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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO(OS) 182/2018, CM No. 50572/2018**
M/S MIRAGE HOSPITALITY & ORS

..... Appellant

Through: Mr. Anil Grover, Adv. with
Mr. Shivesh P. Singh, Adv.

versus

HOTEL HANS PVT LTD & ORS

..... Respondent

Through: Mr. Sunil Dalal, Adv. with
Mr. Ajay Sondhi, Mr. Ashish Sharma
& Mr. Jaskaran Mehra, Adv.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER
14.01.2019

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Even though various prayers are made in the appeal, today during the course of hearing, learned counsel appearing for the appellants would argue that the appellants are only challenging second part of the order dated April 03, 2018 (Annexure-A/1) so far as it pertains to rejection of appellant's application under Order 6 Rule 17 CPC i.e IA 10231/2017 in CS(OS) 2379/2015. He categorically states that he is neither challenging the order dated April 04, 2016 (Annexure-A/2) nor the first part of the order dated April 03, 2018 contained in Annexure-A/1, so far as it pertains to initiating

proceedings against the appellant No.3 herein under Section 340 Cr.PC. It is stated by learned counsel for the appellants that for those prayers, appellants would take recourse to remedy as may be available under law.

As far as the rejection of the application under Order 6 Rule 17 CPC is concerned, it is the case of the appellants that the learned Single Judge rejected the said application without considering it on merit and only on account of the fact that *prima facie* a case for taking criminal action against the appellant No.3 herein has been initiated. This aspect of the matter is found to be correct as the order passed in IA No. 10231/2017, which is an application under Order 6 Rule 17 CPC only indicate that it is being dismissed for the reasons indicated in the order pertaining to initiating action in exercising power under Section 340 Cr.PC read with Sections 191 and 209 IPC.

In our considered view, when there were various grounds raised in the application for amendment under Order 6 Rule 17 CPC, the same should have been considered on its own merit and not be rejected only on the ground that there is a concealment for which action under Section 340 Cr.PC is required to be taken against the appellant No.3 herein. Taking note of the above, we remand the matter back to the learned Single Judge to consider

the application being IA No. 10231/2017 under Order 6 Rule 17 CPC afresh in accordance with law and on its own merit after hearing all concerned.

With the aforesaid, the appeal stands allowed and disposed of.

CM No. 50572/2018 (for stay)

Dismissed as infructuous.

CHIEF JUSTICE

V. KAMESWAR RAO, J

JANUARY 14, 2019/ak