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

+ CM(M) 43/2017

ISHU KAMARA

..... Petitioner

Through Mr.V.L.Madan, Advocate

versus

VIJAYA FABRICS

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **13.01.2017**

1. By the present petition under Article 227 of the Constitution of India the petitioner seeks to impugn the order dated 2.1.2017 whereby the trial court had framed issues. The grievance of the petitioner is that issue No.1 should have been treated as a preliminary issue. The trial court, however, declined to do so holding that without evidence and trial the issues cannot be disposed of.

2. Learned counsel appearing for the petitioner has vehemently argued that the issue No.1 can be disposed of as a preliminary issue. He submits that preliminary objection No.1 in the written statement is that the suit has been instituted by a wrong person as the said Shri Vijay Khanna who has instituted the suit is not a partner of the firm of the plaintiff/respondent firm. He has relied upon order 30 Rule 1 CPC to contend that where a firm has two partners only one partner cannot execute the power of attorney. He secondly submits that a perusal of the power of attorney placed on record

shows that it is signed in 2009 and it does not authorise the said Shri Vijay Khanna to file the present suit inasmuch as it only deals with a criminal complaint under section 138 of the Negotiable Instruments Act, 1938.

3. Under Order 30 Rule 1 CPC if any two or more persons who are claiming to be partners and carrying on business, they may sue or be sued in the name of the firm. Order 30 Rule 1(2) CPC provides that where a person sues or is sued under the name of the firm the pleadings etc can be signed and verified by any one of such persons. Hence, the argument of learned counsel for the petitioner is entirely erroneous.

4. Regarding the power of attorney placed on record of Shri Vijay Khanna being a photocopy, it appears to be a notorized power of attorney which specifically authorises Shri Vijay Khanna to sign suits, adduce evidence etc. etc. It is not clear how the petitioner contends that it permits only filing of criminal complaint.

5. There is no infirmity in the impugned order. Petition is dismissed. All pending applications, if any, also stand disposed of accordingly.

JAYANT NATH, J

JANUARY 13, 2017

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