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

Date of decision: 14th MAY, 2026

IN THE MATTER OF:

+ **CS(COMM) 645/2022**

SHIVAM CORPORATION INDIA

.....Plaintiff

Through: Dr Pankaj Garg, Mr. Milind Garg,
Ms. Nikita Garg, Mr. Yaksh Garg,
Mr. Yashna Ahuja, Ms. Muskaan
Chawla, Advocates

versus

GEM SALES CORPORATION

.....Defendant

Through: *Appearance not given.*

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT (ORAL)

I.A. 18933/2025

1. The present application has been filed by the Defendant under Order VII Rule 11 of the CPC for rejection of the plaint.
2. The instant suit has been filed by the Plaintiff for recovery of Rs.4,50,38,414.75/- from the Defendant.
3. The averments which have been made by the Plaintiff in the plaint are as follows:-
 - i. It is stated that the Plaintiff is a proprietorship concern and is engaged in the business of raw iron/pig iron/iron material etc.
 - ii. It is stated that the Defendant purchased the goods of pig iron



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from the Plaintiff. It is the case of the Plaintiff that the last of the payment was made by the Defendant on 13.06.2017 for a sum of Rs.30 lakhs and there is an outstanding amount of Rs.4,50,38,414.75/- which payable by the Defendant to the Plaintiff.

- iii. The Plaintiff has given a table in Paragraph 8 of the plaint providing details of the goods supplied to the Defendant and according to the Plaintiff between 31.08.2016 to 13.06.2017, the Plaintiff has supplied goods worth Rs. 5,74,10,658.75/- under various invoices. It is the case of the Plaintiff that after reconciliation of the accounts, a sum of Rs. 4,50,38,414.75/- is still due and payable by the Defendant.
- iv. It is the case of the Plaintiff that demand notices were sent to the Defendant on 26.06.2019 but the outstanding amount has not been paid. It is stated that prior to the filing of the present suit, the Plaintiff approached the Delhi High Court Mediation & Conciliation Centre for Pre Litigation Mediation in terms of Section 12A of the Commercial Courts Act. It is stated that three sessions were held on 13.09.2019, 30.09.2019 and 24.10.2019 and despite notices by the mediation centre, none appeared for the Defendant.
- v. It is the case of the Plaintiff that applying the Judgment of the Apex Court in *Suo Motu Writ Petition No. 3/2020*, the instant suit has been filed on 13.07.2022, which is within the period of limitation.
- vi. Written Statements have been filed by the Defendant. A



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preliminary objection was taken by the Defendant stating that this Court does not have the territorial jurisdiction to entertain the suit. Reliance has been placed on the invoices raised by the Plaintiff itself. The invoices specifically states that "subject to the Faridabad jurisdiction' and it is the case of the Defendant that since the parties have by agreement confined themselves to the jurisdiction of courts at Faridabad, this Court ought not to entertain the suit.

4. Issues have yet not been framed and the case is still at the initial stage. The instant application has been filed under Order VII Rule 11 of the CPC stating that the plaint is barred by limitation. An objection has also been raised wherein it is stated that the plaint is to be rejected/returned as not being maintainable before this Court on the ground of territorial jurisdiction.

5. The objection of territorial jurisdiction is one under Order VII Rule 10 of the CPC. Even though the objection of territorial jurisdiction is raised in an application under Order VII Rule 11 of the CPC, this Court is inclined to consider this application as one under Order VII Rule 10 of the CPC. Further, objection regarding territorial jurisdiction has been raised by the Defendant at the first opportunity along with the Written Statement.

6. It is well settled that a decree passed by the court without jurisdiction is a nullity and that parties can by agreement confine themselves to one of many courts if more than one courts have jurisdiction. The Apex Court in Kiran Singh & Ors. V. Chaman Paswan & Ors., (1954) 1 SCC 710, has held as under:-

“6. The answer to these contentions must depend on what the position in law is when a court entertains a



suit or an appeal over which it has no jurisdiction, and what the effect of Section 11 of the Suits Valuation Act is on that position. It is a fundamental principle well established that a decree passed by a court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the court to pass any decree, and such a defect cannot be cured even by consent of parties. If the question now under consideration fell to be determined only on the application of general principles governing the matter, there can be no doubt that the District Court of Monghyr was coram non judice, and that its judgment and decree would be nullities. The question is what is the effect of Section 11 of the Suits Valuation Act on this position.”

7. The Apex Court in Harshad Chiman Lal Modi v. DLF Universal Ltd. & Anr., (2005) 7 SCC 791, has observed as under:-

*“30. We are unable to uphold the contention. The jurisdiction of a court may be classified into several categories. The important categories are (i) territorial or local jurisdiction; (ii) pecuniary jurisdiction; and (iii) jurisdiction over the subject-matter. **So far as territorial and pecuniary jurisdictions are concerned, objection to such jurisdiction has to be taken at the earliest possible opportunity and in any case at or before settlement of issues. The law is well settled on the point that if such objection is not taken at the earliest, it cannot be allowed to be taken at a subsequent stage.** Jurisdiction as to subject-matter, however, is totally distinct and stands on a different footing. Where a court has no jurisdiction over the*



subject-matter of the suit by reason of any limitation imposed by statute, charter or commission, it cannot take up the cause or matter. An order passed by a court having no jurisdiction is a nullity.”

(emphasis supplied)

8. The Apex Court in EXL Careers v. Frankfinn Aviation Services (P) Ltd., 2020 (12) SCC 667, has observed as under:-

“12. It is no more res integra that in a dispute between parties where two or more courts may have jurisdiction, it is always open for them by agreement to confer exclusive jurisdiction by consent on one of the two courts. Clause 16-B of the agreement extracted above leaves us in no doubt that the parties clearly indicated that it was only the court at Delhi which shall have exclusive jurisdiction with regard to any dispute concerning the franchise agreement and no other court would have jurisdiction over the same. In that view of the matter, the presentation of the plaint at Gurgaon was certainly not before a court having jurisdiction in the matter. This Court considering a similar clause restricting jurisdiction by consent in Swastik Gases (P) Ltd. v. Indian Oil Corpn. Ltd. [Swastik Gases (P) Ltd. v. Indian Oil Corpn. Ltd., (2013) 9 SCC 32 : (2013) 4 SCC (Civ) 157] , observed as follows: (SCC pp. 47-48, para 32)

“32. ... It is a fact that whilst providing for jurisdiction clause in the agreement the words like “alone”, “only”, “exclusive” or “exclusive jurisdiction” have not been used but this, in our view, is not decisive and does not make any material difference. The intention of the parties—by having Clause 18 in the agreement—is clear and unambiguous that the courts at Kolkata shall have jurisdiction which means that the courts at Kolkata alone shall have jurisdiction. It is so because for



construction of jurisdiction clause, like Clause 18 in the agreement, the maxim expressio unius est exclusio alterius comes into play as there is nothing to indicate to the contrary. This legal maxim means that expression of one is the exclusion of another. By making a provision that the agreement is subject to the jurisdiction of the courts at Kolkata, the parties have impliedly excluded the jurisdiction of other courts. Where the contract specifies the jurisdiction of the courts at a particular place and such courts have jurisdiction to deal with the matter, we think that an inference may be drawn that parties intended to exclude all other courts. A clause like this is not hit by Section 23 of the Contract Act at all. Such clause is neither forbidden by law nor it is against the public policy. It does not offend Section 28 of the Contract Act in any manner.”

9. The Apex Court in Swastik Gases Private Limited v. Indian Oil Corporation Limited, 2013 (9) SCC 32, has observed as under:-

“32. For answer to the above question, we have to see the effect of the jurisdiction clause in the agreement which provides that the agreement shall be subject to jurisdiction of the courts at Kolkata. It is a fact that whilst providing for jurisdiction clause in the agreement the words like “alone”, “only”, “exclusive” or “exclusive jurisdiction” have not been used but this, in our view, is not decisive and does not make any material difference. The intention of the parties—by having Clause 18 in the agreement—is clear and unambiguous that the courts at Kolkata shall have jurisdiction which means that the courts at Kolkata alone shall have jurisdiction. It is so because for construction of jurisdiction clause, like Clause 18 in the agreement, the maxim expressio unius est exclusio alterius comes into play as there is nothing to indicate to the contrary. This legal maxim means that



*expression of one is the exclusion of another. By making a provision that the agreement is subject to the jurisdiction of the courts at Kolkata, the parties have impliedly excluded the jurisdiction of other courts. **Where the contract specifies the jurisdiction of the courts at a particular place and such courts have jurisdiction to deal with the matter, we think that an inference may be drawn that parties intended to exclude all other courts.** A clause like this is not hit by Section 23 of the Contract Act at all. Such clause is neither forbidden by law nor it is against the public policy. It does not offend Section 28 of the Contract Act in any manner.”* (emphasis supplied)

10. Applying the said law to the facts of this case, this Court is of the opinion that since the objection of territorial jurisdiction was raised by the Defendant at the first opportunity and the parties have themselves agreed that only the courts at Faridabad will have jurisdiction, this Court does not have territorial jurisdiction to entertain the present Suit.

11. The argument of the learned Counsel for the Plaintiff that since it is not stated that only the Courts at Faridabad has jurisdiction, this Court has the jurisdiction to entertain the Suit, cannot be sustained. The fact that the words “only” or “alone” or “exclusive” or “exclusive jurisdiction” have not been used is immaterial. The parties by consent have agreed that the disputes will be adjudicated only by Courts at Faridabad. It is not as if the Courts at Faridabad do not have the jurisdiction to entertain the Suit and the parties by consent have given jurisdiction to a Court which does not have jurisdiction to entertain the Suit. This Court is of the opinion that the parties have by consent have restricted the jurisdiction to get their disputes adjudicated by the courts at Faridabad.



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12. The plaint, is therefore, returned under Order VII Rule 10 of the CPC, for the same to be filed before the court of competent jurisdiction.

13. In view of the fact that the Plaint is returned, the suit is disposed of as returned along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

MAY 14, 2026

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