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

+ CM(M) 280/2015

KAUSHALYA DEVI Petitioner

Through: Ms. Mala Goel, Adv.

versus

M/S SANJAY TRADING CO & ORS Respondents

Through: Mr. S.D. Dixit proxy counsel for
Mr. M.L. Bajaj, Adv.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

% **15.12.2017**

The impugned order dated 06.02.2015 was passed by the trial court in civil suit No.727/2014, declining to entertain it under Order 37 of the Code of Civil Procedure, 1908 and instead treating it as an ordinary suit and issuing summons accordingly.

The suit in question is founded on promissory note dated 12.12.2011. The manner in which the issue was approached by the trial Court cannot be approved of. It was for the defendants to appear and take exception by submitting contentions against the maintainability of the suit under Order 37 CPC by application for leave to defend. In this view, the impugned order is set aside.

The defendants have already appeared in response to the notices on the petition at hand before this Court. The parties are directed to appear before the Additional District Judge. The trial Court will proceed with the case under Order 37 CPC wherein the respondents herein (the defendants

before the trial Court) will have the opportunity to file leave to contest.

The date 1st February, 2018, hereby fixed for their appearance before the trial Court shall be treated as the date on which the defendants have put in appearance.

With these observations, the petition is disposed of.

R.K.GAUBA, J.

DECEMBER 15, 2017
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