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

+ **CS(COMM) 754/2016 & IAs No.7604/2016 (u/O 39 R-1&2 CPC) & 7605/2016 (u/S 149 CPC)**

SURINDER JEET KAUR & ORS Plaintiff

Through: Mr. S.N. Kumar, Sr. Adv. with Mr. K.B. Soni, Adv.

Versus

S. PRITAM SINGH CHUGH & ORS Defendants

Through: None.

AND

CS(COMM) 756/2016 & IAs No.7611/2016 (u/O 39 R-1&2 CPC), 7612/2016 (u/S 149 CPC) & 7731/2016 (u/O 30 R-1 CPC)

SURINDER JEET KAUR & ORS Plaintiffs

Through: Mr. S.N. Kumar, Sr. Adv. with Mr. K.B. Soni, Adv.

Versus

GURPREET KAUR & ANR Defendants

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **16.09.2016**

1. The senior counsel for the plaintiffs in both the suits, in response to the order dated 8th July, 2016 raising queries as to the very maintainability of the suits and the claim therein being within time, states that instead of amending the plaint in both the suits and which amendment would be in overhaul of the plaint as already filed, the suits be dismissed as withdrawn and liberty be granted to the plaintiffs to sue again on the same cause of action.

2. The suits were listed along with applications under Section 149 of Code of Civil Procedure, 1908. As per the office report, there is still some deficiency in court fees.
3. The senior counsel for the plaintiffs, under instructions, states that deficiency in court fees in both the suits has already been made up.
4. The suits are dismissed as withdrawn with liberty to the plaintiffs to sue on the same cause of action, subject to the condition that the plaintiffs along with the new suits / proceedings, if any filed, will in the new suits / proceedings disclose the filing of the present suits and file along therewith the plaints in these two suits and the copies of the orders dated 8th July, 2016 and today's order in those new suits / proceedings.
5. The senior counsel for the plaintiffs invokes Section 16A of the Court Fees Act, 1870, as applicable to Delhi.
6. However the said Section 16A of the Act is applicable, only if the suits are settled. That is not the position in the present case.
7. The reliance on Section 16A of the Act is thus misconceived. However, in exercise of inherent powers and as held by the Division Bench of this Court in *Aya Singh Tirlok Singh Vs. Munshi Ram Atma Ram* 4 (1968) DLT 310, it is deemed appropriate to refund 50% of the court fees paid for each of the suits.
8. Accordingly, certificates entitling the plaintiffs to obtain refund of 50% of the court fees paid for each of the suits be handed over to the counsel for the plaintiffs.

RAJIV SAHAI ENDLAW, J.

SEPTEMBER 16, 2016/bs..
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