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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO (COMM) 188/2023 CM APPL. 48288/2023 CM APPL.**
52864/2023 CM APPL. 4490/2024
HINDUSTAN CONSTRUCTION COMPANY LTD. Appellant
Through: Mr.Arjun Jain, Ms.Anushree Narain,
Ms.Simran Kumari, Advocates.
versus
CLASSIC CONSTRUCTION COMPANY & ORS. Respondents
Through: Mr.Rabi Kumar, Ms.Himanshi Saini,
and Mr.Nishant Pachori, Advocates
for R1.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORDER

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31.01.2024

1. The appellant has filed the present appeal impugning the order dated 26.07.2023 (hereafter '**the impugned order**') passed by the learned Commercial Court in CS (COMM) No.619/2022 captioned ***Classic Construction Company v. Hindustan Construction Company Limited & Ors.***
2. By the impugned order, the learned Commercial Court rejected the application of the appellant under Order VII Rule 10 the Code of Civil Procedure, 1908 (hereafter '**the CPC**').
3. Respondent no.1 had filed the above mentioned suit under Order XXXVII of the CPC, *inter alia*, for recovery for a sum of ₹13,27,536/- along with costs and interest. It is respondent no.1's case that it had supplied goods against which an amount of ₹13,27,536/- is outstanding. It is claimed that the said goods were supplied in Delhi for a project undertaken by the appellant (arrayed as defendant no.1 in the suit) in Delhi. In addition,



respondent no. 1 also claims that the appellant has its office located at Munirka Elevator Corridor Project, Nelson Mandela Marg, Opp. DLF Ambiance Mall, Vasant Kunj, New Delhi-110070. It claims that the appellant had issued purchase orders from its office in Delhi.

4. Paragraph no. 15 and 16 of the plaint are set out below:-

“15.That the cause of action arose the day after materials/products were delivered to the defendant company, a further fresh cause of action arose every time the plaintiff received a false promise of payment from the defendants. The cause of action again arose the day legal notice for demand of the outstanding balance was sent by the plaintiff through his advocate, Mr. Piyush Bharadwaj, and continued till today, the date of the filing of the recovery suit for money of Rs. 13,27,536.

16.That this Hon'ble Court has territorial jurisdiction to try and entertain the present suit since the defendant, M/S Hindustan Construction Company, has its registered office at Munirka Elevator Corridor Project, Nelson Mandela Mall, Opp. DLF Ambiance Mall, Vasant Kunj, New Delhi-110070, and they are residing within the territorial jurisdiction of this Hon'ble Court and the cause of action has also arisen in Delhi.”

5. The appellant had filed an application under Order VII Rule 10 of the CPC praying that the plaint be returned, as according to the appellant the goods in question were supplied pursuant to the purchase orders, which expressly provided that the purchase order would be governed as per laws of India and only Mumbai Courts shall have the jurisdiction. It is contended that respondent no.1 did not dispute the receipt of the purchase order as referred to by the appellant in its application. On the contrary, respondent



no.1 claimed that it had not only received the particular purchase order mentioned in the application of appellant, but also the other purchase orders.

6. In view of the aforesaid, the appellant contends that the Courts in Mumbai alone would have the jurisdiction to adjudicate the disputes involved in the suit, CS (COMM) No.619/2022.

7. Respondent no.1 had disputed the said contention. According to respondent no.1, the Courts at Mumbai have no jurisdiction to entertain the suit because the goods were supplied in Delhi and the appellant has its office located in Delhi. It is also claimed that the purchase orders were issued from Delhi. According to respondent no.1, the entire cause of action has arisen in Delhi and no part of the cause of action has arisen in Mumbai. It is contended that the parties cannot confer jurisdiction by agreement.

8. The learned Commercial Court had proceeded to examine these pleas and held that the question whether the plaint is required to be returned under Order VII Rule 10 of the CPC is required to be decided accepting the averments made in the plaint to be correct. The learned Commercial Court has held that, if the averments made in paragraph nos.15 and 16 are accepted as correct, it has the jurisdiction to entertain the suit. Thus, the plaint is not required to be returned. Accordingly, the learned Commercial Court rejected the application under Order VII Rule 10 of the CPC.

9. It is trite law that application under Order VII Rule 10 of the CPC is required to be determined on a demurer; that is, by accepting that the averments made in the plaint are correct (Ref. *M/s Allied Blenders & Distillers Pvt. Ltd. v. R.K. Distilleries Pvt. Ltd.*: 2017 SCC OnLine Del 7224), *Liverpool & London S.P. & I Association Ltd. v. M.V. Sea Success I*: (2004) 9 SCC 512 and *Exphar Sa v. Eupharma Laboratories Ltd.*:



(2004) 3 SCC 688).

10. It is also settled law, that, in cases where two or more courts have the territorial jurisdiction to entertain an action, the parties can agree that one of those court alone would have jurisdiction. But the parties cannot confer jurisdiction on a court that otherwise does not have the jurisdiction to entertain the action.

11. We find no infirmity with the decision of the learned Commercial Court to reject the appellant's application under Order VII Rule 10 of the CPC.

12. The appeal is, accordingly, dismissed. All pending applications also stand disposed of.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

JANUARY 31, 2024

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Click here to check corrigendum, if any