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

+ LPA 157/2016 & C.M.No.8837/2016 (*stay*)

OM PRAKASH THAKUR

..... Appellant

Through: Mr.Rajesh Kr.Gupta, Adv. with  
Mr.Sachin Garg, Adv.

Versus

RAJ KUMAR

..... Respondent

Through: None.

**CORAM:**

**HON'BLE THE CHIEF JUSTICE**

**HON'BLE MR. JUSTICE V.P. VAISH**

**ORDER**

% **11.03.2016**

**C.M.No.8838/2016 (*exemptions*)**

Allowed subject to all just exceptions.

**LPA No.157/2016**

1. By the order under appeal, CM(M) 1053/2014 filed by the appellant herein under Article 227 of the Constitution of India was dismissed with costs of Rs.50,000/- by the learned Single Judge holding that the petition seeking correction in the judgment and decree in Suit bearing No.1589/2010 titled Om Prakash Thakur v. Raj Kumar is nothing but an abuse of process of the court.

2. As could be seen from the material available on record, the appellant who is the plaintiff/decreed holder in the suit filed for possession as well as mesne profit and other reliefs preferred an application under Section 152 of CPC seeking modification/clarification of the judgment and decree after the decree was executed and possession of the suit property was recovered. By

the date of filing the said application, the defendant's appeal against the judgment and decree in the suit was also dismissed. Having taken note of the facts and circumstances of the case, the learned ADJ dismissed the application with costs of Rs.5,000/- observing that the application is a belated attempt on the part of the plaintiff to overreach the judgment and decree dated 06.05.2011 and that the application is totally mischievous.

3. Having heard the learned counsel for the appellant, we are unable to hold that the order of the learned ADJ suffered from any error of fact or law and therefore the learned Single Judge has rightly dismissed CM(M) No.1053/2014. However, we consider it appropriate to eschew the costs of Rs.50,000/- imposed by the learned Single Judge. Accordingly, the order under appeal to the extent of imposing costs of Rs.50,000/- is set aside and the appeal is disposed of.

**CHIEF JUSTICE**

**V.P. VAISH, J**

**MARCH 11, 2016/‘anb’**