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

+ CS(OS) 647/2017

M/S SAGU DREAMLAND PRIVATE LIMITED Plaintiff

Through: Ms. Avnish Ahlawat, Advocate with
Ms. Palak Rohmetra, Advocate.

versus

M/S. JINGLE BELL AMUSEMENT PARK PVT. LTD. & ORS

..... Defendants

Through

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

% **04.12.2017**

I.A. No.14308/2017 (exemption)

1. Exemption allowed subject to just exceptions.

I.A. stands disposed of.

+CS(OS) No.647/2017 and I.A. No.14307/2017 (under Order 39 Rules 1 & 2 CPC)

2. After arguments, this suit is disposed of as withdrawn in view of language of Order 23 Rules 3 and 3A of Code of Civil Procedure, 1908

CS(OS) No.647/2017

page 1 of 3

(CPC) which requires a party questioning the compromise agreement only to question that compromise agreement in the suit in which compromise agreement is entered into or if there will be an issue with respect to non performance of the compromise agreement terms, then in the execution proceedings of the compromise decree which is passed between the parties.

3. Learned counsel for the plaintiff states that the plaintiff had withdrawn the execution proceedings on the ground that a suit has to be filed and therefore it be clarified that filing of the suit will not bar the plaintiff from filing the appropriate proceedings either in the suit or by means of execution proceedings since there is no estoppel against law i.e the law is that a suit cannot be filed because of Rule 3A of Order 23 CPC with the fact that issue as to validity etc of compromise has to be decided in the suit itself before passing of the decree. Hence filing of the present suit will not estop the plaintiff from filing appropriate proceedings as stated above inasmuch as a wrong concession made in law will not estop a party.

4. Since the suit is withdrawn at the initial stage, plaintiff is entitled to refund of 50% of the court fees as per Section 16-A of the Court-

fees Act,1870 (as applicable to Delhi) and certificate of 50% of the refund of the court fee be issued to the plaintiff by the Registry of this Court.

VALMIKI J. MEHTA, J

DECEMBER 04, 2017
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CS(OS) No.647/2017

page 3 of 3