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

+ **FAO 528/2016**

BIBO DEVI

..... Appellant

Through Mr. H.C. Kharbanda and Mr. T.N.
Saxena, Advocates

versus

RAM PRAKASH AND ORS

..... Respondent

Through None

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

ORDER

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11.11.2016

CM No.41959/2016 (exemption)

Allowed subject to just exceptions.

Application stands disposed of.

FAO 528/2016 & CM No. 41958/2016 (interim ex parte order)

Challenge in this appeal under Order 43 Rule 1(r) CPC is against the order dated 19th September, 2016 passed by the learned Additional Sessions Judge whereby summons of the suit has been ordered to be issued to the defendant returnable on 5th December, 2016.

Counsel for the appellant submits that application u/O 39 R. 1 & 2 CPC was also moved, however, no order has been passed on the said application meaning thereby that the said application has been dismissed. This submission is not fortified by the order dated 19th September, 2016 passed by the learned Additional Sessions Judge which for the sake of convenience is reproduced as below:-

"Fresh suit received by way of assignment. It be checked and registered as per rule.

Present: Sh. R.K. Yadav, Advocate for plaintiff

Issue summons of suit to the defendants vide P.F. & R.C. Courier and Dasti for 05.12.2016.

At this stage copy of order dated 18.07.2016 in CS No. 14582/16 [180/16] is placed on record."

It seems that the application u/O XXXIX Rule 1&2 CPC was not pressed at that time. Under the circumstances, it will be open to the appellant to move appropriate application before the learned Trial Court for consideration of this application. That being so, learned counsel for the appellant seeks liberty to withdraw the appeal.

The appeal is accordingly dismissed as withdrawn.

SUNITA GUPTA, J

NOVEMBER 11, 2016

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