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

+ FAO(OS) 182/2017

% Date of decision : 18th April, 2018

M/S DADHIMATI CONSTRUCTIONS Appellant

**Through : Mr. Abhay Anand and
Mr. B.K. Jha, Advs.**

versus

THE MUSE SAROVAR PORTICO & ORS ... Respondents

Through : Ms. Bharti Baderaa, Adv.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

GITA MITTAL, ACTING CHIEF JUSTICE

1. The instant appeal assails the order dated 13th February, 2017 whereby the Id. Single Judge has allowed four applications being I.A.Nos.22629-32/2015 filed by the respondents herein (defendants in the suit) under Order XXXVII Rule 3(5) of the CPC seeking leave to defend the suit. By the impugned order, the Id. Single Judge has granted unconditional leave to the respondents to defend the suit in which these applications were filed.

2. The appellant (plaintiff in this suit) had instituted CS(OS)No.869/2015 under Order XXXVII of the CPC in respect of a collaborative agreement dated 17th December, 2011 contending that

the respondents had failed to release the full amount payable to the appellant/plaintiff for the work done by it.

3. The appellant has assailed the finding of the Id. Single Judge in the impugned order that the plaintiff had nowhere stated that the time for completion of the awarded project was extended or was rescheduled till 30th April, 2012.

Ld. counsel for the appellant has been unable to point out any material from the record at this stage in support of this challenge.

4. A further grievance is made on behalf of the appellant that the observations made in the impugned order, may be treated as final adjudication on the merits of the appellant's claim in the suit.

5. It is well settled that while considering an application for leave to defend, the court is only concerned with the examination of the matter from the perspective as to whether the defendant had raised triable issues which would require consideration of the defence put forth by the defendant.

6. In this background, the observations made by the Id. Single Judge in the impugned order cannot be considered as a final expression of opinion on the merits of the rival contentions. Such final opinion has to be based on findings which would be led by both sides during trial. Needless to say this would be the position so far as reliance on the impugned order is made in other legal proceedings as well.

7. For the foregoing reasons, we find no merit in this appeal which is hereby dismissed.

8. No order as to costs.

ACTING CHIEF JUSTICE

C.HARI SHANKAR, J

APRIL 18, 2018

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