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

+ **FAO(OS) 468/2010**

RAMINDER SARUP SINGH DECD THRU LRS Appellant
Through: Mr. I.S. Alag, Senior Advocate with
Mr. J.S. Lamba, Advocate.

versus

GOVINDER SINGH Respondent
Through: Mr. M.S. Ahluwalia, Advocate with
respondent in person

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER
% **10.10.2017**

1. The appellant, one of the four successors-in-interest of Sardarni Raminder Sarup Singh, who was the plaintiff in CS(OS) 3403/1991, has filed the present appeal, being aggrieved by an order dated 7.5.2010, passed by the learned Single Judge dismissing an application that was originally filed by his mother, impugning a consent decree dated 25.11.1993, passed in CS(OS) 3403/1991.

2. It is worthwhile to note that during the pendency of the aforesaid application (I.A. No. 6903/1996), the mother had expired on 29.11.2005, leaving behind four legal heirs and the appellant was brought on record as her legal representative. By the impugned order, the learned Single Judge

rejected the objections raised by the respondent with regard to the maintainability of the said application and then proceeded to dismiss the said application on merits on the ground that the appellant could not establish that any 'coercion' and 'undue influence' was exerted by the defendant/respondent on the mother of the parties. Before parting with the case, it was specifically observed in the impugned order that any observations made therein shall not come in the way of disposal on the merits of CS(OS) 973/1994, instituted by the appellant and CS(OS) 265/2008, instituted by the respondent.

3. We are informed by learned counsels that the trial in CS(OS) 973/1994 is over and the said suit is now listed for final arguments on the original side of this court, on 16.11.2017. As for CS(OS) 646/2008 instituted by the respondent, pleadings therein have yet to be completed even after the passage of almost a decade.

4. On an earlier date, we had enquired from learned counsel for the appellant that having regard to the fact that a specific issue has been framed in CS(OS) 973/1994 with regard to the compromise filed in CS(OS) 3403/1991 being null and void and not binding on the appellant (plaintiff in the suit) and another issue was framed with regard to the judgment and decree dated 25.11.1993, passed in CS(OS) 3403/1991 being null and void and not binding on the appellant, whether he would like to press this appeal any further. This is all the more so when the impugned order has safeguarded the interest of both sides in the captioned suits, instituted by the parties.

5. Mr. Alag, learned Senior Advocate appearing for the appellant submits that the appellant has an apprehension that if the present appeal is not decided on merits, then it may give a handle to the respondent to urge before the Single Judge during the arguments to be addressed in CS(OS) 973/1994 that the appellant is barred from taking the plea of coercion and undue influence and for seeking a declaration in respect of the compromise that was arrived at between the mother of the parties and the respondent in CS(OS) 3403/1991

6. If the appellant has made averments of undue influence and/or coercion in the plaint and issues have been framed on the above lines and thereafter, evidence led by him to prove the same, then it shall be for the learned Single Judge in the captioned suit to decide the same by returning appropriate findings on the issues so framed.

7. Learned counsel for the appellant states that specific pleas on the above lines have been taken by the appellant in the suit plaint and ample evidence led on the issues framed. He seeks leave to withdraw the present appeal while reserving the right of the appellant to pursue the suit instituted by him against the respondent.

8. Mr. Ahluwalia, learned counsel for the respondent disputes the submission made by learned counsel for the appellant as above and submits that appellant has not made any averments in the plaint with regard to undue influence and coercion allegedly exercised by the respondent on the deceased mother of the parties and nor has any evidence been led on this aspect.

9. We decline to examine the said aspect in this appeal. It is left to the learned Single Judge to decide the suit instituted by the appellant in terms of the issues framed therein, in accordance with law.

10. Leave as prayed for is granted to the appellant and the appeal is disposed of.

HIMA KOHLI, J

DEEPA SHARMA, J

OCTOBER 10, 2017

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