

\$~3

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

CM(M) 541/2015 & C.M. Nos.10331-32/2015

FROLIC WALTER

..... Petitioner

Through

Counsel for the petitioner (appearance
not given.)

versus

MANISH GUPTA & ORS

..... Respondents

Through

None.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

%

04.04.2016

The petitioner is aggrieved by the order dated 23.01.2015 wherein the Appellate Court had reversed the finding of the Trial Judge and had held that the doctrine of res-judicata was not applicable; the suit having been dismissed on the plea of res-judicata was accordingly remanded back to the Trial Court for trial.

The impugned order suffers from no infirmity.

Section 11 of the Code of the Civil Procedure records the doctrine of res-judicata. Section 11 reads herein as under:-

“11. Res judicata.

No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such

issue has been subsequently raised, and has been heard and finally decided by such Court.

This provision specifically postulates that the hearing in the former suit must have been a hearing which is an adjudication on the merits of the controversy. In the instant case, as noted in the impugned order, the former suit had been dismissed on the ground of non-prosecution; evidence had not been led by the plaintiff. This was not a decision on merits. The principle of res-judicata was rightly declined by the impugned order. The matter not having been heard on merits, the question of the applicability of this doctrine was thus rightly held not to be applicable.

Petition is without any merit. Dismissed.

INDERMEET KAUR, J

APRIL 04, 2016

A