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

Dated of Reserve: July 15, 2008
Date of Order: August 22, 2008

+ CM(M) No.1479/2007

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22.08.2008

Batra Properties (Firm)

...Petitioner

Through: Mr. L.P. Dhir with Mr. Manoj Yadav, Advocate

Versus

Yokohama Foods & Anr.

...Respondents

Through: Nemo

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not ?
3. Whether judgment should be reported in Digest ?

JUDGMENT:

1. By this petition under Article 227 of the Constitution of India the petitioner has assailed the order of the learned trial court dated 23rd August 2007 dismissing an application under Order 7 Rule 11 of the CPC filed by the petitioner.

2. The basic contention of the petitioner in the application under Order 7 Rule 11 CPC was that the plaintiff (respondent herein) had no privity of contract with the petitioner firm and the suit filed by the respondent was liable to be rejected on this ground. It is argued that the suit was frivolous, vexatious and meritless and ought to have been rejected by the court below.

3. A perusal of the suit filed by the plaintiff would show that the plaintiff had filed the suit in the name of M/s Yokohama Food through its partner Mr. H.K. Bansal. In the first paragraph, the plaintiff claimed to be a partnership firm. The plaintiff also relied upon a written deed of agreement dated 21st March 1994 between the respondent and the plaintiff M/s Yokohama Food through its partner Mr. Dorjee Bhutia.

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4. The petitioner contended that it had entered into the deed of agreement with M/s Yokohama Food as a proprietor firm and not as a partnership firm and it was a proprietorship firm. The petitioner submitted before the trial court that the documents placed by the plaintiff regarding registration of the partnership etc were forged documents and M/s Yokohama Food was only a proprietor firm.

5. The Court below after going through the documents and the plaint filed by the plaintiff, came to conclusion that the plea of the petitioner of rejection of the plaint on the ground that it had no privity of contract on the face of it was not maintainable as the Court was bound to take into account only the averments in the plaint and the defence was not to be considered. The petitioner preferred an appeal against the order. In the appeal, the court below discussed at great length whether the appeal was maintainable or not and came to conclusion that the appeal filed by the petitioner was not maintainable. However, still the court considered the order of the Civil Judge on merits and came to conclusion that the application under Order 7 rule 11 was rightly dismissed.

6. The petitioner has preferred this petition in the form of a second appeal against the order of the learned ADJ and framed around 10 questions of law for consideration of the Court. The plea taken is that the order is replete with the grave mistakes of the facts and law which are patently apparent on the face of the record. It was pleaded that the Civil Judge wrongly inferred that the plaint was filed by a partnership firm as there was no such evidence that the property in question was given to a partnership firm. The partnership firm was bogus and question of any lease or license would not have arisen keeping in view the contents of the plaint and accompanied documents.

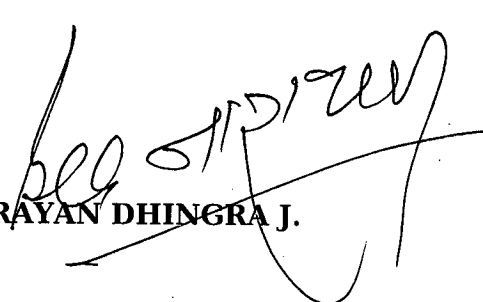
7. It is settled law that at the stage of deciding an application under Order 7 Rule 11, the Court cannot look into the defence of the defendant and the Court has to consider the averments made in the plaint as correct and then see if the

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suit is maintainable or not or the suit was barred by any law. The petitioner in this case has repeatedly advanced arguments on the basis of his defence which were rightly rejected by the Courts below. The Court has not to take into account the defence of the defendant while considering the application Order 7 Rule 11 of the CPC. If the plaintiff makes false averments, the plaintiff is bound to suffer but only after the trial or at the stage when defence of the defendant can be taken into account and not at the threshold of the filing of the plaint.

8. In view of my foregoing discussion, I find no force in this petition. The petition is hereby dismissed. No orders as to costs.

August, 22 2008
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SHIV NARAYAN DHINGRA J.