



2024:DH:7122



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 13th September, 2024

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CM(M) 3390/2024, CM APPL. 53654/2024, CM APPL. 53655/2024
& CM APPL. 53656/2024

M/S. BRAINZTORM TECHNICAL EXCELLENCE

.....Petitioner

Through: Mr. Vikas Pal, Advocate.

versus

M/S. V-CONNECT SYSTEMS AND SERVICES PVT. LTD.

.....Respondent

Through: None.

CORAM:**HON'BLE MR. JUSTICE MANOJ JAIN****J U D G M E N T (oral)**

1. Respondent herein (plaintiff before the learned Trial Court) filed a suit seeking recovery of sum of approx. Rs. 29,00,000/- with interest.
2. Petitioner is one of the defendants i.e. defendant No. 1 in said suit.
3. Admittedly, all the defendants in the aforesaid civil suit, despite due service, did not file their written statement and their right to file written statement was closed and their defence was also struck off on 15.02.2024.
4. However, said defendants moved an application under Order VII Rule 11d of CPC, contending that when the plaintiff had availed mandatory option of pre-institution mediation, it approached a different authority i.e. Delhi Legal Services Authority, East District which had no jurisdiction in the present matter. It asserted that, eventually, the suit was filed in South-



East District, Saket Courts, New Delhi and since the process of the ‘pre-institution mediation’ had been invoked in a different District, initiation of such process was not in consonance with Section 3 of *Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018*. It was on the above premise that the said application had been moved before the learned Trial Court seeking rejection of the suit.

5. Such contention did not find favour and, therefore, the present petition has been filed under Article 227 of Constitution of India.

6. When asked, learned counsel for petitioner, very fairly, admitted that the defendants did receive notice in relation to invocation of such pre-institution mediation, also supplementing that they did not participate therein.

7. We need not emphasize that the purpose and objective of the mandate given under Section 12-A of Commercial Courts Act, 2015 is to merely explore whether any such commercial suit can be amicably settled or not. Such provision is mandatory for any such suit, not contemplating any urgent relief.

8. As noticed above, in the case in hand, the petitioner does admit that it did receive the notice regarding pre-institution mediation, albeit, from a different District. They also admit that they did not participate in the aforesaid mediation process.

9. Right here, it needs to be underlined that even where any suit is filed in a court and any defendant therein alleges that such court does not have



any jurisdiction, such defendant, on receiving summons, can always appear and take such legal objection about lack of jurisdictional competence. If any such defendant, instead of appearing and defending the matter, chooses to sit merrily, assuming that the court does not have jurisdiction, such defendant, manifestly, does it at its own risk and peril and may even eventually suffer a decree. Applying the same analogy, even if, defendants were of any such view that such invocation, that too merely at a pre-institution stage, was without jurisdiction, they still could have participated in such pre-institution mediation process, reserving their objection.

10. After all, such process merely explores possibility of settlement and nothing more.

11. Such process, required to be initiated before filing of a suit, cannot be held to be so rigid and hyper-technical, in context of jurisdictional aspect particularly when, it may so happen that cause of action may arise at multiple places.

12. Here, even as per the averments made in the plaint, the registered office of the plaintiff is situated in Mandawali, Delhi which falls in 'East District'. The defendants had allegedly approached plaintiff for seeking Mobile Messaging Services on some terms and conditions and, thereupon, an agreement was entered into between the parties in Delhi. As noted, the office of plaintiff is situated in East Delhi. Plaintiff also averred that the cheques in question, when presented, returned dishonoured due to insufficient funds and its bank was situated in the territorial jurisdiction of South-East District, Saket Courts, New Delhi, being in Greater Kailash,



Delhi.

13. It is not the case of the petitioners that the suit could have been filed only and only in Noida, Uttar Pradesh where they are located. Notably, even the Tax Invoice raised by the plaintiffs contains a categorical recital that these were subject to Delhi Jurisdiction.

14. Ideally, any such plaintiff ought to initiate such process where it may eventually choose to file its case, fact remains that in the present case, it cannot be said that the initiation of such process had caused any kind of prejudice to the defendants, particularly, when in view of the averments made in the plaint said other District, too, had jurisdiction. Moreso, the defendants had received such notice and for the reasons best known to them, they did not think of participating in the above process.

15. In view of the said peculiar backdrop and keeping in mind the facts of the present case, this court is of the view that learned Trial Court has not committed any error in dismissing the application moved by the defendants.

16. Present petition is accordingly dismissed *in limine*

(MANOJ JAIN)
JUDGE

SEPTEMBER 13, 2024/sw