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

+ **FAO(OS) 115/2016 & CM 13082/2016, 13081/2016**

RAUJEEV TANEJA

..... Appellant

Through: Ms Anju Jain, Adv. with Mr Hitesh Sachar,
Mr Siddhartha, Advs.

versus

M/S IFCI FACTORS LIMITED AND ANR

..... Respondents

Through: Mr Anjali Sharma, Adv. with Mr Deepak,
Adv.

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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29.11.2016

This appeal is preferred against an order dated 10.02.2016 passed by the learned single Judge of this court whereby an application (I.A.20732/2014) filed under Order 1 Rule 10 of the Code of Civil Procedure, 1908 by the appellant/defendant no.1 for impleadment of Evinix Industries Ltd. as a defendant was rejected.

The appellant is a guarantor in respect of a facility provided by the respondent no.1/plaintiff to the said Evinix Industries Ltd.. The appellant, by way of the application under Order 1 Rule 10 CPC, sought the impleadment of Evinix Industries Ltd. on the ground that it was a principal debtor.

However, the learned single Judge was of the view that the said Evinix Industries Ltd. was neither a necessary nor proper party insofar as the suit filed by respondent no.1 against the guarantor which included the appellant/ defendant no.1 was concerned. The suit (CS(OS) 1396/2013) is based on a contract of guarantee which is independent of the arrangement between Evinix Industries Ltd. and the respondent no.1.

It is settled law that the suit can be filed at the election of the creditor against the principal debtor or the guarantor and neither the guarantor nor the principal debtor can insist that the debt be serviced by the other. The contract of guarantee is an independent one and the suit has been filed on the basis of that contract.

Consequently, we do not find any infirmity in the decision of the learned single Judge. The appeal is dismissed. There shall be no order as to costs.

BADAR DURREZ AHMED, J

JAYANT NATH, J

NOVEMBER 29, 2016

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