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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO (COMM) 239/2023 & CM APPL. 60036/2023, CM APPL. 63410/2023**

M/S SANTOSHI POLYMERS

..... Appellant

Through: Mr Ronyommen John and Mr Anuj
Dubey, Advocates.

versus

SHRI AKSHAT KOHLI

..... Respondent

Through: Mr S. C. Singhal, Advocate.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE AMIT BANSAL

ORDER

27.02.2024

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[Physical Hearing/Hybrid Hearing (as per request)]

1. This appeal is directed against the judgment and order dated 03.11.2023 whereby, the learned trial court has rejected the application filed on behalf of the appellant/ defendant under Order VII Rule 10 of the Code of Civil Procedure, 1908 [in short, "CPC"].
2. Mr S.C. Singhal, learned counsel, who appears on behalf of the respondent / plaintiff, says that the appeal is not maintainable in view of the provisions of Order XLIII Rule 1 (a) of the CPC. Mr Singhal, based on the plain language of the said provision, submits that only if the plaint is returned under Order VII Rule 10 of the CPC, can an appeal lie.
3. Furthermore, Mr Singhal says that in any case, the suit is at the stage of recordal of evidence.

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4. We are told by Mr Singhal that the respondent's/ plaintiff's evidence stands recorded, and now the evidence that may be tendered by the appellant/ defendant and other witnesses cited by him have to be recorded.

4.1 This position is not disputed by Mr Ronyoommen John, learned counsel, who appears on behalf of the appellant.

5. Mr John also does not dispute the position that an issue concerning absence of territorial jurisdiction has also been framed by the trial court.

6. It is Mr John's contention that while rejecting the appellant's/ defendant's application under Order VII Rule 10 of the CPC, costs of Rs.5,000/- were imposed.

7. Mr Singhal says that respondent/ plaintiff is not keen on pressing the directions contained in the impugned judgment and order *vis-a-vis* costs.

8. Having regard to the plain language of Order XLIII Rule 1 (a) of the CPC, this appeal, on the face of it, is not maintainable.

9. The appeal is thus closed, taking note of Mr Singhal's statement that the direction concerning cost shall not be pressed

10. At this stage, Mr John says that the appeal should be converted into a petition under Article 227 of the Constitution of India. We are not inclined to do so as the suit has reached the stage of evidence and the issue with regard to the jurisdiction has been framed by the trial court.

RAJIV SHAKDHER, J

AMIT BANSAL, J

FEBRUARY 27, 2024/rt

[Click here to check corrigendum, if any](#)