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

+ CM(M) 343/2017

ANSHU GUPTA

..... Petitioner

Through Ms.Madhu Tewatia, Mr.Adhirath
Singh and Mr.Sachin Saini, Advocates

versus

SHEILA GUPTA

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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27.03.2017

CM Nos.11866/2017 & 11867/2017

Exemption allowed, subject to all just exceptions.

CM(M) 343/2017 & CM No.11865/2017 (stay)

1. By the present petition under Article 227 of the Constitution of India the petitioner seeks to impugn orders dated 19.8.2016 and 07.02.2017.
2. The suit is filed by the respondent/mother-in-law of the petitioner for damages for filing a false criminal case against the respondent. The petitioner has moved an application under Order 7 Rule 11 CPC for rejection of the plaint on the ground that no cause of action has arisen in favour of the respondent. The grievance of the petitioner is that the trial court by order dated 19.8.2016 has framed an issue that the plaint does not disclose a cause of action, however, the court has not framed the said issue as a preliminary issue. A similar grievance is that the application filed by the

petitioner under Order 7 Rule 11 CPC was not taken up for hearing prior to the parties leading evidence as is evident from order dated 7.2.2017. Reliance is placed by the learned counsel for the petitioner on the judgment of the Supreme Court in ***R.K.Roja vs. U.S.Rayudu and another*** being ***Civil Appeal No.5540/2016 dated 04.7.2016*** .

3. In view of the fact that the trial court has by the impugned orders not dealt with the submission of the petitioner regarding treating the said submission as a preliminary issue and keeping in view the judgment of the Supreme Court, liberty is granted to the petitioner to move an appropriate application under Order 14 Rule 2 CPC for deciding the issue framed as a preliminary issue. In case such an application is filed on the next date of hearing before the trial court the trial court will deal with the said application, as per law.

4. Petition stands disposed of. All pending applications, if any, also stand disposed of.

5. Costs imposed vide order dated 7.2.2017 are set aside.

JAYANT NATH, J

MARCH 27, 2017

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