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

+ CS(OS) 424/2009

MR. SUNIL GUPTA & ANR Plaintiffs

Through: Mr.Akhil Sibhal, Sr. Adv. with Ms.
Vasudha Sen, Adv.

versus

MR. M.S. SHARMA & ORS Defendants

Through: Mr. Ravi Sikri, Sr. Adv. with Ms.
Anne Mathew & Mr. Somesh
Dhawan, Adv. for applicant in IA
No. 245/2017.
Mr. T.K. Ganju, Sr. Adv. with Mr.
Abhishek Sharma, Adv. for D-3 & 4.
Mr. Purushottam K. Jha & Mr. Anuj
Sharma, Adv. for D-14.
Mr. Yashish Chanda, Adv. for D-15.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

% **10.03.2017**

IA No. 3098/2017 (under Order 23 Rule 1 CPC on behalf of the plaintiff)

By this application, the plaintiffs seek to withdraw the suit at hand unconditionally. The defendants do not oppose the application. However, the applicant (in IA No. 245/2018) seeking impleadment under Order 1 Rule 10 CPC opposes on the ground his rights and contentions have to be considered *vis-a-vis* defendant No.3 with whom there has been some understanding concerning the warrants/equity shares which are subject matter of the present litigation.

Having heard the objection to the withdrawal, this Court finds no reason why the prayer in the application should not be granted. It has to be

borne in mind that the plaintiff is the master of the suit and has the prerogative, in law, to continue with its prosecution or to withdraw it, if so advised, unconditionally and further to choose the parties against whom it wishes to litigate. Since the application under Order 1 Rule 10 CPC for impleadment has been moved only on 6th January, 2017, and even a notice thereupon has not been issued, withdrawal of the suit unconditionally will not in any which way affect the rights of the applicant. Even otherwise, the said party was not chosen by the plaintiff as the defendant in these proceedings. It has come to the Court on its own seeking impleadment. The withdrawal of the suit will not inhibit such party from pursuing its remedies independently in law.

In above view, the application is allowed, the suit is dismissed as withdrawn.

This renders all pending applications (including IA No. 245/2017) infructuous. They stand disposed of accordingly.

The notices issued on the application under Order 39 Rule 2 A CPC stand discharged.

R.K.GAUBA, J

MARCH 10, 2017

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