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

+ **FAO(OS) 340/2016**

R MODI & ORS

..... Appellants

Through Mr. Chander M. Lall, Sr. Adv. with
Ms. Nancy Roy and Mr. Rupin Bahl,
Advs.

versus

SYMANTEC SOFTWARE SOLUTIONS PVT LTD & ORS

..... Respondents

Through Mr. Rajeev K. Virmani, Sr. Adv. with
Mr. Pravin Anand, Ms. Kruttika
Vijay, Mr. Ravin Galgotia and Mr.
Ashish Somasi, Advs.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE ANIL KUMAR CHAWLA

ORDER

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12.05.2017

CM No. 44106/2016 (delay)

This application seeking condonation of delay is not opposed
and is accordingly allowed.

FAO(OS) 340/2016 & CM No.44105/2016 (stay)

Ld. Senior Advocate appearing for the respondents on advance
notice submits that view expressed in the impugned order dated
17.10.2016 are only prima facie and additional issue nos. (a) and (b)
on the question of entrapment and malafide would be adjudicated and

decided after trial at the time of judgment. He specifically refers to para 33 of the impugned order.

Learned Senior Counsel for the appellant submits that in view of the statement made by the counsel for the respondents, they would be entitled to argue on issue nos. (a) and (b) at the time of final judgment.

In view of the statement made by the counsel for the parties, we clarify that the observations made in the order dated 17.10.2016 would not be treated as final and binding on issue nos. (a) and (b).

With regard to question of summoning of witnesses, Learned Senior Counsel for the appellant submits that he would be producing their witnesses and also argue that adverse inference should be drawn against the respondents. Counsel for the respondents submits that he does not accept the last assertion and would argue to the contrary.

We clarify that we have not expressed any opinion on this issue or aspect, which has to be determined by the Single Judge while finally deciding the issues (a) and (b) in the final judgment.

We further clarify that the appellant would be at liberty to take recourse to Sub-Section (1) of Section 105 of the Code of Civil

Procedure, 1908, if required and necessary.

In view of the statements made by the counsel for the parties and aforesaid observations, the appeal is disposed of.

We also clarify that Id. Counsel for the respondents had initially raised objection regarding maintainability of the appeal, but, had, subsequently, made the aforesaid statement without prejudice to his rights and contentions. There would be no order as to costs.

SANJIV KHANNA, J

ANIL KUMAR CHAWLA, J

MAY 12, 2017/rc