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

+ C.R.P. 211/2016 and CM Nos. 47553-55/2016

RAJENDER PRASAD Petitioner
Through Manish Garg, Advocate.

versus

SATYA NARAYAN Respondent
Through

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER
22.12.2016

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1. By the present petition filed under Section 115 CPC, the petitioner seeks to impugn the order dated 27.07.2016 by which an application under Order 7 Rule 11 CPC filed by the petitioner was dismissed.
2. In the application it was urged that the present suit is barred under Order 2 Rule 2 CPC as the respondent had also filed a suit for permanent injunction which was withdrawn without seeking liberty to present a fresh plaint. The trial court has dismissed the application holding that the relief claimed in the earlier suit and in the instant suit are different and hence, rejection of the plaint at the threshold would lead to miscarriage of justice.
3. In my opining, this issue should have been pressed by the petitioner at the time of final adjudication of the matter.
4. At this stage, learned counsel for the petitioner submits that issues have already been framed and no issue has been framed about the suit being

barred under Order 2 Rule 2 CPC.

5. In view of the above, the petitioner is granted liberty to file an appropriate application under Order 14 Rule 5 CPC requesting for framing of a preliminary issue on this account. In case such an application is filed, the trial court may deal with the same in accordance with law.

6. With the above observations, the petition stands disposed of.

7. All pending applications also stand disposed of.

JAYANT NATH, J

DECEMBER 22, 2016

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