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

+ **FAO 30/2017**

RADHEY SHYAM GUPTA

..... Appellant

Through: Mr. R.S. Kela and Mr. Sanjeev
Bindal, Advocates.

versus

TATA POWER DELHI DISTRIBUTION LTD

..... Respondent

Through: Mr. Manish Kumar Srivastava,
Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

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26.07.2017

1. This first appeal is filed under Order 43 Rule 1 (u) CPC against the order of the first appellate court dated 29.9.2016 which has directed the trial court to decide all issues instead of dismissing the suit only with respect to decision on issue nos. 3 and 4 in the suit.

2. It is trite in view of Order 14 Rule 2 CPC that the court must decide all issues unless a preliminary issue was framed which was a legal issue and which affected the jurisdiction of the court. In this case no preliminary issue was framed and the suit went to trial and

both the parties led evidence. The judgment of the trial court dated 27.3.2015 was passed at the stage of final arguments in the suit after evidence was led by both the parties.

3. In view of the above, no fault can be found with the judgment of the first appellate court dated 29.9.2016, however, it is clarified as per the request made on behalf of the appellant/plaintiff that when the trial court will now pass a fresh judgment in accordance with the remand order dated 29.9.2016 of the first appellate court then in case the appellant/plaintiff still fails, then the appellant/plaintiff should be allowed to challenge the judgement now to be passed by the trial court deciding all issues by even challenging the issue nos. 3 and 4 which were decided by the judgment dated 27.3.2015. There cannot be any quarrel to this preposition as put forth by the appellant because once by the remand order a fresh judgment will be passed, that is the judgment which will be subject to appeal including with respect to decisions on issue nos. 3 and 4, and appellant is not in any manner legally prohibited or stopped to challenge the judgment if it goes against him with respect to all issues which would be decided in the

suit against the appellant/plaintiff.

4. The appeal is accordingly disposed of with the aforesaid observations.

VALMIKI J. MEHTA, J

JULY 26, 2017

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