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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 736/2017, CM No.25183/2017 (for stay) & CM
No.37246/2017 (u/O I R-10 (2) CPC)
ANIL KUMAR Petitioner

Through: Mr. Ankit Gosain with Ms. Swati
Bansal, Advocates

Versus

UNION OF INDIA & ORS Respondents

Through: Mr. Jagjit Singh, Sr. Standing
Counsel with Mr. Sukhdev Singh,
Advocate

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **16.10.2017**

1. This order is in continuation of the earlier order dated 19th July, 2017.
2. The counsel for the petitioner has been heard further.
3. The counsel for the petitioner has not been able to show anything to change the *prima facie* opinion expressed in para 9 of the order dated 19th July, 2017 inter alia to the effect that no error could be found in the order dated 1st December, 2016 of the Additional District Judge deleting the Station Master, Thiruvananthpuram Railway Station and the SHO Railway, Police Station Thiruvananthpuram from the array of parties in the suit, on the ground that none had been personally named and only the office of Station Master and the SHO had been sued and that the office could not be sued for malicious prosecution.
4. Thus, the petition is liable to be dismissed.
5. I had, on 19th July, 2017 also inquired from the counsel for the petitioner / plaintiff about the territorial jurisdiction of the Courts at Delhi to

entertain the suit for malicious prosecution when the petitioner / plaintiff had been prosecuted and ultimately acquitted at Thiruvananthapuram. The counsel for the petitioner/plaintiff has in this regard referred to ***Bahori Lal Vs. Sri Ram*** AIR 1946 ALL 139, ***Gokaldas Melaram Vs. Baldevdas T. Chabria*** AIR 1961 Mys 188, ***Dr. R.P. Goala Vs. Amarpal Singh*** AIR 1972 Raj 142 & ***Khandchand Pokardas Vs. Harumal D. Varma*** AIR 1965 Bom 109.

6. Before proceeding to adjudicate the matter, I have inquired from the counsel for the petitioner/plaintiff, whether the petitioner/plaintiff is able to consent to this Court adjudicating the said question under Article 227 of the Constitution of India, though not the subject matter of order impugned herein.

7. The counsel for the petitioner/plaintiff states that he has no instructions to consent.

8. In the absence of consent, it would be deemed appropriate to allow the learned Additional District Judge, before whom the suit is pending, to consider the said aspect so as to not to deprive either party from the remedy available thereagainst.

9. The petition is thus dismissed, but with a request to the learned additional District Judge-04, South-East, Saket Courts, Delhi, to, at an appropriate stage, consider the aspect of territorial jurisdiction to entertain the suit.

RAJIV SAHAI ENDLAW, J

OCTOBER 16, 2017/P..