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

\+ CM(M) 617/2017 and CM APPL.20746/2017 (stay)

M/S JAIPURIA INFRASTRUCTURE DEVELOPERS PVT LTD
..... Petitioner

Through: Mr. Saurabh Gupta, Advocate with Mr. Gagan Gupta, Adv.

versus

NARESH VASHISTHA & ORS. ..... Respondents

Through: Mr. Rishi Sehgal, Advocate with Ms. Nidhi Bhuwania, Adv. for R-1.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

O R D E R

% **12.02.2018**

The civil suit (CS No.57889/2016) in which the impugned order dated 25.11.2016 was passed by the additional district judge (ADJ) has been filed by the first respondent seeking recovery of certain amounts, which he claims to be due towards him from the petitioner, it being the first defendant in the suit, admittedly former employer which had engaged the services of the plaintiff for certain period. The petitioner as the defendant undoubtedly did not submit the list of witnesses around the stage of the case when the issues were settled. Such list was tendered at the stage when the plaintiff's evidence was about to be concluded and submitted along with application under Order XVI Rule 1 of the Code of Civil Procedure, 1908 (CPC). A request was made before the trial court for liberty to have the record of income tax department summoned, this, as explained at the hearing, to prove the certificate of tax deducted at source (TDS) for the assessment year 2008-2009 as also the income tax return (ITR) which would have been submitted by the plaintiff of the case with balance sheet to the income tax department.

Having regard to the nature of controversy which is the subject matter of the civil suit, this court is of the opinion that the contention of the petitioner, as defendant of the case, as to the relevancy of such material cannot be disputed. In these circumstances, a fair opportunity deserves to be granted to the defendant to have such record summoned particularly because, as came to be demonstrated during the hearing on the petition at hand, the plaintiff is not ready or willing or inclined to discover such facts or documents of his own.

The impugned order is thus set aside. The official witness of the income tax department with aforementioned documents shall be summoned at appropriate stage, of course, conditional upon the petitioner, the defendant of the case, taking appropriate steps in such regard.

The petition and the application filed therewith stand disposed of in above terms.

R.K.GAUBA, J.

FEBRUARY 12, 2018
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