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

+ RFA (OS) 98/2015, CM APPL.23448/2015

ABDUL RASHID Appellant

Through: Mr. Neeraj Yadav, Advocate.

versus

DELHI WAQF BOARD Respondent

Through: Mr. Wafeeh Shafia with Ms. Ekta Verma, Advocate for respondent/Delhi Waqf Board.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

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02.02.2016

The present appeal is directed against the impugned judgment and order of the learned Single Judge who dismissed the suit at the very first hearing. The ground for dismissal was that the mandatory provisions under Order I Rule 9 CPC were not complied with. Counsel for the respondent who appears submits that even though the suit is apparently dismissed, the observations made in the course of the impugned judgment have lasting impact and have been made without considering the documents or hearing the contentions of the parties. It was submitted that if the observations are allowed to stand, they would adversely affect the rights of the respondents in possible future proceedings as well.

Counsel for the appellant submits that having regard to the fact that the suit was dismissed for non-compliance with Order I Rule 9, CPC, this Court may consider granting leave to file a fresh suit after duly complying with the said provisions. Counsel for the respondents has no objection to this course.

In these circumstances, it is open to the appellant to file a fresh suit after duly complying with the mandatory provisions of law. Observations with respect to the nature and legal character of the property in question shall not be deemed concluded on the merits and shall not bind the respondents/defendants. It is open to the said party to raise all objections as are available in law on merits including as to the maintainability of the fresh suit on other grounds as well.

The impugned judgment is clarified and duly modified to the above extent with leave to the appellant to file fresh suit.

The appeal is dismissed but in the above terms.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

FEBRUARY 02, 2016

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