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

+ **CM(M) 1300/2023**

**M/S SABGROUP FOODS PVT LTD** ..... Petitioner

Through: **Mr. Varun Garg and Ms. Nitya Prabhakar, Advocates**

versus

**M/S HNS ENTERPRISE** ..... Respondent

Through: **Ch. Rabindra Singh, Advocate with Mr. Paras Aggarwal and Ms. Ekta Singh, Advocates**

**CORAM:**

**HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA**

**ORDER**

**% 16.12.2023**

**CM(M) 1300/2023**

1. In this petition filed under Article 227 of the Constitution of India, the issue arising for consideration is with regards to the territorial jurisdiction of the concerned Commercial Court at Delhi to entertain and adjudicate the suit.

2. The Trial Court by the impugned order has decided the preliminary issue with regards to territorial jurisdiction to entertain the commercial suit in favour of the plaintiff and against the defendant i.e., the Petitioner herein.

3. The impugned order arises out of a commercial suit which is governed by provisions of the Commercial Courts Act, 2015 ('Act of 2015') Section 8 and Section 12(3) of the Act of 2015 read as under:

***"8. Bar against revision application or petition against an interlocutory***



*order. – Notwithstanding anything contained in any other law for the time being in force, no civil revision application or petition shall be entertained against any interlocutory order of a Commercial Court, including an order on the issue of jurisdiction, and any such challenge, subject to the provisions of section 13, shall be raised only in an appeal against the decree of the Commercial Court.*

*(3) No appeal or civil revision application under section 115 of the Code of Civil Procedure, 1908, as the case may be, shall lie from an order of a Commercial Division or Commercial Court finding that it has jurisdiction to hear a commercial dispute under this Act.*

*(3) Notwithstanding anything contained in the Legal Services Authorities Act, 1987, the Authority authorised by the Central Government under sub-section (2) shall complete the process of mediation within a period of three months from the date of application made by the plaintiff under sub-section (1): 19 of 1987*

*Provided that the period of mediation may be extended for a further period of two months with the consent of the parties:*

*Provided further that, the period during which the parties remained occupied with the pre-institution mediation, such period shall not be computed for the purpose of limitation under the Limitation Act, 1963.”*

*“12. Determination of Specified Value.—*

*.....*

*(3) No appeal or civil revision application under Section 115 of the Code of Civil Procedure, 1908 (5 of 1908), as the case may be, shall lie from an order of a Commercial Division or Commercial Court finding that it has jurisdiction to hear a commercial dispute under this Act.*

*(Emphasis Supplied)*

4. The provision of Section 8 of the Act of 2015 was considered by the Division Bench of this Court vide judgment dated 10<sup>th</sup> August 2021, in **CM(M) 132/2021**, titled as **Black Diamond Trackparts Pvt. Ltd. and Ors. v. Black Diamond Motors Pvt. Ltd** and a connected matter; also reported in **2021 SCC OnLine Del 3946**, wherein the Court held as under:

*“2. **CM(M) No.132/2021** was filed, impugning the order dated 25th September, 2021 of the District Judge (Commercial)-01, South District, Saket Courts, New Delhi in CS(COMM) No.184/2020, of dismissal of the application of the petitioners / defendants under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC). The said suit was filed by the respondent / plaintiff for permanent injunction, to restrain the petitioners*



/ defendants from passing off their goods as that of the respondent / plaintiff and for ancillary reliefs. **The petitioners / defendants applied for rejection of the plaint in the said suit, on the ground of the Courts at Delhi not having territorial jurisdiction to entertain the suit** and on the ground of the reliefs claimed in the suit being barred by res judicata. Vide the impugned order, the said application was dismissed.

.....  
22. Once it is so, the order dismissing an application under Order VII Rule 10 of the CPC would satisfy the requirements of proviso to Section 115 of the CPC inasmuch as if the application had been allowed, the suit would have been finally disposed of and such an order, if made in failure to exercise jurisdiction or in exercise of jurisdiction illegally or with material irregularity, would be revisable under Section 115 of the CPC.

23. It thus follows, that the order impugned in CM(M) No.132/2021 is revisable under Section 115 of the CPC.

.....  
29. **The reasoning in the aforesaid judgments gave rise to the question, that since the remedy of revision under Section 115 of the CPC though available under the CPC against the order of dismissal of application under Order VII Rule 10 of the CPC, has been taken away under the Commercial Courts Act, whether a petition under Article 227 would lie.**

30. **We are of the view that once the Commercial Courts Act has expressly barred the remedy of a revision application under Section 115 of the CPC, with respect to the suits within its ambit, the purpose thereof cannot be permitted to be defeated by opening up the gates of Article 227 of the Constitution of India. The scope and ambit of a petition under Article 227 is much wider than the scope and ambit of a revision application under Section 115 of the CPC; whatever can be done in exercise of powers under Section 115 of the CPC, can also be done in exercise of powers under Article 227 of the Constitution. Allowing petitions under Article 227 to be preferred even against orders against which a revision application under Section 115 CPC would have been maintainable but for the bar of Section 8 of the Commercial Courts Act, would nullify the legislative mandate of the Commercial Courts Act.** Recently, in *Deep Industries Limited v. Oil and Natural Gas Corporation Limited* (2020) 15 SCC 706, in the context of petitions under Article 227 of the Constitution of India with respect to orders in an appeal against an order of the Arbitral Tribunal under Section 17 of the Arbitration & Conciliation Act, 1996, it was held that if petitions under Article 226/227 of the Constitution against orders passed in appeals under the Arbitration Act were entertained, the entire arbitral process would be derailed and would not come to fruition for many years. It was observed that though Article 227 is a constitutional provision which



*remains untouched by an non-obstante Clause 5 of the Arbitration Act but what is important to note is that though petitions can be filed under Article 227 against judgments allowing or dismissing First Appeals under the Arbitration Act, yet the High Court would be extremely circumspect in interfering with the same taking into account the statutory policy, so that interference is restricted to orders which are patently lacking in inherent jurisdiction. **Thus, though we are of the view that gates of Article 227 ought not to be opened with respect to orders in commercial suits at the level of the District Judge against which a revision application under CPC was maintainable but which remedy has been taken away by the Commercial Courts Act, but abiding by the judgments aforesaid, hold that it cannot be said to be the law that jurisdiction under Article 227 is completely barred.** However, the said jurisdiction is to be exercised very sparingly and more sparingly with respect to orders in such suits which under the CPC were revisable and which remedy has been taken away by a subsequent legislation i.e. the Commercial Courts Act, and ensuring that such exercise of jurisdiction by the High Court does not negate the legislative intent and purpose behind the Commercial Courts Act and does not come in the way of expeditious disposal of commercial suits.*

*31. We thus hold the petition under Article 227 of the Constitution of India to be maintainable with respect to the order impugned in CM(M) No. 132/2021. **However, the discretion, whether in the facts and circumstances such petition is to be entertained or not, having under the roster been vested in the Single Judge, we leave it to the Single Judge to exercise such discretion.***

(‘Emphasis Supplied’)

5. The Division Bench upon deciding the question of law arising from CM(M) 132/2021 had listed the matter before the roster bench under Article 227 of the Constitution of India. Before the learned Single Judge, the challenge has been raised on the issue of lack of territorial jurisdiction of the concerned commercial court. Thereafter, the learned Single Judge of Court keeping the background of the scope of jurisdiction as explained by the Division Bench dismissed the said petition by order dated 27.08.2021. The relevant portion of the order read as under:

“1. The present petition was filed, impugning the order dated 25th



September, 2021 of the District Judge (Commercial)-01, South District, Saket Courts, New Delhi in CS(COMM) No.184/2020, of dismissal of the application of the petitioners/defendants under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC). The said suit was filed by the respondent/plaintiff for permanent injunction, to restrain the petitioners/defendants from passing off their goods as that of the respondent/plaintiff and for ancillary reliefs. **The petitioners/defendants applied for rejection of the plaint in the said suit, on the ground of the Courts at Delhi not having territorial jurisdiction to entertain the suit and on the ground of the reliefs claimed in the suit being barred by res judicata. Vide the impugned order, the said application was dismissed.**

.....  
5.. It is in the aforesaid factual background that the present petition is listed today before me. **Keeping in mind what was held by the Division Bench, undoubtedly the jurisdiction under Article 227 of the Constitution of India is a constitutional remedy and cannot be taken away by a Statute. However, at the same time such jurisdiction cannot be exercised in derogation of the statutory provisions. In the present case, the remedy of revision under Section 115 of the CPC against the dismissal of the application under Order VII Rule 11 of the CPC has been specifically taken away by the Commercial Courts Act. Therefore, once the remedy of revision under Section 115 of the CPC is barred, the same relief cannot be sought by means of filing a petition under Article 227 of the Constitution of India as that would render the bar under the Commercial Courts Act otiose. Interference under Article 227 of the Constitution of India can only be made in cases of jurisdictional error or where there is manifest error in the face of the record. The Trial Court has rightly held that the principle of res judicata would not apply in the present case since the earlier suit was withdrawn with liberty to file a fresh suit. Even on the question of territorial jurisdiction, there is no such jurisdictional or manifest error that requires interference by this Court. In the present case, no grounds are made for exercise of jurisdiction under Article 227 of the Constitution of India.**

(‘Emphasis Supplied’)

6. The said judgment of the Division Bench was further explained by learned Single Judge in **Ashok Kumar Puri and Anr. v. Sun Con Relators Pvt. Ltd. (2021) SCC OnLine Del 5220**. The learned Single Judge, was also part of the Coram that delivered the judgment **Black Diamond Trackparts Pvt. Ltd. (supra)**, after taking note of the judgment of the Division Bench dismissed the petition filed under Article 277 of the



Constitution of India and held that in case of commercial suits the scope of interference is extremely narrow. The relevant extract of the said judgment read as under:

*9. The above observations of the Division Bench are fully applicable in the facts and circumstances of the present case. In the present case also, if it were not a commercial matter, the remedy of the petitioner against the impugned order would be to file a revision petition under Section 115 of the Civil Procedure Code, 1908 (CPC). **However, the said remedy has been barred under Section 8 of the Commercial Courts Act, 2015 in respect of commercial matters. Therefore, the scope of interference by this Court in exercise of jurisdiction under Article 227 of the Constitution of India is extremely narrow and limited only in respect of orders that are patently lacking inherent jurisdiction. This is not a case where the impugned order was passed by the commercial court without inherent jurisdiction.***

(Emphasis supplied)

7. The parties are directed to address arguments on the issue of territorial jurisdiction raised in these petitions keeping in view the limited scope of interference in these petitions filed under Article 227 of the Constitution of India impugning the orders passed by the Commercial Court. The Petitioner would therefore have to show a patent lack of inherent jurisdiction in the Courts at Delhi, which is apparent on the face of the record and not admissible to two interpretations.

8. It is clarified that there is no stay of the suit proceedings pending before the Trial Court, however, the proceedings shall remain subject to the final outcome of this petition.

9. List on 04.01.2024 in first ten (10) matters in advance list.

**MANMEET PRITAM SINGH ARORA, J**  
**DECEMBER 16, 2023/hp/ms**

*Click here to check corrigendum, if any*