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

+ **FAO 415/2016**

RAJESH LUTHRA

..... Appellant

Through: Mr. Samar Singh Kachwaha,
Advocate

Versus

PHAFAG AG & ANR.

..... Respondents

Through: Nemo.

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER

29.08.2016

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**FAO 415/2016 & C.M.No. 31310/2016 & C.M.No. 31311/2016 &
C.M.No. 31312/2016 & C.M.No. 31313/2016**

In a suit for recovery of Rupees Forty Eight Lakh odd against first respondent, appellant-plaintiff's application under Order 39 Rule 1 & 2 CPC has been declined. The relief claimed against first respondent in this appeal infact comes with the domain of Order 38 Rule 5 CPC.

Learned counsel for appellant submits that application under Order 38 Rule 5 CPC is pending before the trial court since 4th August, 2016 and despite four hearings, the said application has not been heard and it is required to be heard and decided on priority, as there is real apprehension of first respondent, who is based in *Principality of Liechtenstein*, removing its assets from this country.

Since the relief claimed by appellant squarely comes within the

ambit of under Order 38 Rule 5 CPC, therefore, it is deemed appropriate to dispose of this appeal with direction to the trial court to prepone the date of hearing of the suit on or before 9th September, 2016 and to effectively dispose of the application under Order 38 Rule 5 CPC within four weeks from the date fixed and to pass appropriate orders thereon, if trial court chooses to issue notice to opposite side.

Needless to say that appellant would be at liberty to have recourse to law against the order passed in application under Order 38 Rule 5 CPC before the appropriate Forum, if need be.

With aforesaid directions, this appeal and applications are disposed of.

Dasti.

**(SUNIL GAUR)
JUDGE**

AUGUST 29, 2016

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