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

+ C.R.P. 361/2023 CM APPLs. 62406/2023, 62407/2023

ITOVIA FOOD SERVICES PVT LTD

.....Petitioner

Through: Mr. Manan Batra & Mr. Varun Tyagi,
Advocates.

versus

LITE BITE FOODS PVT LTD

.....Respondent

Through: Ms. Nanita Sharma, Mr. Vivek
Sharma & Mr. Prince Sugadh,
Advocates.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

18.10.2024

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1. The present Revision Petition under Section 115 of the Code of Civil Procedure, 1908 (*hereinafter referred to as "CPC, 1908"*) has been filed on behalf of the Revisionist-Defendant against the Order dated 24.11.2023 *vide* which the Application under Order VII Rule 11 read with Section 151 of CPC, 1908 filed by the Revisionist-Petitioner for rejection of the Plaint, has been dismissed.

2. The Revisionist-Defendant had sought the rejection of the Suit on two grounds; **firstly**, the Suit being undervalued and insufficient court fee affixed on the relief claimed by the Respondent-Plaintiff, and **secondly**, the Court has no territorial jurisdiction to try the Suit.

3. The learned District Judge in regard to the deficit court fee observed that the deficit court fee can be directed to be paid even at the time of passing of the Decree. In respect of the territorial jurisdiction, it was observed that the Respondent-Plaintiff had contended that the Meal boxes



were supplied at Feroz Shah Kotla Stadium and thus, the Court had the territorial jurisdiction. It was also observed that the issue of terrestrial jurisdiction is mixed question of fact and law. Consequently, the Application under Order VII Rule 11 read with Section 151 of CPC, 1908, has been dismissed.

4. Learned counsel for the Revisionist-Defendant has contended that in Paragraph-14 of the Plaint, it has nowhere been stated that the Meal boxes were intended to be supplied at Feroz Shah Kotla Stadium. There was an objection taken in regard to the territorial jurisdiction in the Written Statement filed on behalf of the Revisionist-Defendant despite which the same has not been clarified by the Respondent-Plaintiff. It is only in response to the Application under Order VII Rule 11 read with Section 151 of CPC, 1908 that the Respondent-Plaintiff has referred to the Invoices to assert that the Court has the territorial jurisdiction to entertain the Suit.

5. It is submitted that from the pleading, it is evident that the Court has no territorial jurisdiction to entertain the Suit and the Plaint should have been returned.

6. **So far as the payment of deficit court fee is concerned**, it is argued that the interest @ 24% per annum has been claimed not for the *pendente lite* and future period, but the said interest has been claimed from the date of Invoices i.e., November, 2019. Since the amount claimed towards the interest from the date of Invoices till the filing of the Suit i.e., on 25.05.2023, being a quantified amount, the court fee should have been paid on the quantified amount and need not be deferred till the passing of the final Decree.

7. It is, therefore, submitted that the impugned Order dated 24.11.2023 is



liable to be set aside and the Plaint is also liable to be returned/rejected.

8. **Learned counsel for the Respondent-Plaintiff** has, however, contended that from the Invoices, it is quite evident that the Meal boxes were supplied at Feroz Shah Kotla Stadium and, therefore, the Suit has been filed in the Court having the territorial jurisdiction.

9. It is also submitted that the issues have already been framed and the matter is at the stage of trial and, therefore, this issue of territorial jurisdiction can be taken up after recording of the evidence.

10. Insofar as the payment of requisite court fee is concerned, similar contention has been made that in case the court fee is found to be deficit, the same can be directed to be made good at the time of passing of final Decree.

11. It is, therefore, submitted that the Application under Order VII Rule 11 read with Section 151 of CPC, 1908 has been rightly dismissed and there is no merit in the present petition.

12. **Submissions heard.**

Deficit Court Fees:

13. The first ground agitated on behalf of the Revisionist-Defendant is in regard to the payment of deficit court fee.

14. It has been rightly contended that the quantified amount of interest @ 24% per annum has been claimed from the date of Invoices till the date of filing of the Suit i.e., on 25.05.2023. Though the *pendente lite* and future interest is to be granted by the Court on its discretion, but when a relief is claimed as a certain definite amount, it becomes the claimed amount and the court fee is liable to be paid on the ascertained claimed amount. Therefore, there is a deficit court fee and the Respondent-Plaintiff is liable to make the court fee good on the amount to be quantified by taking interest @ 24% per



annum from November, 2019 when the Invoices were raised, till the date of filing of the Suit i.e., 25.05.2023.

Territorial Jurisdiction:

15. **The second ground agitated** is in regard to the territorial jurisdiction. Though the pleading is not happily worded and the Respondent-Plaintiff could have explained by way of amendment or Replication when a specific objection to territorial jurisdiction was raised by the Revisionist-Defendant, but because the Respondent-Plaintiff has sought to justify the territorial jurisdiction on the basis of Invoices, it is rightly observed that the same is a mixed question of fact and law. It may also be observed that hyper technical objections cannot be made a ground for denial of substantial rights. Therefore, no interference is required or warranted in respect of the territorial jurisdiction.

Conclusion:

16. In view of above, the Respondent-Plaintiff is directed to make the deficit court fee good on the interest component from the date of Invoices till the filing of the Suit, within four weeks of this Order.

17. Accordingly, the present Revision Petition along with pending Applications is hereby disposed of in the above terms.

NEENA BANSAL KRISHNA, J

OCTOBER 18, 2024

S.Sharma