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

+ CM(M) 1316/2017 & CM No. 42180/2017 (stay)

CHARAN DASS & ORS Petitioners

Through: Mr. D.S.Kauntae, Advocate for
petitioners no.1 & 2

versus

CAPT KRISHAN KUMAR & ORS Respondents

Through: None

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **21.11.2017**

1. This petition under Article 227 of the Constitution of India seeks quashing of the summons ordered to be issued by the Court of Senior Civil Judge, Dwarka, New Delhi of CS No. 115/2017 filed by the respondent no.1 against the three petitioners and respondents no.2 & 3.

2. Counsel for the petitioners, on enquiry, agrees that under the Code of Civil Procedure, 1908 (CPC) the remedy of applying under Order VII Rule 11 of the CPC is available to the petitioners/defendants but contends that the same will result in a long drawn trial and in any case the jurisdiction of this Court under Article 227 of the Constitution of India is very wide.

3. Though undoubtedly, the jurisdiction of this Court under

CM(M) No.1316/2017

Page 1 of 3

Article 227 is plenary in nature but at the same time it is not to be exercised in supersession of ordinary civil remedies. Reference if any required in this respect can be made to ***Sadhana Lodh vs. National Insurance Co. Ltd (2003) 3 SCC 524***. The only prejudice which the counsel for the petitioners states that petitioners will suffer by availing the remedy under Order VII Rule 11 of the CPC, is of the suit being put to trial.

4. The whole purpose of order VII Rule 11 CPC is to nip in the bud the suits which are not maintainable in law, without the same being put to trial. Thus, there is no question of any prejudice being suffered by the petitioners.

5. CPC is a complete code in itself qua civil disputes and petitions under Article 227 cannot be a substitute for remedies thereunder. It cannot also be lost sight of that the same CPC makes provision for remedies against an order on an application under Order VII Rule 11 CPC and if the petition under Article 227 is to be entertained instead, the aggrieved party would be deprived of the said remedies also.

6. The counsel for the petitioners states that he is personally the petitioner No.3 in this petition and has been unnecessarily impleaded in the suit.

7. If the plaint does not disclose any cause of action against the petitioner no.3, the petitioner no.3 has remedies therefore as well before the Civil Court.

8. The petition is entirely misconceived and is dismissed.

9. At this stage, counsel for the petitioners seeks leave to

withdraw this petition with liberty to take appropriate remedies.

10. Dismissed as withdrawn with liberty as aforesaid.

Dasti under the signatures of the Court Master.

RAJIV SAHAI ENDLAW, J

NOVEMBER 21, 2017/mw