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

+ C.R.P. 63/2016

MADAN MULWANI

..... Petitioner

Through Mr.Shrey Chathly, Ms.Bandana
Grover and Mr.Vishesh Wadhwa, Advocates

versus

M G D KORETH & ORS

..... Respondent

Through Ms.Latika Chaudhary, Advocate

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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08.12.2016

1. By the present petition filed under Section 115 of CPC the petitioner seeks to impugn the order dated 22.1.2016 by which the application of the petitioner under Order 12 Rule 6 CPC was dismissed. The petitioner/plaintiff has filed the suit for recovery of Rs.1,46,168/- under Order 37 CPC. The trial court converted the suit into an ordinary suit. It is submitted by the petitioner that he was appointed to the post of Director on a part time basis with respondent No.2. The terms of the association of the petitioner with the defendant was reduced in the form of contract dated 30.9.2013. The petitioner was entitled to Rs.20,000/- per month as honorarium plus other expenses. He was also entitled to be paid additional implementation fee for projects brought by him. Learned counsel for the petitioner has placed heavy reliance on para 17 of the plaint where he has made an averment that on 11.8.2014 the respondent No.1 has issued an email admitting liability of Rs.1,37,966/- due and payable to the petitioner. Reliance is placed on said para 17 of the written statement where it is

submitted that there is no specific denial of the communication dated 11.8.2014. The respondent has filed a written statement and a counter claim. The stand of the respondent is that the petitioner did not perform his part of the contract and did not bring a single project into the respondent company. In six months the petitioner failed to bring any project and sought more time. In the counter-claim respondents have claimed refund of Rs.1,54,200/- which is said to have already been paid to the petitioner in terms of the contract between the parties.

2. The trial court by the impugned order had dismissed the application of the petitioner holding that no grounds are made out to pass a decree under Order 12 Rule 6 CPC.

3. In my opinion, there are serious disputed questions of fact which can only be adjudicated upon after the trial is completed. The stray observations in para 17 of the written statement does not show any admission by the respondent. The written statement and counter claim have to be read as a whole. Once the same are read as a whole it is implicit that the stand of the respondent is that the petitioner has not performed his part of the work and hence they are seeking refund of the amount which has been paid to the petitioner. There is no unequivocal admission warranting passing of a decree under Order 12 Rule 6 CPC. The petition is without merits and is dismissed.

JAYANT NATH, J

DECEMBER 08, 2016

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