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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% **Date of Decision: 16<sup>th</sup> May, 2025**

+ CM(M) 1228/2023 &amp; CM APPL. 39269/2023

M/S INKEL LIMITED .....Petitioner

Through: Mr. Vishwanathan Iyer and Ms. Pooja  
Sharma, Advocates.

versus

M/S TRIMASTER PVT LTD .....Respondent

Through: Mr. Rahul Malhotra and Mr. Chirag  
Goyal, Advocates.**CORAM:****HON'BLE MR. JUSTICE MANOJ JAIN****JUDGMENT (oral)**

1. Petitioner herein is defending a suit for recovery.
2. For the sake of convenience I would be referring to the parties as per their nomenclature before the learned Trial Court.
3. Plaintiff-M/s. Trimaster Pvt. Ltd. filed a suit for recovery and according to plaintiff, the Courts in Delhi have jurisdiction, primarily, based on the recital appearing in the invoice in question. Such condition with respect to the jurisdiction, as contained in the invoice, reads as under:-  

*“3. Disputes, if any, arising out of this to be settled in Court of Law in Delhi only.”*
4. Fact remains that the abovesaid invoice is based on a *purchase order* issued by the defendant which also contains a jurisdiction clause which reads as under:-  

*“9. This Purchase Order shall be governed by and construed in accordance with the Laws of the Republic of India and the Courts of Ernakulam/Cochin shall have the exclusive jurisdiction to try the cases if any relating to this Purchase Order.”*
5. The issue is as to which of the abovesaid two clauses would prevail and why and the decision thereof is not dependent on leading of the evidence by



the parties.

6. The defendant had moved an application under Order VII Rule 10 CPC seeking return of the plaint, based on the jurisdiction clause appearing in the purchase order.

7. The learned Trial Court took up the abovesaid application on 24.07.2023, when the case was already listed for plaintiff's evidence.

8. It observed that the question of jurisdiction is a mixed question of law and facts and, therefore, it cannot be adjudicated solely on the basis of the statements made by the parties and, therefore, in order to ensure a fair trial, the parties were directed to lead evidence and the question of jurisdiction was thus kept in abeyance, holding that such application was not maintainable at that stage.

9. Needless to say, any such application can be filed at any stage of the case.

10. Admittedly, on some occasions, issue of jurisdiction may be found to be a mixed question of fact and law. At times, even issue of limitation is also a mixed question of fact and law.

11. However, in the case in hand, it is quite apparent that the sole issue which the Court is to answer as to which of the abovesaid two jurisdiction clauses would prevail and the reason thereof.

12. As admitted by the parties except for the abovesaid two documents i.e. purchase order and invoice, there is no other communication between them with respect to the jurisdictional aspect and, therefore, the Court is not required to wait till the completion of evidence and, thereafter, to answer the question of jurisdiction.

13. The issue of jurisdiction has to be answered as expeditiously as



possible. This would be, rather, more in the interest of the plaintiff as well because if after comprehensive trial, the learned Trial Court comes to conclusion that it had no jurisdiction, such plaintiff would be then compelled to knock the doors of such other Court.

14. Moreover, as far as possible, any such application which challenges very jurisdiction of the Court needs to be decided expeditiously. It really does not matter even if the trial has begun already.

15. Viewed thus and after taking note of the specific averments made in the pleadings by the respective parties, the present petition is disposed of with request to learned Trial Court to take up the abovesaid application moved under Order VII Rule 10 CPC afresh and to dispose of the same in accordance with law, after giving due opportunity of hearing to both the sides.

16. The matter is, reportedly, fixed before the learned Trial Court on 26<sup>th</sup> instant. The learned Trial Court, depending upon its Board position, would be at liberty to either hear the arguments same day or would, after ascertaining the availability of the counsel of the parties, fix up another date for said purpose.

17. The petition stands disposed of in aforesaid terms.

18. Needless to emphasis, this Court has not given any observation with respect to the aspect of jurisdiction and, therefore, the present order would not prejudice the mind of the learned Trial Court.

**(MANOJ JAIN)**  
**JUDGE**

**MAY 16, 2025/ss/SS**