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

+ RSA 63/2016 & CM Appln.7860/2016

R.P. BAJAJ Appellant

Through: Mr. Pramod Ahuja, Adv.

versus

SHIELA KAPUR & ANR Respondents

Through: Mr. Amit Gupta, Adv. for R-2

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ORDER

% **25.05.2016**

The plaint of the suit filed by the appellant/plaintiff was rejected under Order 7 Rule 11 of the CPC on the ground of the same being not valued properly for the purposes of computing court fee. As against the aforesaid rejection of the plaint, the appellant approached the superior court which justified the Trial Court's order of rejection but remanded the case back under Order 41 Rule 23 CPC for allowing the appellant/plaintiff to carry out correction with respect to court fee and suit valuation. Though the appellant approached the civil court and sought time for correcting the suit valuation and the court fee but also challenged the order of remand before this court under Section 100 read with Section 41 CPC.

This court had, on 22.03.2016, issued notice to the respondents on the submission of the learned counsel for the appellant that in a suit filed by the respondent with respect to the same suit property, a lower court fee was paid as the suit was valued at Rs.4,200/-, which despite objection by the present

appellant, who was defendant in that suit, was accepted by the Trial Court.

Learned counsel for the appellant today submits that the Trial Court has not followed the conditions of remand by the First Appellate Court and instead of giving an opportunity to explain away his cause for valuating the suit property at a particular quantum, has asked him to pay the enhanced court fee.

In that event, the aforesaid order of the Trial Court could be challenged before the First Appellate Court.

The present second appeal, however, is directed against the judgment of the First Appellate Court passed under Order 41 Rule 23 CPC whereby the case has been remanded by the Trial Court.

This Court is afraid that no second appeal would be maintainable against the order of remand by the Lower Appellate Court and the only remedy before the appellant is to prefer an appeal under Order 43 (u) read with Section 104 CPC.

In that view of the matter, the prayer of the appellant to withdraw this appeal in order to enable him to file an appeal against the order of the First Appellate Court under Section 104 read with Order 43(u) CPC, is allowed.

The appeal is dismissed as withdrawn with the liberty aforesaid.

ASHUTOSH KUMAR, J

MAY 25, 2016

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