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

+ LPA 634/2018 & C.M.No.47656/2018 (stay)

M/S KONARK INFR DEVELOPERS

PVT LTD & ORS.

..... Appellants

Through: Ms.Ashima Mandla, Ms.Mandakani
Singh, Mr.Abhishek Arora, Advs.

Versus

INDIA AFFORDABLE HOUSING SOCIETY

SOLUTIONS (IAHS)

..... Respondent

Through: Mr.O.N.Sharma, Adv.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

20.11.2018

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Seeking exception to an order dated 03.04.2018 passed by the learned Single Bench in Civil Suit bearing CS(OS) No.82/2014 granting conditional leave to defend in a civil suit under Order 37 Rule 3(5) of the CPC, this appeal has been filed under Clause 10 of the Letters Patent by contending that the conditional leave granted, i.e. deposit of Rs.3 Crores with the Registrar General of this Court is unsustainable and should be interfered with. It is seen that office has raised a note to the effect as to whether against the aforesaid order an LPA under Clause 10 of the Letters Patent is maintainable. Earlier, appellant herein had filed FAO(OS) 94/2018, an appeal under Order 43 Rule 1 CPC but as the appeal was not maintainable, it was withdrawn and it is stated that now this LPA is maintainable as the order impugned amounts to a judgment. Even though learned counsel for the respondent refutes the aforesaid contention, for the present, we are of the considered view that in this case the learned Single Bench took note of the criteria and the principle of law applicable for

considering an application under Order 37 CPC, the defence of the appellant raised in the matter in a proceeding under Section 138 of the Negotiable Instruments Act, 1881, the stand being contrary to the stand taken in the proceedings under Section 138 allowed leave to defend subject to the condition that a sum of Rs.3 Crores is deposited with the Registrar General of this Court within four weeks. The amount was directed to be deposited in fixed deposit for a period of one year or in the alternate furnishing a bank guarantee. In our considered view, the discretion exercised by the Single Bench in the matter is based on the material which shows that the defence of defendants No.1 to 3 is illusory in nature in view of the contrary stand taken by them with regard to the same issue in a proceeding under Section 138-A, exercised discretion in granting the leave subject to the condition as stipulated hereinabove. The discretion exercised by the Single Bench being in accordance with the requirement of law, we are not inclined to interfere into the matter.

2. We may clarify that the question of maintainability has not been gone into by us and it is kept open to be considered in an appropriate case.

CHIEF JUSTICE

V. KAMESWAR RAO, J

NOVEMBER 20, 2018

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