

(2014) 07 DEL CK 0357
In the Delhi High Court
Case No : CM (M) No. 657 of 2014

Nine Dot Nine Mediaworx Pvt. Ltd.

APPELLANT

Vs

Attero Recycling Pvt. Ltd.

RESPONDENT

Date of Decision : 14-07-2014

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2015) 213 DLT 758

Hon'ble Judges : Valmiki J. Mehta, J

Bench : Single Bench

Advocate : Krishnayan Sen, Advocate for the Appellant

Judgement

Valmiki J Mehta, J.

C.M. No. 11052/2014 (exemption)

1. Exemption allowed subject to just exceptions. C.M. stands disposed of.

C.M. (M) No. 657/2014 and C.M. No. 11051/2014 (stay)

2. This petition filed under Article 227 of the Constitution of India impugns the order of the trial Court dated 17.5.2014, by which the trial Court has refused to treat the suit as one under Order 37, CPC and had issued summons in the suit to the defendant taking the suit to be an ordinary suit.

3. I may note that since the defendant in the Court below, and respondent herein, has not been served before passing of the impugned order dated 17.5.2014, no notice is required to be issued in the present petition. Also in case the defendant takes up an issue with respect to maintainability of the suit, the same will be decided at the stage of deciding the application for leave to defend. However, only prima facie view of the matter has to be seen qua the applicability of Order 37, CPC at the time of issuing of summons in the prescribed form.

4. Learned Counsel for the petitioner has drawn the attention of this Court to

page No. 57 of the present paper book, which contains the subject purchase order, and it is argued that on the basis of the catena of judgments of this Court, a written purchase order is a written contract under Order 37, CPC. I agree. Also I am bound by the judgments which have been rendered by the different Single Judges of this Court.

5. It may be noted that the expression "written contract" does not say that it should be a signed written contract. It is enough that there is a written contract. A purchase order is a written contract.

6. In view of the above, the impugned order dated 17.5.2014 is set aside and the trial Court is directed to issue summons to the defendant in the requisite form under Order 37, CPC, leaving it open to the defendant if it so wishes to take up any defence of alleged maintainability of the suit, and if defence is so taken, the same will be decided in accordance with law at the appropriate stage. In terms of the aforesaid observations, the petition is allowed and disposed of along with interim application.