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

+ **CM(M) No.732/2017 & CM No.25137/2017 (for stay).**

J.P SUD

..... Petitioner

Through: Mr. Rama Shankar and Ms. Kamlesh,
Advts.

versus

PASHUPATI SPINNING AND WEAVING

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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19.07.2017

CM No.25138/2017 (for exemption).

1. Allowed, subject to just exceptions.
2. The CM stands disposed of.

CM(M) No.732/2017 & CM No.25137/2017 (for stay).

3. This petition under Article 227 of the Constitution of India impugns the order (dated 25th February, 2017 of the Court of the Additional District Judge-02, New Delhi District, Patiala House Courts, New Delhi in CS No.55896/2016 filed by the respondent / plaintiff) of dismissal of the application filed by the petitioner / defendant for impleadment of Archit Sud and Rajat Sud as defendants, along with the petitioner / defendant, to the suit.
4. The counsel for the petitioner / defendant has been heard.
5. The respondent / plaintiff has instituted the suit from which this petition arises for recovery of money from the petitioner / defendant.
6. The petitioner / defendant applied under I Rule 10 of the Code of Civil Procedure, 1908 (CPC) for impleadment of Archit Sud and Rajat Sud

also as defendants to the suit *inter alia* contending that the claim of the respondent / plaintiff for recovery was on account of business of M/s. Hem Stitch India in which the petitioner / defendant along with the said Archit Sud and Rajat Sud were partners and the liability if any of the petitioner / defendant for dues of the respondent / plaintiff was to the extent of 1/3rd only.

7. The learned Additional District Judge, in the impugned order, has reasoned that the respondent / plaintiff could not be compelled to sue the said Archit Sud and Rajat Sud and they were thus not necessary or proper parties.

8. The counsel for the petitioner / defendants has raised the same argument as raised before the Trial Court before this Court also.

9. I have enquired from the counsel for the petitioner / defendant, whether not in the event of the petitioner / defendant establishing that he is liable only for 1/3rd of the suit amount, the decree even if any against the petitioner / defendant would be for 1/3rd of the suit amount only.

10. The counsel for the petitioner / defendant has drawn attention to the copy of the plaint at page 29 of the paper book and has stated that the respondent / plaintiff has sued the petitioner / defendant as proprietor of M/s Hem Stitch India.

11. Even if that be so, it is always open to the petitioner / defendant to show that the monies claimed were due from M/s Hem Stitch India, a partnership firm and not from the petitioner / defendant personally and that the petitioner / defendant though a petitioner, is not liable for the entire amount. However if the petitioner / defendant is unable to show so, in fact or

in law, even then in the event of the suit amount being recovered from the petitioner / defendant, the remedy of the petitioner / defendant would be to recover the amount recovered from him in excess of his share from the aforesaid Archit Sud and Rajat Sud. However, the petitioner / defendant cannot compel the respondent / plaintiff to litigate with a person with whom the respondent / plaintiff does not desire to. Reference in this regard may be made to Section 43 of the Indian Contract Act, 1872.

12. No error is thus found in the conclusion reached in the order impugned in the petition.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

JULY 19, 2017

‘pp’..

CM(M) No.732/2017

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