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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 692/2019 and CM APPL. 21214/2019**

ANKIT GARG

..... Petitioner

Through: Petitioner in person (M:
9654060881).

versus

M/S XIAOMI NORTH & ANR

..... Respondents

Through: Mr. Nitin Masilamani, Mr. Dushyant
Manocha, Ms. Ananya Ghosh and
Mr. Amritanshu Jha, Advocates for
R-1 (M: 8800703247).
Mr. Sanjay K. Chadha, Advocate for
R-2 (M: 9811177238).

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

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02.03.2020

1. The present petition has been filed challenging the order dated 8th August, 2018 by which the Court has dismissed the application filed by the Plaintiff under Order XXXVII Rule 3(6) for issuing summons in terms thereof on the ground that the recovery sought is of unliquidated damages, and thus a suit under Order XXXVII is not maintainable.
2. The dispute in this case is in respect of a Xiaomi phone which was purchased by the Petitioner/Plaintiff (*hereinafter, "Plaintiff"*). The Plaintiff had filed the suit on the ground that the Redmi Note 4 instrument, according to the Plaintiff, did not function properly and had various defects. The cost of purchase was Rs. 12,999/-. Since the phone did not function properly, and despite repeated requests, the phone was not replaced, a suit

was filed seeking recovery of the amount and damages. The suit has been filed both against Defendant No. 1- a company called M/s Xiaomi North, as also the Defendant No. 2, M/s One Assist Consumer Solutions Pvt. Ltd., which had insured the Phone.

3. Notice was issued in this petition on 11th September, 2019. Ld. counsels for the Respondents/Defendants have entered appearance, and during the course of proceedings, the matter has been amicably resolved. The Plaintiff originally impleaded one M/s Xiaomi North which is not a legal entity, and undertakings have been given by Xiaomi Technology Private Limited under instructions from Mr. Sameer B.S. Rao who is the CFO of the said company. As per the terms of settlement agreed to by the Plaintiff, who is present in person, and the Defendants, the petition is disposed of as being settled in the terms set out below.

4. Parties have agreed to settle their disputes on the following terms:-

- a) Xiaomi Technology Private Limited undertakes to provide a new XIAOMI Redmi Note 8 Pro (6 GB Ram, 128 GB storage) mobile phone to the Plaintiff on or before 15th March, 2020.
- b) The Defendant No. 2 the Insurance company undertakes to pay a sum of Rs. 10,000/- by way of demand draft on or before 15th March, 2020 in favour of Mr. Ankit Garg.
- c) Petitioner undertakes that upon receipt of the new phone as also the sum of Rs. 10,000/-, his claims shall stand fully and finally settled and he shall have no further claims against the Defendants. The Plaintiff undertakes to then withdraw suit filed before the trial court.

5. The statement of the Plaintiff has been recorded today. Counsels

appearing for the Respondents state that they have instructions to settle the dispute in the terms recorded above. The phone as mentioned in para 4(a) above, would be handed over by Defendant No. 1 to the Plaintiff along with all the warranty/guarantee cards etc, along with receipt. Upon the receipt of the mobile phone instrument, as also the sum of Rs. 10,000/- the Plaintiff undertakes to not press any further claims before the trial court and shall withdraw the suit pending before the trial court.

6. This order has been passed in view of the settlement, which has been arrived at between the parties and shall not operate as a precedent. In view of the fact that the disputes have been settled by way of mediation, the Plaintiff is entitled to a refund of the complete Court fee. Let a recovery certificate be issued to the Plaintiff.

7. The petition is disposed of as settled. Parties shall be bound by the terms of the settlement recorded hereinabove.

8. List for reporting compliance on 30th March, 2020.

PRATHIBA M. SINGH, J.

MARCH 02, 2020

MR