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

+ CM(M) 156/2017

M/S GREEN VENTURES SECURITIES PVT LTD..... Petitioner

Through Mr.Sunil K.Jain and Mr.Ashok
Kumar, Advocates

versus

MEENU JAIN

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **09.02.2017**

CM No.156/2017 (Exemption)

Exemption allowed, subject to all just exceptions.

CM(M) 156/2017 & CM No.5251/2017

1. By the present petition under Article 227 of the Constitution of India the petitioner seeks to impugn the order dated 4.2.2017 by which an application filed under Order 7 Rule 11 CPC for rejection of the plaint on the ground that the court has no jurisdiction as the dispute involved is a commercial dispute was dismissed.

2. The respondent has filed a suit under Order 37 CPC for recovery of Rs.1,85,40,000/- towards principal amount and Rs.5,40,000/- towards interest.

3. It is the case of the respondent that she is closely related to the director of the petitioner company. Sometimes in the year 2012, the respondent sold her immovable property and invested the sale proceeds in the petitioner company on interest basis. According to the respondent, her

late husband had also deposited various amount w.e.f. July, 2012. Keeping in account the fact that an amount of Rs.70,00,000.00 was invested from her account and from the account of Sh.Amit Vohra, son-in-law of the respondent and the interest accruing on the above said deposited amount was being reinvested by the petitioner and the same swelled to Rs.1,02,00,000.00. The husband of the respondent expired on 31.01.2013. On 01.02.2013 the petitioner company acknowledged in writing to the son of the respondent Sh.Sahil Jain that as on 01.02.2013 the investment of Rs.1,02,00,000.00. Subsequently, it is urged that a settlement was arrived at and as a consequence of which the petitioner company issued two undated cheques amounting to Rs.1,80,00,000.00, i.e. bearing cheque No.000830 for Rs.30,00,000.00 and other cheque No.000831 for Rs.1,50,00,000.00 with the request that the same may be presented for encashment in the last week of December, 2015. When the cheques were presented for encashment, the same were dishonoured with the remarks “refer to drawer”. Based on the above, the present suit has been filed.

4. The trial court by its order dated 24.9.2016 on the application seeking leave to defend filed by the petitioner partly allowed the application subject to deposit of Rs.72,70,000/- in the form of an FDR in the name of the court from a nationalised bank. Against the said order dated 24.9.2016 the petitioner filed a petition under Article 227 of the Constitution of India before this court being CM(M)1204/2016. The petition was dismissed on 6.12.2016.

5. The petitioner instead of complying with the orders of the trial court and depositing necessary FDR proceeded with the matter and instead on 7.1.2017 has now filed an application under Order 7 Rule 11 CPC seeking

rejection of the plaint on the contention that the dispute involved in the present dispute is a commercial dispute and the amount claimed is more than Rs.1 crore and hence the trial court does not have pecuniary jurisdiction to try the present suit.

6. I have heard learned counsel appearing for the petitioner. In my opinion, the present application has been filed merely for the purpose of trying to wriggle out of the directions passed by the trial court in its order dated 24.9.2016 by which order conditional leave to defend was granted to the petitioner subject to deposit of an amount of Rs.72,70,000/- in the form of an FDR. Instead of complying with the said direction and to escape the rigours of the said direction, the present application is filed which is baseless and in any case cannot be allowed. The petitioner ought to have raised these contentions in his application for leave to defend and not after adjudication of the said application, come up with these contentions.

7. Be that as it may, I have also examined the contention on merits. Learned counsel appearing for the petitioner has relied upon section 2(c)(i) of the Commercial Courts Commercial Division and Commercial Appellate Division of High Court Act, 2015. The relevant provision reads as follows:-

“2. (1) In this Act, unless the context otherwise requires,—
(c) “commercial dispute” means a dispute arising out of—
(i) ordinary transactions of merchants, bankers, financiers and traders such as those relating to mercantile documents, including enforcement and interpretation of such documents;”

.....

8. As noted above, in the present case as per the plaint which is the relevant document for the purpose of Order VII Rule 11 CPC funds have been given to the petitioner for the purpose of investment with the petitioner

company. This transaction cannot be termed to be a transaction of merchants, bankers, financiers or traders. From a reading of the plaint it appears to be a simple loan on interest forwarded to the petitioner.

9. Clearly, the above dispute cannot be termed on a reading of the plaint as a commercial dispute. There is no merit in the present petition. Needless to say, nothing said herein would prejudice the petitioner in case he complies with the directions relating to conditional leave to defend granted to him, at the time when after filing of written statement the matter is adjudicated at the final stage.

10. Petition stands dismissed. All pending applications, if any, also, stand dismissed.

JAYANT NATH, J

FEBRUARY 09, 2017

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