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

+ **CRP-IPD 1/2023**

M/S MAXX FOOD ENTERTAINMENT & ANR.... Petitioner

Through: Mr. Tarjit Singh, Advocate
(through VC)

versus

M/S SAGAR RATNA RESTAURANT PVT. LTD.

..... Respondent

Through: Mr. Aman Vasisth, Advocate.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER (O R A L)

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25.09.2023

(Through Video-Conferencing)

1. The order dated 27 October 2022, passed by the learned District Judge (Commercial Courts), Saket ("the learned Commercial Court"), in CS(COMM) 11/2022, is under challenge at the instance of Defendant 1 in the said suit, to be extent the said order rejects an application filed by Defendant 1 under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC).

2. Mr. Tarjit Singh, learned Counsel for the petitioners, submits that he is restricting his challenge to the impugned order to the extent of imposition of costs of ₹ 5,000 on his client.

3. In exercise of revisional jurisdiction, this Court would be loath to interfere with imposition of costs by the order under challenge, save and accept where the imposition is bad for want of jurisdiction or



otherwise perverse in law.

4. It is seen that the application under Order VII Rule 11, filed by the petitioner, was on the ground that the respondent/plaintiff had not exhausted the avenue pre-institution mediation as required by Section 12A of the Commercial Courts Act, 2015. This issue stands squarely settled against the petitioner by the judgment of the Division Bench of this Court in *Chandra Kishore Chaurasia v. R.A. Perfumery Works Pvt Ltd*¹.

5. If, therefore, the learned Commercial Court deemed it appropriate to award costs of ₹ 5,000/- for having filed such an application, this Court would be loath to interfere with the said order, which is fundamentally discretionary in nature.

6. In view of the aforesaid, this petition is devoid of merit and is accordingly dismissed.

7. Mr. Tarjit Singh learned counsel for Plaintiff also submits that his client is desirous of settling the matter with the respondent. It is open to him to advance the said submission before the learned Commercial Court which shall take a call thereon, as and when it is urged.

8. The petition stands disposed of in the aforesaid terms.

C.HARI SHANKAR, J

SEPTEMBER 25, 2023/sa