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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 1129/2016
M/S SABH INFRASTRUCTURE LTD Petitioner
Through Mr.Ajay Mehrotra,Adv.
versus
SUDHIR MEHROTRA Respondent
Through

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER
% **09.11.2016**
CM No.41774/2016

Exemption allowed, subject to all just exceptions.

CM(M) 1129/2016 & CM No.41773/2016

1. By the present petition filed under Article 227 of the Constitution of India the petitioner seeks to impugn the order dated 19.9.2016 by which the application filed by the respondent seeking leave to defend was allowed unconditionally.
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.

5. In view of the above the present petition and all pending applications stand disposed of.

6. A copy of this order be given dasti as prayed.

JAYANT NATH, J

NOVEMBER 09, 2016

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