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

+ **CS(COMM) 120/2017**

M/S. ABW - SUNCITY PROJECTS Plaintiff

Represented by: **Ms.Anubha Agarwal, Advocate.**

versus

M/S. AHLCONS INDIA PVT LTD AND ANR Defendants

Represented by: **Mr.Raunak Satpathy, Advocate for defendant No.1.**

Mr.Neeraj Yadav and Ms.Aditi Sharma, Advocates for defendant No.2.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

% **04.09.2019**

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1. Suit is listed for settling the issues. Though defendant No.1 has filed the written statement and counter claim, however, it appears that the counter claim has not been registered till date because no court fees has been paid.
2. Be that as it may, admission/denial of documents in the suit is concluded and hence, this Court is proceeding to settle the issues.
3. On hearing learned counsel for the parties and perusing the record, following issues are settled:

(1) *Whether the suit of the plaintiff is barred under Section 89 of the Partnership Act? (OPD2)*

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- (2) *Whether the suit of the plaintiff is bad for mis-joinder and non-joinder of parties? (OPD2)*
- (3) *Whether there exists no privity of contract between the plaintiff and defendant No.2, if so its effect? (OPD2)*
- (4) *Whether the suit of the plaintiff is barred by limitation? (OPD2)*
- (5) *Whether the plaintiff has raised defects upon defendant No.1 within the defects liability period in terms of Purchase Order dated 15th October, 2011? (OPD1)*
- (6) *Whether the plaintiff is entitled to a decree of specific performance against the defendant No.1 to replace the entire glass facade? (OPP)*
- (7) *Whether the plaintiff is entitled to a decree of mandatory injunction thereby directing the defendant No.1 to maintain the existing glass fixtures? (OPP)*
- (8) *Whether the plaintiff is entitled to a decree of recovery of damages for breach of contract, compensation and damages? (OPP)*
- (9) *Whether the plaintiff is entitled to interest on damages, compensation and expenses, if so at what rate and for what period? (OPP)*
- (10) *Cost.*

4. Learned counsel for defendant No.2 states that issue Nos.2 and 3 be treated as preliminary issues and can be heard without any evidence being led between the parties.

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5. List for hearing on the preliminary issue Nos. 2 and 3 on 26th November, 2019.

I.A. No.2093/2017 (under Order XXXIX Rule 1 and 2 CPC)

1. Learned counsel for the plaintiff states that this application was filed at the time of filing of the suit for the reason the glasses installed by defendant No.1 in the building were falling which could have injured any resident or even an outsider. She states that at the moment none of the glasses is falling, so she be permitted to withdraw this application with liberty to file a fresh application as and when required.
2. Leave and liberty granted.
3. Application is dismissed as withdrawn.

I.A. 392/2018 (under Section 151 CPC for modification of order dated 8th December, 2017)

1. By this application the plaintiff seeks modification of order dated 8th December, 2017.
2. Learned counsel for the plaintiff submits that in the order dated 18th December, 2017 it has been noted “No reply filed by the plaintiff”. However, reply to I.A. No.12433/2017 under Section 5 of the Limitation Act read with Order VIII Rule 1 CPC filed by the defendant No.1 seeking condonation of delay in filing the written statement was filed by the plaintiff on 21st September, 2017 and was on record.
3. A perusal of the record reveals that the reply to I.A. No.12433/2017 of defendant No.1 was filed by the plaintiff on 21st September, 2017 and was on record and thus being on record the finding of learned Joint Registrar that
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no reply was filed by the plaintiff is incorrect.

4. In the present application the plaintiff further states that there was delay of 70 days in filing the written statement and hence the same could not be condoned however, this plea was not taken in the reply to I.A. No.12433/2017 filed by the defendant No.1 seeking condonation of delay in filing the written statement and hence on this ground this Court finds no ground to recall the order dated 8th December, 2017.

5. Application is dismissed.

MUKTA GUPTA, J.

SEPTEMBER 04, 2019

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