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

+ C.R.P. 62/2017 & CM No.9364/2017

M/S BHAGYASHREE TRADECOM PVT LTD Petitioner
Through: Ms. Monisha Handa with Mr. Mohit
D. Ram, Advocates.
versus

HARISH ANAND AND ANR Respondents
Through: Mr. Aman Mehta, Advocate.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

% **08.03.2018**

1. The petition at hand challenges the correctness, legality and propriety of order dated 17.02.2017 of the additional district judge passed on the file of civil suit (CS no. 522/2015) instituted by the respondent (the plaintiff) against the petitioner (the defendant) for recovery of money whereby the trial court had appointed a court commissioner for recording evidence of both sides apportioning the responsibility to bear the consequent cost on each of them, the grievance of the petitioner essentially being that it had not given consent for such a course to be adopted.
2. Though initially the counsel for the respondent/plaintiff took a preliminary objection that the petition was not maintainable, after some hearing, both sides have come to agree that the proceedings before the trial court need course correction.

3. It is noted that by order dated 02.05.2016 the trial court had framed issues, the first of which was to address the question as to whether the petitioner/defendant is right in contending that the plaintiff of the case had committed breach of the agreement to sell dated 09.11.2012 giving rise to valid forfeiture by the defendant of the amount of Rs.50 lakhs, the burden of proof in this regard having been placed by the trial court on the petitioner/defendant.

4. In the given facts and circumstances, the learned counsel on both sides fairly agree that in view of the said issue, it is the defendant of the case, i.e. the petitioner herein who should begin first by examining its witnesses. It is also fairly agreed by both sides that since the defendant is reluctant to bear the cost of court commissioner and the learned counsel for the respondent/plaintiff, on being asked, has also submitted disinclination to bear half of the expenses which were placed at the door of the defendant, for the present – to be possibly recovered as cost of the suit in case the plaintiff succeeds – the direction of recording of evidence in the case through court commissioner as given by the impugned order dated 17.02.2017 be set aside. Ordered accordingly.

5. The petition is, thus, disposed of with directions that the petitioner/defendant will be obliged to lead evidence first and thereafter the plaintiff of the case will be called upon to lead evidence followed by opportunity for evidence in rebuttal, if any such right is available or claimed in law, at appropriate stage.

6. The trial court will fix an appropriate date for recording of evidence of the defendant and issuing of necessary consequent directions.

7. Learned counsel for the defendant assures and undertakes that the defendant will cooperate in expeditious progress of the trial and early adjudication and also undertakes not to seek any unnecessary adjournments.

8. The petition and the pending application stand disposed of with these observations.

R.K.GAUBA, J

MARCH 08, 2018

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