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

+ CM(M) 1358/2017

M/S HIL LIMITED

..... Petitioner

Through: Mr. Ved Prakash Sharma, Mr. Atul
Shanker Mathur, Ms. Priya Singh &
Ms. Shweta Singh, Advs.

versus

M/S MMTC LIMITED

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

% **29.11.2017**

CM No.43389-90/2017 (exemptions)

Allowed subject to all just exceptions.

CM(M) 1358/2017 & CM No.43388/2017(stay)

The application of the petitioner under Order XXVI Rules 1, 2 & 4 read with Section 151 of the Code of Civil Procedure, 1908 for appointment of a Local Commissioner for cross examination of the plaintiff's witness Mr. K.L. Ghuwalewala, stated to be 84 years old and presently residing in Gurgaon, has been dismissed by the Additional District Judge by the impugned order dated 28.08.2017 *inter alia* for the reasons that the place where the witness resides being Gurgaon in the State of Haryana, it would be impermissible for

CM(M) 1358/2017

page 1 of 2

such Commission to be issued and further that there was nothing to show that the witness was unable to travel to Court due to medical reasons.

The hesitation shown by the Additional District Judge for issuance of such Commission on account of location of the witness being beyond the territorial jurisdiction of this Court, is apparently misplaced. The learned counsel for the petitioner submits that a medical certificate was placed on record along with the application to show incapability of the witness to travel which has not been noticed.

The counsel now submits that he may be permitted to withdraw the present application and instead go back to the Additional District Judge with review application to be presented with appropriate medical record showing the incapability of the witness to travel.

The petition is dismissed as withdrawn with liberty, as prayed, granted.

R.K.GAUBA, J

NOVEMBER 29, 2017/umang