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

+ **CM(M) No.814/2017 & CM No.27372/2017 (for stay).**

**LUTHRA & LUTHRA LAW OFFICES**

..... Petitioner

Through: Mr. Ashwini Kumar Mata, Sr. Adv.  
with Mr. Abhishek Swaroop, Mr.  
Bharat Chugh, Ms. Abhilasha Vij and  
Mr. Vibhor Jain, Advs.

versus

**P V KAPUR & ANR**

..... Respondents

Through: Mr. Anil Airi, Sr. Adv. with Ms.  
Sukanya Lal, Ms. Divyaa Kapur and  
Mr. Sishant Kapur, Advs.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

**ORDER**

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**02.08.2017**

**CM No.27373/2017 (for exemption).**

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

**CM(M) No.814/2017 & CM No.27372/2017 (for stay).**

3. This petition under Article 227 of the Constitution of India impugns the order (dated 19<sup>th</sup> July, 2017 in CS No.58220/2016 of the Court of Additional District Judge-01, Patiala House Courts, New Delhi) as under:-

*“Present: Mr. Abhishek Swaroop, Counsel for  
Defendant No.1.*

*An application moved under Order VII Rule 11 (a)  
& (d) read with Order I Rule 10(2) and Section 151 of the  
Code of Civil Procedure, 1908 on behalf of defendant  
no.1.*

*Issue notice to the plaintiff on filing of PF & RC for  
date already fixed.”*

4. The senior counsel for the petitioner / defendant no.1 has argued (i) that vide order dated 26<sup>th</sup> May, 2017 in the suit, issues framed and the matter listed for evidence before the Court Commissioner on 17<sup>th</sup> August, 2017 to 19<sup>th</sup> August, 2017 and 21<sup>st</sup> August, 2017 to 25<sup>th</sup> August, 2017 and listed before the learned Additional District Judge on 1<sup>st</sup> September, 2017; (ii) that the counsel who appeared for the petitioner / defendant no.1 before the Court on 19<sup>th</sup> July, 2017 requested the learned Additional District Judge to issue notice of the application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC) for a date prior to 17<sup>th</sup> August, 2017; (iii) however the said request was ignored and notice issued for 1<sup>st</sup> September, 2017, by when the entire trial in the suit is likely to be over; and, (iv) that it is the mandate of law that the application under Order VII Rule 11 of the CPC is to be decided before further proceedings in the suit.

5. I have enquired from the senior counsel for the petitioner / defendant no.1 as to when was the suit instituted.

6. The senior counsel for the petitioner / defendant no.1 states that the suit was instituted in the year 2013.

7. It is thus evident that the petitioner / defendant no.1 has filed the application under Order VII Rule 11 of the CPC, which is in the nature of putting an end to the suit at the threshold, after four years of the institution of the suit and when the trial in the suit was imminent.

8. Not only so, there is nothing at all to show that on 19<sup>th</sup> July, 2017, the counsel who appeared for the petitioner / defendant no.1 pressed for any date before 17<sup>th</sup> August, 2017 as is now being contended. In the application under Order VII Rule 11 of the CPC, admittedly there is nothing to suggest

that the application be heard before commencement of trial.

9. Once there is nothing from which this Court can gather that a request which is made before this Court was made before the Additional District Judge, this Court in exercise of powers under Article 227 cannot take upon itself the conduct of the suit, without the same being agitated before the Trial Court.

10. The senior counsel for the petitioner / defendant no.1 at this stage, under instructions, seeks to withdraw this petition with liberty to apply to the Additional District Judge for hearing of the application under Order VII Rule 11 of the CPC before the commencement of the trial on 17<sup>th</sup> August, 2017.

11. Dismissed as withdrawn with liberty aforesaid.

No costs.

*Dasti* under signature of Court Master.

**RAJIV SAHAI ENDLAW, J**

**AUGUST 02, 2017**

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