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

+ CS(OS) 208/2016

H K AGARWAL

..... Plaintiff

Through: Mr. Simran Mehta, Ms. Swati R.K. &
Mr. Surhid Bhandari, Advs.

Versus

VIJAY KUMAR AGGARWAL & ANR

..... Defendants

Through: Mr. Jeevesh Nagrath, Mr. V.D.
Verma & Mr. Pratham Sharma, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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10.04.2017

1. This order is in continuation of the order dated 27th March, 2017.
2. The counsel for the plaintiff states that now that the defendant no.1 Vijay Kumar Aggarwal in his written statement has taken an unequivocal stand of his resignation as a Director of the defendant no.2 Ghaziabad Engineering Company Pvt. Ltd., he agrees that this suit need not go to trial.
3. The counsel for the plaintiff however states that this Court may appoint an auditor to prepare the accounts of the defendant no.2 Company and to file the same with the Registrar of Companies (ROC).
4. I have enquired from the counsel for the plaintiff as to why the plaintiff cannot prepare the said accounts or appoint an auditor.
5. The counsel for the plaintiff states that the defendant no.1 is not providing access to the books and property of the defendant no.2 Company.
6. The counsel for the defendant no.1 denies that the defendant no.1 has the books of account of the defendant no.2 Company.

7. Even otherwise no relief also in this connection has been claimed in the plaint.
8. The counsel for the defendant no.1 has in Court drawn attention to the documents filed by the plaintiff himself and contends that in fact it is the plaintiff who is the Managing Director.
9. The counsel for the plaintiff states that though the plaintiff at one point of time was the Managing Director but is now only a shareholder.
10. The counsel for the defendant no.1 controverts.
11. If the plaintiff is only a shareholder, the plaintiff, in response to the notice if any issued by the ROC, has to prove that he is not the person liable for presenting the accounts and thus not liable to be prosecuted therefor.
12. The counsel for the plaintiff then states that the plaintiff has no notice also of any winding up petition filed by the defendant no.1.
13. The counsel for the defendant no.1 states that notice of the winding up petition was issued by this Court and winding up petition is required to be transferred to National Company Law Tribunal (NCLT) and is listed before this Court for said purpose on 12th April, 2017.
14. The counsel for the plaintiff has been informed of the said date.
15. The counsel for the plaintiff then states that the plaintiff is not interested in winding up of the defendant no.2 Company and if the accounts are not filed by the defendant no.2 Company, it will be ordered to be wound up.
16. The plaintiff to look up his remedies in law for the situation where there is no Director of the company, either by calling Extraordinary General Meeting (EGM) of the company or by making a requisite application in this regard in the winding up petition of which notice has been ordered to be

issued.

17. To say the least, this suit is misconceived and is dismissed.

Decree sheet be prepared.

No costs.

RAJIV SAHAI ENDLAW, J

APRIL 10, 2017

‘gsr’..