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

+ C.R.P. 146/2016

HARISH KUMAR KHUBANI & ORS Petitioners

Through: Mr. Sanjay Luthra, Advocate.

versus

RAJ KUMAR KHUBANI & ORS Respondents

Through: Mr. Rajesh Mahindru, Advocate for R-1 & 2
with R-1 in person.

Mr. Arun Birbal & Mr. Sanjay Singh,
Advocates for R-3/DDA.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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09.09.2016

C.R.P. No.146/2016 & C.M. Nos.33253-33255/2016

1. It has been pointed out by the learned counsel for the respondents that by the present impugned order the suit of the petitioner/plaintiff has been dismissed under Order VII Rule 11 CPC. Hence, an appeal under Section 96 CPC would be the remedy for the petitioner and not the present revision petition.

2. Learned counsel for the petitioners has relied upon the judgment of the learned Single Bench of this court passed in CM (M) No.68/2015 titled *Murari Lal vs. Madan Lal Moondra* dated 30.6.2015 to contend that the present petition is maintainable. A perusal of the said judgment shows that it was dealing with

a case where an application under Order VII Rule 11 CPC was dismissed. The court in para 6 of the said judgment observed that if an application is allowed, an appeal under Section 96 from an original decree would lie. Clearly the contention of the learned counsel for the petitioners is without merit.

3. At this stage, the learned counsel for the petitioner submits that he seeks to withdraw the present petition with liberty to file an appropriate appeal. He, however, submits that the petitioner *bona fide* believing that a revision petition lies, had presumed that the limitation period would be 90 days; however, for the appeal under Section 96 CPC, limitation period will be only 30 days.

4. Keeping in view the submissions of the petitioner, the present petition is dismissed as withdrawn granting leave and liberty to the petitioner to file an appropriate appeal under the Code. In case such an appeal is filed, the petitioner is granted liberty to urge the above noted contentions before the concerned court for seeking condonation of delay in filing the appeal.

5. With above observations, the present petition is dismissed as withdrawn.

JAYANT NATH, J.

SEPTEMBER 09, 2016
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