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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO(OS) (COMM) 58/2017**

SANJAY KRIPALANI & ANR Appellants
Through : Sh. Dayan Krishnan, Sr. Advocate with
Sh. Arjun Singh Bawa and Ms. Vishakha Gupta,
Advocates.

versus

M/S WHITEFIELD MOTORS Respondent
Through : Sh. I.S. Alag, Sr. Advocate with Sh. J.S.
Lamba, Advocate.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE S.P.GARG

ORDER
% **09.08.2017**

The present appeal is directed against an order made by the learned Single Judge in the course of hearing in CS(Comm) 1132/2016.

The appellants' grievance is that the impugned order decided – without a hearing – the interim injunction preferred by the plaintiff (arrayed as respondent in this case). Learned Single Judge had adverted to the previous order in the suit made in the application for injunction under Order XXXIX Rules 1 and 2 CPC on 10.09.2014 which was modified subsequently on 24.12.2014 and further modified on 11.02.2016.

During the course of hearing, it was suggested by the parties, especially learned counsel for the petitioner that since the tenor of the previous orders indicated that consent was not given unconditionally, the

application for injunction should have been decided on the merits.

Learned senior counsel for the plaintiff aired the grievance that some matters were to be decided on the merits but were not, and that for the sake of fuller decision at the interim stage the matter would require consideration and, therefore, the remission to the learned Single Judge was necessary.

Having regard to the limited nature of the controversy which is the subject matter of suit, this Court is of the opinion that even while remitting the application (i.e. I.A. No.17555/2014), for a decision on merits after hearing learned counsel, at the same time, given the fact that the parties have completed their pleadings and also filed their respective documents of which admission/denial is complete, it would be appropriate to also frame the issues.

Learned counsel for the parties have agreed upon the following issues which are hereby framed for trial in the suit:

1. *Whether the present suit is barred by limitation? OPP/OPD*
2. *Whether the plaintiff is entitled to the decree of sum of ₹3,37,00,000/- along with the pendente lite interest @ 15% p.a.? OPP.*
3. *Whether the plaintiff company entered into an agreement to sell dated 30.01.2010 with the Defendant No.2 company? OPD.*
4. *Does the defendant prove that an enforceable memorandum of understanding dated 16.07.2014 was entered into by the parties? OPD*
5. *Whether the plaintiff company is bound by the actions of Sh. Babbar SJ Bahadur? OPD.*

The parties are directed to be present before the learned Single Judge

who shall thereupon proceed to hear IA. No.17555/2014 on 22.08.2017, the date already fixed. Learned Single Judge may consider expeditiously fixing the schedule for recording evidence and proceeding further with the trial of the case.

The appeal is accordingly disposed of.

S. RAVINDRA BHAT, J

S.P.GARG, J

AUGUST 09, 2017/ajk