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

% *Date of Decision : 22.04.2025*

\+ **RFA(COMM) 94/2023 & CM APPL.23201/2025**

RAJENDRA GEARS AND ORS .....APPELLANTS

Through: Mr Sanjay Vashistha, Mr Deepak Nagar, Mr Nipun Arora, Mr Shivendra Gupta and Mr Siddharth Goswami, Advocates.

versus

M/S DPZ INTERNATIONAL AND ORS .....RESPONDENTS

Through: Mr Bhavya Sethi, Mr Anupam Sharma and Mr Akash Garg, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE TEJAS KARIA

VIBHU BAKHRU, J. (*ORAL*)

1. The appellants have filed the present appeal under Section 13(1A) of the Commercial Courts Act, 2015 [**the CC Act**] impugning the judgment dated 07.03.2023 [**the impugned judgment**] passed by the learned Commercial Court in CS(COMM) No.990/2022 captioned *M/s DPZ International and Others v. M/s Rajendra Gears and Others*.

2. In terms of the impugned judgment, the learned Commercial Court decreed the suit preferred by the respondents [plaintiffs] for a sum of

₹24,19,118/- (Rupees Twenty Four Lakhs Nineteen Thousand One Hundred and Eighteen Only) along with interest at the rate of twenty-four (24) percent per annum from the date of filing of the suit (02.04.2022) till realisation of the amount. The said decree was passed on admissions under Order XII Rule 6 of the Code of Civil Procedure, 1908 [**CPC**].

3. The respondents [**plaintiffs**] had filed the aforementioned suit for recovery of a sum of ₹24,19,118/- along with interest at the rate of twenty-four (24) percent per annum being the amount claimed as recoverable from the appellants [**defendants**] against goods supplied by plaintiff no.1 (DPZ International) of which the other plaintiffs were constituent partners.

4. The plaintiffs claim that the defendants had in normal course of business placed orders for the supply of the chain set as per the details set out in the invoices raised by plaintiff no. 1 firm.

5. It is averred that plaintiff no.1 firm supplied the goods to the defendants and raised invoices for the same. It is also averred that plaintiff no.1 firm was maintaining a ledger account for the supplies made in the regular course of its business and an amount of ₹24,19,118/- remained payable and outstanding in respect of the goods supplied. The plaintiffs claim that they sent reminders to the defendants for clearing the outstanding amount, however, the defendants failed and neglected to pay the same.

6. The plaintiff firm initially filed a suit under Order XXXVII of the CPC, but the same was withdrawn due to a technical error, with liberty to file afresh. Thereafter, the plaintiffs initiated a pre-institution mediation, as required under Section 12A of the CC Act. However, the defendants failed

to participate in the said proceedings.

7. It is material to note that the plaint neither contains any details regarding the invoices raised nor any averments as to the dates and the manner in which the goods were supplied.

8. The defendants filed a written statement contesting the suit. They raised a preliminary objection that the learned Commercial Court did not have jurisdiction to try the suit, as exclusive jurisdiction vested in the courts at Ghaziabad. The defendants relied on the purchase orders issued, which, according to them, clearly specify that all disputes would fall within the jurisdiction of Ghaziabad courts. The defendants also made certain bald allegations regarding fraud and concealment of facts, but no particulars of the same were furnished, which could flesh out any of the said averments with any substance.

9. In addition to the above, the defendants also claim that certain goods supplied by the plaintiffs were defective. The defendants claim that the goods supplied were lying at the factory and contended that the plaintiffs are liable to pay damages/rent.

10. The learned Commercial Court proceeded, in our view, erroneously, on the basis that the claims made by the plaintiffs were admitted. The learned Commercial Court rejected the defendants' contention that the courts at Ghaziabad had the exclusive jurisdiction to adjudicate the disputes in view of the purchase orders. The learned Commercial Court proceeded to hold that the court had the jurisdiction to try the suit as part of the cause of action had arisen within its jurisdiction. The relevant extract to the

impugned judgment setting out the learned Commercial Court's reasoning is set out below: -

> "7. The defendants have filed a purported purchase orders dated 06.12.2018, 31.10.2018, 31.10.2018, 31.10.2018, 16.10.2018, 10.07.2018 and 14.06.2018 in support of contention that it had been agreed between the parties that all disputes would be settled within jurisdiction of "Ghaziabad" only. The said purchase orders never translated into and took shape of a written agreement for want of acknowledgement by the plaintiff thereupon i.e. on the purchase order itself or vide separate communication in this regard. It thus cannot be concluded that by virtue of alleged agreement(s), entered into pursuant to purchase orders dated 06.12.2018, 31.10.2018, 31.10.2018, 31.10.2018, 16.10.2018, 10.07.2018 and 14.06.2018, plaintiffs and defendants had agreed that all their disputes would be subject to jurisdiction of Courts at Ghaziabad only.
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> 8. Further in the case of *A.B.* C. *Laminart Pvt. Ltd.* & *Anr vs. A.P. Agencies, Salem, 1989 AIR 1239*, it has been held that:"
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> > "In the matter of a contract there may arise causes of action of various kinds. In a suit for damages for breach of contract the cause of action consists of the making of the contract, and of its breach, so that the suit may be filed either at the place where the contract was made or at the place where it should have been performed and the breach occurred. The making of the contract is part of the cause of action. A suit on a contract, therefore, can be filed at the place where it was made. The determination of the place where the contract was made is part of the Law of Contract.

But making of an offer on a particular place does not form cause of action in a suit for damages for breach of contract. Ordinarily, acceptance of an offer and its intimation result in a contract and hence a suit can be filed in a court within whose jurisdiction the acceptance was communicated. The performance of a contract is part of cause of action and a suit in respect of the breach can always be filed at the place where the contract should have performed or its performance completed. If the contract is to be performed at the place where it is made, the suit on the contract is to be filed there and nowhere else. In suits for agency actions the cause of action arises at the place where the contract of agency was made or the place where actions are to be rendered and payment is to be made by the agent. Part of cause of action arises where money is expressly or impliedly payable under a contract. In cases of repudiation of a contract, the place where repudiation is received is the place where the suit would lie. If a contract is plead ed as part of the cause of action giving jurisdiction to the Court where the suit is filed and that contract is found to be invalid, such part of cause of the action disappears The above are some of the connecting factors. So long as the parties to a contract do not oust the jurisdiction of all the Courts which would otherwise have jurisdiction to decide the cause of action under the law it cannot be said that the parties have by their contract ousted the jurisdiction of the Courts."

9. In the instant case, since the orders for goods were placed at Delhi, the goods were supplied from the registered office of plaintiff from Delhi and the payment for the same was also received at Delhi, the Court at Delhi specifically this Court has jurisdiction

to try and adjudicate upon the matter."

11. It is apparent from the above that the learned Commercial Court found that the purchase orders had been not translated or taken the shape of the written agreement for want of the acknowledgment. It is also noted that the learned Commercial Court rejected the defence that the goods were supplied in Ghaziabad.

12. It is not necessary to examine the merits of the decision rendered by the learned Commercial Court on the issue whether it had the jurisdiction to try and adjudicate the suit. However, it is apparent that the said decision is not based on admissions. As noted above, the learned Commercial Court had proceeded to reject the defence and decree the suit. Clearly, the impugned judgement is not premised on admissions but is founded on rejection of the defence raised by the defendants. For this reason alone, the impugned judgment is unsustainable.

13. The fact that the defendants had admitted the receipt of the invoices is clearly not dispositive of the entire disputes. However, we note that the impugned judgment is passed principally on the basis that the defendants had admitted the invoices during the course of the admission / denial of the documents conducted on 20.01.2023.

14. In view of the above, the impugned judgment is set aside. We remand the matter to the learned Commercial Court to resume proceedings at the stage as obtaining when the impugned judgment was rendered.

15. Nothing stated in this order shall be construed as an expression on the merits of the disputes between the parties. We clarify that all the rights and

contentions of the parties are reserved in this regard.

16. The parties shall appear before the learned Commercial Court/ Successor Court on 15.05.2025 for directions.

17. The appeal is allowed in the aforesaid terms. The pending application is also disposed of.

VIBHU BAKHRU, J

TEJAS KARIA, J

APRIL 22, 2025
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Click here to check corrigendum, if any