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

+ **FAO(OS) 170/2016 & CM APPL.21250/2016**

PREETI SEHGAL

..... Appellant

Through: Mr A. Maitri with Ms Radhika
Chandrashekhar, Advocates

versus

SARLA SEHGAL AND ANR

..... Respondents

Through: Mr Sachin Dutta, Senior Advocate with
Mr Bharat Bhushan and Ms Kanupriya
Tiwari, Advocates

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ORDER

% **02.08.2016**

We have heard the counsel for the parties.

This is an appeal against the order dated 03.05.2016 passed by a learned Single Judge of this court in CS(OS) 585/2011 whereby the plaint has been rejected under Order VII Rule 11 CPC for non-payment of deficient court fee.

Mr Maitri, appearing on behalf of the plaintiff/appellant submits that on 03.05.2016 he was in some personal difficulty and the appellant was present before the court in person and made a request for an adjournment. That request was refused by the learned Single Judge and the learned Single Judge took up the issue of alleged deficiency in court fee and concluded that the deficient court fee has not been paid and therefore rejected the plaint under Order VII Rule 11 CPC insofar as the plea with regard to the recovery of money was concerned. The learned counsel for the appellant submits that the plaint could not have been rejected in part in any event.

Mr Maitri also pointed out that earlier an application under Order VII Rule

11 CPC was filed by the respondents/defendants being IA No.9395/2013 on the very same ground of non-payment of deficient court fee. That application was withdrawn as a fresh application being IA No.17323/2013 was filed on the very same grounds. That application (IA 17323/2013) was also disposed of by an order dated 20.01.2016 as not pressed by the respondents/defendants. Therefore, according to Mr Maitri, no occasion arose for consideration of the plea of rejection of the plaint under Order VII Rule 11 CPC inasmuch as on 03.05.2016, on which date the impugned order was passed, there was no pending application under Order VII Rule 11 CPC.

Mr Dutta appearing on behalf of the respondents submits that IA 17323/2013 was not pressed because of the direction given in very same order and particularly in paragraph 15 thereof.

We are not entering into the controversy as to whether the deficient court fee has been paid or not paid. The point which we are concerned with is that on 03.05.2016 there was no pending application under Order VII Rule 11 CPC as the same had already been disposed of as not pressed. Therefore, in our view, it was not proper for the learned Single Judge to have taken up that issue particularly when there was no counsel representing the plaintiff/appellant. It cannot be expected of the litigant to answer to legal issues which may arise while considering the plaint under Order VII Rule 11 CPC and it is for this reason that the impugned order needs to be set aside and further opportunity ought to be given to plaintiff/appellant to address arguments on the plea of deficient court fee.

However, the impugned order is set aside only insofar as it deals with the consideration under Order VII Rule 11 CPC. The matter is remitted on this aspect to the learned Single Judge, who shall give an opportunity to the appellant to make good her submissions with regard to payment of alleged deficient court fee. We are making it clear that we have not commented upon the merits of the matter either way. It is entirely for the learned Single Judge to take a call on this issue.

We are also making it clear that we are also not interfering with the directions with regard to the preliminary decree.

The appeal stands disposed of in the above terms.

BADAR DURREZ AHMED, J

ASHUTOSH KUMAR, J

AUGUST 02, 2016

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