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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 782/2014
CHIRANJI LAL

..... Petitioner
Through Mr. Hameed S. Shaikh, Adv.
versus

OM PRAKASH

..... Respondent
Through Mr. Mukesh Birla, Adv.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER
% **25.02.2016**

Impugned order dated 10.10.2013 is set aside. The first suit filed by the petitioner was admittedly a suit which was simply withdrawn; this was on 17.12.2011. The question of it having been 'heard and decided on merits' was not done; the Trial Court concluding that the principle of res-judicata would apply has thus committed a folly.

Accordingly, the impugned order is set aside.

Learned counsel for the respondent submits that the Court had also taken into account the bar which is contained in Order XXIII Rule 1 (4) of the CPC and the first suit which had been withdrawn on 17.12.2011 had been withdrawn without liberty to file a fresh suit and this had also weighed in the mind of the Court. On this count, learned counsel for the petitioner submits that this was not the defence taken by the defendant in the Trial Court.

This submission qua the applicability of Order XXIII Rule 1 (4)

of the CPC is left open and the Trial court shall deal with it in view of the submissions and counter-submissions to be made by the parties.

Petition disposed of.

INDERMEET KAUR, J

FEBRUARY 25, 2016

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