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

+ **CM(M) 685/2017**

**BROADCAST ENGINEERING
CONSULTANT INDIA LTD**

..... Petitioner

Through: Mr. Ankit Jain, Adv.

Versus

ABACUS HEAT TRANSFER LTD

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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10.07.2017

CM No.23652/2017 (for exemption)

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

CM(M) 685/2017 & CM No.23653/2017 (for stay)

3. This petition under Article 227 of the Constitution of India impugns the order dated 21st March, 2017 of the learned Additional District Judge (ADJ) of refusing to shift the onus of Issue No.3 as under:

“3. Whether the suit for recovery has not been instituted through a duly authorised person? OPD”

from that placed on the petitioner/defendant to on the respondent/plaintiff. The learned ADJ has reasoned that Issue No.3 is framed in terms of preliminary objection raised by the petitioner/defendant.

4. Ordinarily the question of onus becomes irrelevant at the final stage of the suit after evidence has been recorded.

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5. For this reason alone, this is not a fit case to be entertained under Article 227 of the Constitution at this stage.

6. It will however be open to the petitioner/defendant to, in the challenge to the final decree in the suit if against the petitioner/defendant, take up the said ground as well.

7. The petition is disposed of.

No costs.

RAJIV SAHAI ENDLAW, J.

JULY 10, 2017

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