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

+ CM(M) 425/2016

SHRI RAKESH MALHOTRA Petitioner
Through Mr.Akshay Bhatia, Advocate.
versus

RAJESH ARORA Respondent
Through Nemo.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **03.05.2016**

C.M. No.16249/2016 (exemption)

Exemption is allowed subject to just exceptions. Application disposed of.

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Petitioner is aggrieved by the order dated 22.3.2016 vide which the suit filed by the petitioner/plaintiff under Order XXXVII of the CPC based on a written contract dated 27.10.2012 had been treated by the Trial Judge as an ordinary suit. Petitioner is aggrieved by the said finding.

Counsel for the petitioner has placed reliance upon a judgment of this Court reported as 213 (2014) DLT 758 Nine Dot Mediaworx Pvt. Ltd. Vs. Attero Recycling Pvt. Ltd. to support a submission that at the stage of issuance of summons it is only a prima facie view of the matter which has to be noted by the Trial Court; detailed arguments do not have to be addressed.

As noted supra, the present suit is a suit for recovery of money which has been filed by the plaintiff against the defendant. It is a

summary suit. The claimed amount is Rs.1,30,00,000/- along with interest. The written contract is an agreement to sell dated 27.10.2012 purported to have been executed inter se the parties. The total consideration agreed upon was Rs.3,40,00,000/- out of which Rs.90,00,000/- were paid and a document in support of this stand has been filed along with the agreement to sell. The Court having gone into detailed facts of the case and noting that the suit does not fall within the purview of Order XXXVII of the CPC at this stage has committed an illegality. Impugned order is set aside. The suit be treated as a suit under Order XXXVII of the CPC. Needless to state that procedure for issuance of summons in a suit Order XXXVII of the CPC be adopted by the Trial Court; in the course of proceedings application seeking leave to defend to refute the submissions made in the suit or to state otherwise that this suit does not fall within the purview of Order XXXVII of the CPC will be considered by the Trial Court.

With these directions petition disposed of.

Order dasti under signatures of the Court Master.

INDERMEET KAUR, J

MAY 03, 2016

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