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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(COMM) 1480/2016 & IAs No.13679/2016 (of plaintiff u/O XXXIX R-1&2 CPC), 2222/2017 (of defendants u/O XXXIX R-3&4 CPC), 2223/2017 (of defendants u/O XXXIX R-1&2 CPC) & 7215/2017 (of defendants u/O VIII R-1A CPC).

HERO MOTO CORP LIMITED Plaintiff
Through: Ms. Sangeeta Sondhi and Ms. Kaanan Gupta, Advs. with Mr. Amiteshwar Singh on behalf of plaintiff.

versus

SS AUTO WHEELS & ANR Defendants
Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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20.12.2017

1. This order is in continuation of the earlier order dated 18th December, 2017.
2. The counsel for the plaintiff informs that alphabets ANC and SSP in the Settlement Agreement dated 26th September, 2017 mean 'Authorised Network Channel' and 'Sales Services Parts' and alphabets ARD used in Settlement Agreement mean 'Authorised Representative of Dealer'.
3. Today also none appears for the defendants.
4. However the defendants have till date not reneged from the Settlement Agreement. Mere absence of the defendants is no reason for this Court not to proceed on the premise of the Settlement Agreement.
5. The counsel for the plaintiff states that though the plaintiff in the Settlement Agreement had agreed to withdraw this suit within a period of 60

days from the date of execution thereof and which time has expired but the defendants though in compliance of all other terms of the Settlement Agreement has not complied with clause (ii) thereof, whereunder the defendants were to make payment to the plaintiff.

6. The counsel for the plaintiff also states that the suit be adjourned to first week of February, 2018, as some other terms are to be complied by January, 2018.

7. The plaintiff should have thought of all of these things before executing the Settlement Agreement whereunder the plaintiff had agreed to withdraw the suit within a period of 60 days from signing of the Settlement Agreement.

8. The Mediation Cell of this Court also ought to have ensured that the Settlement Agreement resulted in a finality and where the settlement reached is executory, provisions for execution in the event of non-compliance of any of the terms and conditions should be contained therein. A copy of this order be forwarded to the Mediation Cell of this Court to take corrective measures for future.

9. Be that as it may, the only option now is to, instead of dismissing the suit as withdrawn, decree the suit with liberty to the plaintiff to execute the decree for the part of the settlement of which the defendants may be in breach.

10. Accordingly, a decree is passed in favour of the plaintiff and against the two defendants namely M/s. SS Auto Wheels and its sole proprietor Mr. Sajal Kumar Agarwal in terms of the Settlement Agreement dated 26th

September, 2017 and this order, both of which shall form part of the decree sheet, leaving the parties to bear their own costs.

11. Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J

DECEMBER 20, 2017

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