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

+ **CM(M) 11/2023**

SURESH GOYAL & ANR.

..... Petitioners

Through: Dr. Amit George, Mr. Manish Gandhi
and Mr. Madhusoddan Singh,
Advocates

versus

G.S RAGHAV

..... Respondent

Through: Mr. Dashrath Raghav, Advocate with
Respondent in person

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

ORDER

05.01.2023

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[The proceeding has been conducted through Hybrid mode]

CM APP No. 292/2023 (Exemption)

1. Allowed subject to all just exceptions.

CM(M) 11/2023 and CM APP No. 291/2023 (stay)

2. Dr. George, learned counsel for the Petitioner, impugns the order dated 26.11.2022 passed by the learned Trial Court whereby the learned Trial Court has transferred the counter claim by exercising its powers under Order VII Rule 10A(3)(a) of the Code of Civil Procedure, 1908 (CPC). Dr. George submits that the learned Trial Court could not have possibly exercised that particular jurisdiction

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unless the plaint was ordered to be returned in the first place and it was only after returning of the plaint, that the Trial Court could have, if at all, exercised its jurisdiction under sub-rule (3)(a) of Rule 10A of Order VII CPC. Dr. George submits that having exercised jurisdiction erroneously, the effect of the impugned order prejudices the Petitioner.

3. *Per contra*, Mr. Raghav, Respondent in person, disputes the contention raised by Dr. George. Mr. Raghav also submits that the present petition is not maintainable and there is an alternative efficacious remedy available under the other provisions of the CPC and thus exercise of jurisdiction under Article 227 of the Constitution is not called for and is unwarranted.

4. Issue notice to the Respondent.

5. Learned counsel for the Respondent accepts notice.

6. Reply be filed within two weeks. Rejoinder thereto, if any, be filed within two weeks thereafter.

7. List for consideration on 10.05.2023.

TUSHAR RAO GEDELA, J

JANUARY 5, 2023

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