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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(COMM) No.37/2017, IA No.535/2017 (under Order XXXIX Rules 1&2 CPC) and IA No.537/2017 (for condonation of 140 days delay in re-filing).

ANITA SAINI

..... Plaintiff

Through: Mr. Shakeel Sarwar Wani and Mr.
Anand Prakash Dubey, Advs.

versus

SWIFT ROAD LINK PRIVATE LIMITED & ORS Defendants

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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16.01.2017

IA No.536/2017 (for exemption).

1. Allowed, subject to just exceptions.
2. The application stands disposed of.

CS(COMM) No.37/2017, IA No.535/2017 (under Order XXXIX Rules 1&2 CPC) and IA No.537/2017 (for condonation of 140 days delay in re-filing).

3. The plaintiff has sued for (i) recovery of monies; (ii) rendition of accounts; (iii) declaration; and, (iv) injunction.
4. The case *inter alia* of the plaintiff is that her husband's brother, his wife, son and daughter-in-law have, taking advantage of the demise of the husband of the plaintiff in the year 2010, appropriated to themselves the business of the husband of the plaintiff as well as monies.
5. On a perusal of the plaint it is not very clear that how the reliefs claimed are within time. Moreover the suit is accompanied with an

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application for condonation 140 days delay in re-filing thereof. As per the amendment of the year 2002 to Order IV Rule 1 of the Code of Civil Procedure, 1908 (CPC), the plaint shall be deemed to be duly instituted only when in compliance with the Rules contained in Order VI And Order VII and not otherwise.

6. Even otherwise the husband of the plaintiff is stated to have, beside the plaintiff, left four children and no Will of the husband has been pleaded. In the absence of any Will, the plaintiff would inherit the estate of her husband along with her children and the entitlement to claim the relief would be of the plaintiff along with all the children but the said children have not been impleaded as parties.

7. Upon the same being put to the counsel for the plaintiff twice, he merely keeps on saying that the plaintiff is aggrieved and since this is a family matter, if summons are issued, a settlement would come about.

8. At this stage, the counsel for the plaintiff seeks time to consider and make the necessary amends.

9. List on 13th February, 2017.

RAJIV SAHAI ENDLAW, J

JANUARY 16, 2017

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