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

+ **CM(M) 729/2017**

NARESH AGGARWAL Petitioner
Through: **Mr. Nikhil Malhotra, Adv.**

Versus

GIAN CHAND @ VINOD KUMAR SAINI Respondent
Through: **None.**

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **19.07.2017**

CM No.25106/2017 (for exemption)

1. Allowed, subject to just exceptions.
2. The application is disposed of.

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3. This petition under Article 227 of the Constitution of India impugns the order (dated 15th March, 2017 of the Court of Additional District Judge (ADJ)-II (North West), Rohini Courts, Delhi in CS DJ No.75291/16 filed by the petitioner/plaintiff for recovery of Rs.59,64,500/-) of dismissal of the application filed by the petitioner/plaintiff under Order XXXVIII Rule 5 of the Code of Civil Procedure, 1908 (CPC).

4. Though undoubtedly the learned ADJ in the impugned order has not dealt with the application on the parameters on which it is required to be dealt with and has not even considered whether on the affidavit of the petitioner/plaintiff, the grounds on which an order of attachment before

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judgment can be made, exist or not and has dismissed the application merely observing that it is premature but nevertheless the application of the petitioner/plaintiff under Order XXXVIII Rule 5 of CPC which has been dismissed was bereft of any particulars whatsoever. A mere parrot like repeating of the provision of law does not amount to satisfying the Court by affidavit of existence of the grounds for an order of attachment before judgment.

5. It is the settled position in law that for an order of attachment before judgment to be obtained, overt acts of the defendant within the meaning of Order XXXVIII Rule 5 of CPC with all particulars have to be pleaded. Reference in this regard may be made to my judgment in *B.K.P. Enterprise Vs. Spicejet Limited* 2017 SCC OnLine Del 8208.

6. Faced therewith, the counsel for the petitioner/plaintiff withdraws this petition. He however states that he be permitted to file another application under the same provision of law.

7. The petition is dismissed as withdrawn.

8. The petitioner/plaintiff, if at any subsequent stage of the suit has a case for an order under Order XXXVIII Rule 5 of CPC, shall be entitled to do so and which application if filed shall be considered in accordance with law on its own merits and without regard to dismissal of the earlier application which in any case has been dismissed by the learned Additional District Judge as “premature”.

RAJIV SAHAI ENDLAW, J.

JULY 19, 2017

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