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

+ **CS(OS) 1154/2015**

SURESH

..... Plaintiff

Through: Mr. B.B.Bhatia, Advocate

versus

RAVITA & ORS

..... Defendant

Through:

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

22.01.2016

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O.A. No. 325/2015

This chamber appeal is directed against the order dated 07.08.2015 whereby the plaintiff's application for issuance of summons for judgment has been dismissed on the ground that summons were issued to the defendant as in an ordinary suit and not as a summary suit under Section 37 CPC vide order dated 27.04.2015.

Counsel for the plaintiff submits that the plaintiff has filed the present suit under Order 37 CPC and when summons were issued, the plaintiff's counsel was under the impression that summons have been issued in a summary suit in the prescribed form. He submits that upon service, defendant Nos. 1 and 2 even filed his memo of appearance by treating the suit under Order 37 CPC on 02.07.2015. Even defendant No. 3 has been served, however, no memo of appearance has been filed by her.

A perusal of the order dated 27.04.2015 shows that the learned Joint

Registrar while issuing summons to the defendants did not apply his mind as to why summons were issued as in an ordinary suit and not as in a summary suit under Section 37 CPC. There is no reason for not issuing summons in a summary suit under Order 37 CPC. Clearly, this is on account of oversight. Thus, merely because of a mistake committed by the Joint Registrar, the right of the plaintiff to pursue the present suit as a suit under Order 37 CPC cannot be taken away. At the same time, the defendants cannot be put to any disadvantage on account of the fact that they were misled as the summons issued to them do not appear to have been issued as a summary suit. It appears that defendant Nos. 1 and 2, from a perusal of the plaint served upon them, entered appearance by filing the memo of appearance by treating the suit as a summary suit. That does not appear to be the position with regard to defendant No. 3. In these circumstances, while allowing the appeal, I direct that the court to which the matter is transferred shall issue summons as in a summary suit to defendant No. 3 and also issue notice to defendant Nos. 1 and 2 before proceeding in the matter.

The chamber appeal stands disposed of.

CS(OS) NO. 1154/2015

In view of the notification No.2718/DHC/Orgl. dated 25.11.2015, issued under Section 4 of the Delhi High Court (Amendment) Act, 2015 (Act 23 of 2015), the present suit is transferred to the Court of the District Judge, Patiala House Courts, for further proceedings before the competent court on 03.05.2016.

VIPIN SANGHI, J

JANUARY 22, 2016

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