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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of hearing and Order: 19th September 2017.

+ RFA 73/2007
R.VAITHIYANATHAN

..... Appellant

Through: Mr. M.A. Niyazi, Advocate

versus

D.D.A. & ORS.

..... Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI
ORDER
% 19.09.2017
P.S. TEJI, J. (ORAL)

1) Aggrieved by the judgment and decree passed by the Additional Sessions Judge dated 29.09.2006 the appellant has preferred the present appeal.

2) During the course of arguments, it has been submitted that the suit is not maintainable without grant of exemption under Section 53-B of the Delhi Development Act. It has been submitted by counsel for the appellant that one application being I.A. No.1052/1997 was filed in the High Court at the time of filing the original suit, on which notice was directed to be issued vide order dated 04.02.1997. Subsequently, suit was transferred to the court of District Judge and this matter was heard and tried by the court below.

3) Admittedly, the compliance of Section 53-B is mandatory before filing the suit against the Delhi Development Authority.

Counsel for the appellant has submitted that the DDA had filed the application in the Original Suit, being I.A. No.1052/1997, which has not yet been decided. He further submits that the matter may be remanded back to the trial court to decide the issue of maintainability of the suit, vis-à-vis the pendency of application I.A. No.1052/1997.

4) Agreeing with the request made by counsel for the appellant, the present appeal filed by the appellant is disposed of with direction that the suit is remanded back to the court below to decide the I.A. No.1052/1997 and the issue with regard to maintainability of the suit in the light of Section 53-B of the Delhi Development Act. The learned District Judge shall try the matter himself or shall assign the same to some other competent court for decision.

5) Appellant is directed to appear before the learned District Judge on 15th November 2017 for further directions.

6) The trial court record be sent back alongwith order passed in this appeal.

7) It is made clear that the order passed in the present appeal would not debar the appellant to file a fresh appeal against the decision of the trial court.

8) With aforesaid directions, the appeal stands disposed of as such.

P.S.TEJI, J

SEPTEMBER 19, 2017
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