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

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Date of Decision: 06.05.2024

+ **FAO (COMM) 2/2024 & CM No.192/2024****CRYSTAL CROP PROTECTION LIMITED**

..... Appellant

Through: Ms. Arti Bansal & Ms. Ishita Pathak,
Adv.

Versus

RANGA KRISHNA MURTHY

..... Respondent

Through: Mr. Harsha Gollamudi, Adv.

CORAM:**HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MS. JUSTICE TARA VITASTA GANJU****VIBHU BAKHRU, J.(Oral)**

1. The appellant has filed the present appeal impugning an order dated 10.10.2023 (hereafter the *impugned order*) passed by the learned Commercial Court in CS(COMM) No.220/2021 captioned *Crystal Crop Protection Limited v. Ranga Krishna Murthy, Prop. M/s Vasavi Traders*. By the impugned order, the learned Commercial Court had allowed the respondent's application under Order VII Rule 10 of the Code of Civil Procedure, 1908 (hereafter the *CPC*) and held that the Court did not have the jurisdiction to entertain the suit and no cause of action had arisen within the territorial jurisdiction of the learned Commercial Court.

2. The learned Commercial Court accepted the contention that the appropriate Court for filing the suit would be the Court in the State of Telangana having jurisdiction to try the suit. The learned Commercial Court noted that the registered office of the appellant – who was the plaintiff in the suit – was at Ahmedabad, Gujarat and the goods supplied were dispatched by the appellant to the respondent from its branch office at Andhra Pradesh. The



learned Commercial Court observed that the respondent's godown / workplace is also situated at Telangana (then within the State of Andhra Pradesh). Additionally, the Court noted that the cheques issued by the respondent to the appellant were dishonoured by the appellant's bank, that is, State Bank of India, Hyderabad. Another cheque issued by the respondent was presented by the appellant at Ludhiana, Punjab, was dishonoured. The appellant filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 against the respondent at Ludhiana, Punjab in respect of dishonour of the said cheque. Further, the learned Commercial Court also concluded that the Statement of Accounts in respect of the transaction with the respondent were maintained by the appellant at the registered office at Ahmedabad, Gujarat and funds were being received in the running account in the State of Andhra Pradesh.

3. The invoices placed by the appellant in respect of the material supplied to the respondent were examined by the learned Commercial Court and the Court concluded that the goods were supplied through corporate/branch office at Hyderabad. Although, the invoices stipulated that the dispute between the parties would be subject to Delhi jurisdiction or jurisdiction of any other state with the discretion of the appellant, the learned Commercial Court concluded that no part of the cause of action had arisen within the territorial jurisdiction of Delhi.

4. The learned Commercial Court also referred to the decision of the Supreme Court in *Indian Performing Rights Society Ltd. v. Sanjay Dalia & Anr.*¹ as well as on the decision of the Coordinate Bench of this Court in *Ultra Home Construction Pvt. Ltd. v. Purushottam Kumar Chaubey &*

¹ (2015) 10 SCC 161



Others.² Following the said decisions, the learned Commercial Court held that the cause of action for the present dispute has arisen at a place where the appellant had some kind of office and therefore, the suit could be filed before the Court having jurisdiction in respect of the said place.

5. We have heard the learned counsels for the parties.

6. It is settled law that the question whether the plaint is to be returned under Order VII Rule 10 of the CPC is to be examined on a demurrer and by accepting the averments made in the plaint to be correct. In this regard it is relevant to refer to paragraph no. 17 of the plaint and the same is set out below:

“17. That this Hon’ble court is having territorial jurisdiction to entertain and adjudicate upon the present suit as the discussions/negotiations between the parties for supply of goods were held and finalized at corporate office of the Plaintiff Company at Wazirpur, Delhi. The Defendant executed Customer Appointment Form at the corporate office of the Plaintiff Company at Wazirpur, Delhi and subsequent discussions / settlement had also been taken place between the parties at Delhi. Purchase orders were placed at the office of the Plaintiff Company at Wazirpur, Delhi. All the payments were made and agreed to be made at the office of the Plaintiff Company at Wazirpur, Delhi. As per the invoices and statement of accounts, all disputes are subject to Delhi jurisdiction only. Therefore, Cause of action has arisen in whole or in part at Wazirpur, Delhi. Hence, this Hon’ble Court has got territorial jurisdiction to try and adjudicate on the subject matter of the present suit.”

7. It is apparent from the above that it is the appellant’s case that the discussions and negotiations for supply of goods were finalized at the corporate office of the appellant at Wazirpur, Delhi. The appellant also claims

² Neutral Citation: 2016:DHC:457-DB



that the respondent had executed the Customer Appointment Form at its corporate office at Wazirpur, Delhi. Additionally, all subsequent discussion and settlement had taken place between the parties at Delhi. According to the appellant, the purchase orders were placed from its office at Delhi and the invoices also expressly indicated that the dispute would be subject to the jurisdiction of the Courts at Delhi. In view of the averments made, the appellant had asserted that the cause of action had arisen at Delhi.

8. The respondent disputes the aforesaid averments.

9. It is apparent that some of the findings returned by the learned Commercial Court are based on averments made in the application filed by the respondent. A reading of the plaint indicates that the respondent had approached the appellant at its Delhi office and desired to purchase the goods. The Customer Appointment Form was also executed at the said Delhi office. Paragraph nos. 5 and 6 of the plaint are relevant and is set out below:

“5. That the Defendant approached the plaintiff company at its office at Delhi and desired to purchase goods in the name of his firm from the plaintiff company and its sister concern M/s. Rohini Seeds. After assurance and promise for timely payment the defendant filled up the Customer Appointment Form.

6. That the Defendant being the sole proprietor of his concern namely M/s. Sri Vasavi Traders used to place purchase orders at Delhi office of the Plaintiff Company for purchase of insecticides/Pesticides and seeds etc. on Credit basis from the Plaintiff Company and its sister concern M/s. Rohini Seeds.”

10. The respondent controverted the said averments. According to the respondent, the Customer Appointment Form indicates that it was executed at Hyderabad and not at appellant's office at Delhi.



11. Additionally, the appellant in paragraph 9 of the plaint has pleaded that the respondent had acknowledged an outstanding amount of ₹55,61,951/- in terms of letter dated 08.09.2018. The appellant has further proceeded to aver that the respondent had visited the appellant at its office in Delhi on 16.11.2018 and settled the account. The respondent had admitted the Statement of Stock Delivery from 01.04.2017 to 31.07.2017 and had acknowledged the balance of the statement of accounts and had promised to pay the outstanding amount of ₹54,95,831.25 by 20.11.2018. Paragraph 9 of the plaint is relevant and is reproduced below:

“9. That in course of business transaction the Defendant, vide his letter dated 08.09.2018, acknowledged the outstanding of Rs. 55,61,951/- and gave a payment schedule mentioning payment date and amount and undertook to make payment as per his schedule wherein the Defendant had to make payment of Rs. 49,50,000/- by 20.10.2018. However, several cheques of Defendant were dishonoured and Defendant failed to comply his above payment schedule. Thereafter the Defendant visited Delhi office of the Plaintiff Company on 16.11.2018 for settlement of the outstanding amount. As such computer generated overdue outstanding and Statement of Account from 01.04.2016 to 16.11.2018 was drawn. Admitting the Statement of Stock Delivery from 01.04.2017 to 31.07.2017 and acknowledging the outstanding balance of the statement of accounts, the Defendant confirmed the outstanding of Rs. 54,95,831.25 payable by 20.11.2018 as per policy of the Plaintiff Company. The amount of Rs. 54,95,831.25 included Rs. 49,80,831.25/- towards the statement debit balance and Rs. 5,15,000/- towards interest.”

12. The learned counsel for the respondent contends that some of the documents produced by the appellant do not support its case. However, it is apparent that there are several averments made in the plaint which, if accepted



as correct, indicate that the part of the cause of action had arisen within the territorial jurisdiction of the learned Commercial Court.

13. It is also settled law that the application under Order VII Rule 10 of the CPC has to be decided on a demurrer accepting the averments made in the plaint to be correct³.

14. The learned Commercial Court has proceeded to evaluate the merits of averments made by the appellant in the light of the respondent's contest as stated in the respondent's application under Order VII Rule 10 of the CPC. It was not necessary for this Court to examine the said averments as the scope of examination under Order VII Rule 10 of the CPC is limited to the averments made in the plaint and the documents filed along with it.

15. The reference to the decision of the Supreme Court in *Indian Performing Rights Society Ltd. v. Sanjay Dalia & Anr.*¹ and the decision of this Court in *Ultra Home Construction Pvt. Ltd. v. Purushottam Kumar Chaubey & Ors.*² is misplaced as the said decisions were rendered in the context of the Trade Marks Act, 1999 and the Copyright Act, 1957, which also permits the suit to be filed where the plaintiff's office is located.

16. The decision in *Ultra Home Construction Pvt. Ltd. v. Purushottam Kumar Chaubey & Ors.*² was rendered in the context of Section 134(2) of the Trade Marks Act, 1991 and Section 62(2) of the Copyright Act, 1957. The same do not apply in the present case as the action instituted by the appellant is for recovery of the amounts in respect of the goods supplied and not for infringement of any Intellectual Property Right.

17. In view of the above, the impugned order is set aside. However, we clarify that nothing stated in this order would be construed as an expression of

³ Exphar Sa & Anr vs Eupharma Laboratories Ltd. & Anr: (2004) 3 SCC 688 & M/s. Allied Blenders and Distillers Private Ltd. v. Prag Distillery Pvt. Ltd. & Anr.: 2017 SCC OnLine Del 7225.



opinion of this Court on the merits of the respondent's case and the same would not preclude the respondent from filing an appropriate application under Order XIII A of the CPC, if otherwise maintainable in law. All rights and contentions of the parties are reserved.

18. The parties shall appear before the concerned Commercial Court on 19.05.2024 for further proceedings.

19. *Dasti* under signature of the Court Master.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

MAY 06, 2024

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