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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ C.R.P. No.202/2017 & CM No.34704/2017 (of the petitioner under
Order I Rule 10 CPC).
INDUS TUBE LTD Petitioner
Through: Mr. K.K. Aggarwal and Mr. Aayush
Aggrawal, Advs.
versus
TECPRO SYSTEMS LTD & ANR Respondents
Through

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **21.09.2017**

1. This order is in continuation of the earlier order dated 12th September, 2017.
2. The petitioner / plaintiff has filed CM No.34704/2017 under Order I Rule 10 of the Code of Civil Procedure, 1908 (CPC) giving up the respondents / defendants no.2 to 5 as respondents in this petition.
3. The counsel for the petitioner / plaintiff on enquiry states that post the decision of this petition, the petitioner / plaintiff will make a similar application before the Suit Court, giving up the respondents / defendants no.2 to 5 and carrying out the consequential amendments in the plaint.
4. Binding the petitioner / plaintiff to the same, the application is allowed and the respondents / defendants no.2 to 5 namely Arun Kumar Sabharwal, Amar Banerjee, Ajay Kumar Vishnoi and Amul Gabrani are deleted from the array of respondents / defendants.
5. Amended memo of parties filed is taken on record.
6. The counsel for the petitioner / plaintiff on enquiry further states that

erstwhile respondent / defendant no.6 and now respondent / defendant no.2 M/s. Mega Urja Nigam Pvt. Ltd. has been impleaded in the suit only as a proper party and no claim in the suit has been made against the respondent / defendant no.2 M/s. Mega Urja Nigam Pvt. Ltd. and M/s. Mega Urja Nigam Pvt. Ltd. need not also file any application for leave to defend if the suit were to be treated as a summary suit.

7. Qua the only reason given in the impugned order for converting the suit under Order XXXVII of the Code of Civil Procedure, 1908 (CPC) of the petitioner / plaintiff into an ordinary suit, the counsel for the petitioner / plaintiff has referred to ***Daryanani (Indo Saigon) Construction Pvt. Ltd. Vs. Mantri Reality Ltd.*** 2017 SCC OnLine Bom 7963 and which in turn relies upon the dicta of this Court in ***Sanjay Kohli Vs. Vikas Srivastava*** (2013) 196 DLT 237 laying down that even if there is no agreement between the parties to claim any specified interest, the plaintiff is entitled to include interest amount in a summary suit in accordance with Section 80 of the Negotiable Instruments Act, 1881 read with Order XXXVII of the CPC.

8. Thus the impugned order dated 31st May, 2017 in CS No.321/17 of the Court of Additional District Judge-4 (North-West), Rohini Courts, Delhi cannot be sustained and has to be set aside.

9. Since the impugned order was passed before even issuing summons to the respondents / defendants, the need to issue notice of this petition to the respondents / defendants is not felt.

10. The petition is allowed.

11. The impugned order dated 31st May, 2017 is set aside and the suit of the petitioner / plaintiff for recovery of monies from the respondent /

defendant no.1M/s. Tecpro Systems Ltd. only is ordered to be treated as a summary suit.

12. The learned Additional District Judge to proceed to issue summons for appearance to the respondents / defendants no.1&2 namely M/s. Tecpro Systems Ltd. and M/s. Mega Urja Nigam Pvt. Ltd. only.

No costs.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 21, 2017

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