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

+ CM(M) 1162/2016 & CM Nos.42445-46/2016

M/S SABH INFRASTRUCTURE LTD Petitioner

Through Mr.Ajay Mehrotra, Advocate

versus

SUDARSHAN PRUTHI (SINCE DECEASED)

THR LRS

..... Respondent

Through Mr.B.K.Manjani and Mr.Hemant
Manjani, Advocates

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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07.12.2016

1. By the present petition under Article 227 of the Constitution of India the petitioner seeks to impugn the order dated 22.9.2016 by which the application of the respondent under Order 37 Rule 3 CPC seeking leave to defend was allowed unconditionally. Learned counsel appearing for the petitioner submits that the facts of the present case are almost akin to the facts of the another case which was adjudicated upon by this court being CM(M)1129/2016 titled as M/s.SABH Infrastructure Ltd. vs. Sudhir Mehrotra. This court after noting the submissions of the petitioner had granted liberty to move an appropriate application for review of the said impugned order. The factual background as narrated in the order dated 9.11.2016 in CM(M)1129/2016 reads as follows:-

“2. The plaintiff has filed the suit under Order 37 of CPC for recovery of Rs.6,35,437. It is the case of the petitioner that he had entered into a Memorandum of Understanding dated

7.10.2012 with the respondent regarding property S-111, Greater Kailash Part-II, New Delhi-110048. He relies upon Clause 9 and 19 of the MOU to contend that a liability for Value Added Tax and Service Tax was to be shared proportionately as per proportion defined in Clause 8 of the MOU. He specifically points out to clause 19 of the MOU where it is stated that service tax if any applicable shall be paid by the respective parties on their respective allocation in the proposed building. He also submits that liability arises on account of the VAT and Service Tax and both the taxes are akin to each other. He further submits that the MOU is admitted by the respondent.

3. The trial court while passing the impugned order has noted that no original document has been placed on record and that Order 37 CPC would not be applicable to matters where the Court has looked at different documents, different transactions, different dates of entry of the statement of accounts and various other facts to arrive at the amount due.

4. The trial court has not gone into the issue of effect of the MOU which is an admitted document on the claim of the petitioner. It is appropriate that the petitioner is granted liberty to approach the trial court with an appropriate application for review of the said impugned order. In case a review application is filed within three weeks from today the trial court may deal with the same and dispose of the same in accordance with law within three months.”

2. Learned counsel appearing for the respondent has pointed out that the clauses relied upon by the petitioner are at page 81 of the paperback are superseded by clauses at page 79 of the paper book which clearly state that the entire amount required for carrying out construction etc. on payment of statutory and other fees will be on account of owner No.2/builder.

3. These are contentions which relate to interpretation of the MOU. The

trial court has instead of entering into the exercise of looking into the terms and conditions of the MOU has merely concluded that in view of the judgment of ***GE Capital Ltd. vs. Dr.K.M.Virappa Reddy*** the present suit is not under Order 37 CPC. In view of the above, appropriate directions were passed in CM (M)1129/2016.

4. In view of the order dated 22.09.2016 already passed by this court, liberty is granted to the petitioner to move an appropriate petition for review of the impugned order. In case a review application is filed within three weeks from today, trial court may deal with the same and dispose of the same in accordance with law within three month from today.

5. Petition stands disposed of. All pending applications, if any, also stand disposed of accordingly.

6. A copy of this order be given dasti under signatures of the Court Master to learned counsel for the petitioner.

JAYANT NATH, J

DECEMBER 07, 2016

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