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

+ CM(M) 926/2017

MOHD KAMIL

..... Petitioner

Through: Mr. Rajat Aneja & Ms. Nisha Sharma,
Advs.

Versus

NADIRA

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **28.08.2017**

CM No.31123/2017 (for exemption)

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

CM(M) 926/2017 & CM No.31122/2017 (for stay)

3. This petition under Article 227 of the Constitution of India impugns the order [dated 26th May, 2017 in Suit No.105447/2015 of the Court of JSCC/ASCJ/GJ, North East District, Karkardooma Courts, Delhi] of dismissal of the application of the petitioner / plaintiff under Order XII Rule 6 of the CPC.
4. The remedy against dismissal of an application under Order XII Rule 6 of the CPC is under Section 115 of the CPC and once a remedy under the CPC is available, the jurisdiction under Article 227 cannot be invoked. Reference in this regard can be made to *Sadhana Lodh Vs. National Insurance Co. Ltd.* (2003) 3 SCC 524.
5. The counsel for the petitioner / plaintiff withdraws the petition with liberty to take appropriate remedy.
6. Dismissed as withdrawn with liberty aforesaid.
No costs.

RAJIV SAHAI ENDLAW, J

AUGUST 28, 2017/‘gsr’..