-03, Central that since the suit was commercial in nature, it ought to be tried by the Court of District Judge (Commercial Court). Resultantly, the concerned Trial Court directed the matter to be placed before the Court of learned Principal District and Sessions Judge (Head Quarters) for appropriate directions.
3. On receiving such file, learned Principal District and Sessions Judge (Central), vide its order dated 07.07.2023, directed the suit to be withdrawn from said Court of learned ADJ-03, Central and to be transferred to the Court of learned District Judge, (Commercial Court), Central Tis Hazari



Courts for proceeding further in accordance with law.

4. However, when the matter was taken up by said Court on 11.07.2023, it again sent back the file to learned Principal District and Sessions Judge (Head Quarters) for passing appropriate order as it was of the view that in view of *Virender Kumar vs Rekha Bhayana* 2022 SCC OnLine Del 2678 the suit should have been rather returned.

5. Such order is impugned herein.

6. According to learned counsel for petitioner/plaintiff, in view of the recent pronouncement of Coordinate Bench of this Court, the issue is now settled and this Court, in order to do substantive justice, has ample power to order transfer of the suit to a Commercial Court and there is no requirement directing returning the suit as such. The relevant paragraphs of order dated 09.01.2024 passed in *Namita Gupta versus Suraj Holdings Limited* 2024 SCC OnLine Del 143 read as under:

“CONCLUSION:

71. Having considered the above position of law, and returning to the facts of the present case, in my view, the learned Additional District Judge has erred in passing the order dated 06.03.2023, impugned in the present petition. Once the learned Additional District Judge was of the view that the dispute raised in the subject Suit is commercial in nature of a Specified Value, the only power vested in him was to return the plaint to the plaintiff, that is, the respondent herein for it to be presented before the Court of competent jurisdiction. The learned Additional District Judge had no power to place the file of the Suit before the learned Principal District and Sessions Judge for it to be transferred to the Court of competent jurisdiction.

72. Similarly, the learned Principal District and Sessions Judge erred in transferring the Suit from the Court of the learned Additional



District Judge to the Court of the learned District Judge, Commercial Court. As held hereinabove, the Commercial Court even at the level below the learned District Judge is not a Court subordinate to the District Judge. Therefore, the learned Principal District and Sessions Judge had no power to pass the Impugned Order dated 14.03.2023.

73. In view of the above, the orders dated 06.03.2023 passed by the learned Additional District Judge and the order dated 14.03.2023 passed by the learned Principal District and Sessions judge are set aside.

74. At the same time, as held herein above, this Court, under Section 24 of the CPC, has the power to transfer the Suit to the court of competent jurisdiction. In the present case, as it is not disputed that the Suit relates to a Commercial Dispute of a Specified Value and is to be tried by the learned District Judge (Commercial), South-East District, Saket District Court, and as it is also not disputed that the petitioner herein, who is the defendant in the Suit, has not only filed her Written Statement but also a Counter-Claim, in my opinion, the interest of justice would demand that in exercise of power vested in this Court under Section 24 of the CPC, the Suit be transferred from the Court of the learned Additional District Judge to the Court of the District Judge (Commercial), South-East District, Saket District Court, to be tried from the stage it is at present.

75. The parties shall appear before the learned Transferee Court on the date that must have already been fixed by the Transferee Court.

76. The petition and the pending applications are disposed of in the above terms.

77. There shall be no order as to costs."

7. Learned counsel for respondent-MCD admits the aforesaid legal position.

8. In fact, it is noticed that when this matter was taken up earlier on 18.09.2023, the respondent herein stated on instructions that they would have no objection if the matter is tried by the concerned Court of learned District Judge, (Commercial Court), Central Tis Hazari Courts. Such statement was even taken on record.



9. During course of arguments, Ms. Latika Malhotra, learned ASC for MCD reiterates the same and submits that she would have no objection if the request made in the present petition is acceded to.

10. It is contended by Ms. Latika Malhotra, learned ASC for MCD that the power of this Court under Section 24 of the CPC cannot be denuded and though, ideally, instead of transfer of suit, it should have been returned but in view of aforesaid judgment, she would have no objection if the petition is disposed of directing transfer of suit. She also contends that the transferee court can always consider her other objections as in *Namita Gupta* (supra), it has been observed that so far as aspect related to non-compliance with Section 12A of the Act was concerned, the Transferee Court shall consider the said objection on merits upon the transfer of the Suit. It was observed therein that the transfer of the Suit does not, in any manner, affect the right of the defendant to contend that the Suit has been filed without any cause of action or is otherwise barred by any provision of law or is liable to be dismissed under Order VII Rule 11 of the CPC for any other reason, including for the failure of the plaintiff to initiate pre-suit mediation as mandated under Section 12A of the Act.

11. These objections would remain open to the defendant even on the transfer of the Suit under Section 24 of the Act. There, thus, cannot be any qualm with the above.

12. Keeping in mind the observations contained in the said order *Namita Gupta* (supra), while exercising its power under Section 24 of CPC and also supervisory powers under Article 227 of Constitution of India, the present



petition is disposed of with the direction that the suit in question stands transferred to the said Commercial Court.

13. The petition stands disposed of accordingly.

(MANOJ JAIN)
JUDGE

JULY 15, 2024/sw