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IN THE HIGH COURT OF DELHI AT NEW DELHI

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FAO (COMM) 23/2023

HAMILTON MEDICAL AG, A COMPANY INCORPORATED
UNDER THE LAWS OF SWITZERLANDAppellant

Through: Mr.Akshay Makhija, Sr. Adv. with
Mr.Atul T.N., Ms.K Pallavi & Ms.Shweta, Advs.

versus

MR. SANJAY SAPROO & ORS.Respondents

Through: Ms.Vishakha Gupta, Advs. for R-1, 2
and 6 to 11.

Mr.Rony Oommen John, Adv. for R-3 & 4

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MR. JUSTICE SAURABH BANERJEE

ORDER

17.02.2025

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1. The present appeal under Section 10(1A) of the Commercial Courts Act, 2015, seeks to assail the order dated 25.11.2022 passed by the learned Commercial Court-02, South District, Saket Courts, New Delhi, in CS (Comm.) 152/2021. Vide the impugned order, the learned Trial Court after holding that it did not have the necessary territorial jurisdiction to try and entertain the suit filed by the appellant/ plaintiff, allowed the application preferred by the respondent/ defendant under Order VII Rule 10, Code of the Civil Procedure, 1908 (hereinafter "the CPC") by observing that the plaint was liable to be returned to the appellant for being presented before the competent Court having the necessary territorial jurisdiction.
2. It is the common case of the parties that the appellant instead of



moving an appropriate application for return of the plaint before the learned Trial Court, preferred the present appeal.

3. After some arguments, learned senior counsel for the appellant on instructions submits that the appellant will, instead of pressing the present appeal, approach the learned Trial Court, within two weeks from today, by way of an application under Order VII Rule 10(A), CPC seeking return of the plaint, for presenting before the competent Court having the necessary territorial jurisdiction and also press its pending application under Order VI Rule 17, CPC, before the competent Court which application had already been filed before the impugned order came to be passed.
4. Learned counsel for the respondent has no objection to this course of action.
5. In the light of the aforesaid, the appeal is disposed of as not pressed with liberty as prayed for, making it clear that in case, the appellant moves an application under Order VII Rule 10(A), CPC within two weeks from today, the learned Trial Court will consider the same on its own merits and pass appropriate orders for transfer of the suit to a Court having the necessary territorial jurisdiction. Needless to state, this order will not preclude the respondent from taking any objections as per law before the learned Trial Court.

REKHA PALLI, J

SAURABH BANERJEE, J

FEBRUARY 17, 2025/kk