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

+ **CS(OS) 110/2017 & IA 7663/2017**

SOUTH DELHI MUNICIPAL CORPORATION..... Plaintiff

Through **Mr.Rakesh Mittal, Standing Counsel
with Ms.Yamini Mittal and Mr.Ajay
Harshana, Advs.**

versus

DELHI GURGAON SUPER CONNECTIVITY

LIMITED &ORS.

..... Defendants

Through **Mr.Ashish Dholakia and Mr.Gautam
Bajaj, Advs. for D-1.
Mr.Neeraj Malhotra, Sr.Adv. with
Mr.Ajit Warriar, Mr.Aditya Nayyar
and Mr.Sharad Kharra, Advs. for D-2.
Mr.Ajit Warriar, Mr.Aditya Nayyar
and Mr.Sharad Kharra, Advs. for D-3.**

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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25.04.2019

IA No.7663/2017

1. This application is filed by defendant No.2 under Order 7 Rule 11(a) CPC seeking rejection of the plaint qua defendant No.2.
2. Perusal of the averments made in the application would show that what essentially defendant No.2 pleads is that the plaintiff has failed to plead a cause of action against defendant No.2 and hence, defendant No.2 is liable to be deleted from the array of the parties.
3. In my opinion, though the title of the application only mentions the provisions under which it is filed is Order 7 Rule 11, essentially it is the application would be covered by the provisions of Order 1 Rule 10 CPC.



4. This would also follow from the settled legal proposition that a plaint cannot be rejected in part. Reference in this context may be had to the judgment of the Supreme Court ***Roop Lal Sathi v. Nachhattar Singh Gill***, **1982 (3) SCC 487**. The relevant para states as follows:

“20. Where the plaint discloses no cause of action it is obligatory upon the Court to reject the plaint as a whole under Order VII, Rule 11 (a) of the Code, but the rule does not justify the rejection of any particular portion of a plaint: Mulla's Civil Procedure Code, 13th Edn., Vol. 1, p. 755.....”

5. The learned counsel for the plaintiff submits that it would be for this court in the above circumstances to dismiss the application. He further submits that defendant No.2 may file an appropriate application in this regard.

6. In my opinion, merely because there is an error in the title of the application stating the provisions of law under which it is filed cannot be a ground to dismiss the application.

7. This application may be disposed of by the learned Joint Registrar as it is under Order 1 Rule 10 CPC.

8. List this application before the Joint Registrar on 17.05.2019.

JAYANT NATH, J.

APRIL 25, 2019/v