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

+ CM(M) 529/2018 & CM No. 18326/2018

SAINI DEVI & ORS

..... Petitioners

Through: Mr. Sanjeev Kumar, Adv.

versus

MUKESH KUMAR

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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04.05.2018

The petitioners are defendants in the civil suit (suit no. 401/17) instituted by the respondent. On being served they had moved an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC) seeking rejection of the plaint. It is explained by the counsel for the petitioners that the ground on which rejection of the plaint is sought primarily are that the plaint does not disclose any cause of action against the petitioners and further that the relief is under-valued. The grievance raised by the petition at hand is that the trial judge has refused to adjudicate on the said application and is proceeding ahead, even though his attention was drawn to the ruling of the Supreme Court reported as *R.K. Roja v. U.S. Rayudu & Anr. AIR 2016 Supreme Court 3282* with the submission that before proceeding further it is the duty of the court to consider the prayer under Order VII Rule 11 CPC. Copy of the order dated 13.11.2017

indicating such disinclination of the additional district judge to take note of the said ruling or to take up the application under Order VII Rule 11 CPC, has been submitted.

Though it does appear that the case is still at the stage of service of some of the parties impleaded as defendants, there is *prima facie* substance in the submission of the petitioners, as noted above.

In the facts and circumstances brought out through the petition at hand where disinclination of the trial court to exercise jurisdiction at the appropriate stage, which is the bone of contention, no useful purpose would be served by issuing notice and calling the opposite party.

The petition is disposed of with directions to the trial court to take up the application under Order VII Rule 11 CPC and pass an appropriate order thereupon dealing with the contentions therein, after hearing the concerned parties i.e. the applicants and also the respondent who is the plaintiff of the case.

The petition and the application filed therewith are disposed of with these observations.

Copy of the order shall be given *dasti* to the counsel who shall place it before the trial judge on the next date of hearing, for information and necessary compliance.

R.K.GAUBA, J.

MAY 04, 2018

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