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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **TR.P.(C.) 144/2017**
ORRIS INFRASTRUCTURE PVT LTD & ORS Petitioners
Through: Mr. Pankaj Vivek & Mr. Atul
Tripathi, Advs.
Versus
MAHESH DHOWN Respondent
Through: None.
CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW
ORDER
% **01.09.2017**

CM No.31712/2017 (for exemption)

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

TR.P.(C.) 144/2017 & CM No.31711/2017 (for stay)

3. Transfer under Section 24 of the Code of Civil Procedure, 1908 (CPC) is sought of Civil Suit No.741/2017 titled “Mahesh Dhown Vs. Orris Infrastructure Pvt. Ltd. & Ors.” of the Court of Sh. Kanwaljeet Arora, Additional District Judge (ADJ), South-West District, Dwarka Courts, New Delhi to this Court on the ground that the suit being a commercial suit within the meaning of Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015, is triable by the Commercial Division of this Court and not by the Court of ADJ.
4. As per my understanding, if a suit is filed before a Court which does not have jurisdiction, the remedy of the defendant is to apply to that Court,

either under Order VII Rule 10 of the CPC or under order VII Rule 11 of the CPC and not under Section 24 of the CPC.

5. The counsel for the petitioners / defendants then states that the suit of which transfer is sought, is under Order XXXVII of the CPC; the petitioners / defendants though have filed appearance but have not been served with summons for judgment; that owing to the suit being under Order XXXVII, the petitioners / defendants have no opportunity to apply under Order VII Rule 10 and / or under Order VII Rule 11 of the CPC.

6. I am unable to agree.

7. The petitioners / defendants can always, either at this very stage or even after summons for judgment are served, besides applying for leave to defend within the prescribed time, also apply under Order VII Rule 10 and / or under Order VII Rule 11 of the CPC and certainly if the contentions of the petitioners / defendants are correct, the Court cannot proceed to, without jurisdiction, adjudicate the leave to defend.

8. The counsel for the petitioners / defendants seek to withdraw this petition with liberty to apply before the Court of ADJ.

9. Dismissed as withdrawn with liberty aforesaid.

No costs.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 01, 2017

‘gsr’..

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