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

+ **RFA(COMM) 213/2024**

SPJ CARGO PRIVATE LIMITED

.....Appellant

Through: Mr. Laksh Khanna, Mr. Utkarsh
Joshi, Ms. Diksha Suri and Ms. Anjali
Menon, Advocates.

versus

AL NOOR EXPORTS & ORS.

.....Respondents

Through: Mr. Pranay Mohan Govil, Advocate
for R-2.
Mr. Varun Varma and Mr. Hitesh
Kumar Sharma, Advocates for R-3.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MR. JUSTICE SAURABH BANERJEE

ORDER

06.02.2025

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1. This matter is listed today as 05.02.2025, was declared as a holiday on account of General Elections-2025 to the Legislative Assembly of NCT of Delhi.
2. The present appeal under Section 96 of the Code of Civil Procedure, 1908 seeks to assail the judgment and decree dated 11.03.2024 passed by the learned District Judge, Commercial Court-02, South-East, Saket Courts, New Delhi in CS (COMM) No.1204/2022. Vide the impugned judgment, the learned Trial Court has dismissed the suit for recovery preferred by the appellant/plaintiff by holding that the Court did not have territorial jurisdiction to deal with the plaint as filed by the appellant.



3. Learned counsel for the appellant submits that the impugned order is wholly perverse and is liable to be set aside as the learned Trial Court has dismissed the suit by holding that it did not have territorial jurisdiction to entertain the claim raised by the appellant without giving any opportunity to the appellant to satisfy the Court with regard to this aspect. By drawing our attention to the impugned judgment, he submits that since the respondents had been proceeded *ex parte*, no written statement was filed by them and consequently, such a plea of territorial jurisdiction had been raised by them. He, therefore, contends that even if the Court was of the view that the plaint was liable to be rejected for want of territorial jurisdiction, an opportunity ought to have been granted to the appellant to make submissions in this regard.

4. Without prejudice to his aforesaid submission, he submits that even if the learned Trial Court was of the view that the claim as raised by the plaintiff did not fall within its territorial jurisdiction, the Court ought to have returned the plaint to the appellant for being presented before the appropriate Court having the necessary territorial jurisdiction and ought not to have outrightly dismissed the suit as has been done under the impugned judgment.

5. Per contra, learned counsel for the respondents though seeking to urge that the suit was rightly dismissed by the learned Trial Court is not in a position to deny that no issue in respect of territorial jurisdiction was ever framed by the learned Trial Court before dismissing the suit. He also does not dispute the settled legal position that if the learned Trial Court was of the view that it lacked territorial jurisdiction to entertain the suit, the plaint itself



should have been returned for being presented in the appropriate Court having territorial jurisdiction.

6. In the light of the aforesaid stand taken by the parties and the admitted position that the suit has been dismissed without the appellant being granted an opportunity to even urge before the learned Trial Court that the claims raised in the suit as instituted fell within its territorial jurisdiction, we have no other option but to set aside the impugned judgment and remand the matter back to the learned Trial Court for adjudication of the suit on merits.

7. Accordingly, while allowing the appeal and setting aside the impugned judgment and remanding back the suit for adjudication to the learned Trial Court, we direct that the learned Trial Court will first frame a preliminary issue regarding the territorial jurisdiction and then proceed to decide the suit on merits. We, however, make it clear that we have not expressed any opinion on the appellant's claim that the suit as filed before the learned Trial Court fell within the territorial jurisdiction of the said Court.

8. We, further, make it clear that in case the respondents make an application before the learned Trial Court for setting aside of the *ex parte* proceedings against them, it will be open for the learned Trial Court to consider the same as per law.

REKHA PALLI, J

SAURABH BANERJEE, J

FEBRUARY 6, 2025/uk