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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO(OS) 163/2016 & CM Nos. 20157/2016 (stay) & 22736/2016 (stay)**
AJIT GANPATLAL SHAH Appellant
Through Mr. Vanshdeep Dalmia, Advocate.

versus
ASHOK SHAH & ANR Respondents
Through Ms. Sumedha Dua, Advocate for respondent No. 1.
Mr. Rajiv Shankar Dwivedi, Advocate for respondent No. 2.

CORAM:
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL
HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER
% **03.11.2017**

Learned counsel appearing on behalf of the respondent No. 1, on instructions from Mr. Prashant Shah, SPA of Mr. Ashok Shah/respondent No. 1, states that although they have annexed a notarised copy of the original will on which they rely on record, they do not have the original of the same in their power and possession.

In view of the above submission made on behalf of the respondent No. 1, learned counsel appearing on behalf of the appellant states that he would not press this appeal, in the event, this Court were to reiterate the findings returned by the learned Single Judge in the impugned order dated 2nd March, 2016, which observes as follows:-

“9. It would, thus, appear that the aforesaid decision relied upon by the applicant goes against the submissions advanced by the applicant, and does not support his case. The plaintiff has not impleaded the applicant as a party defendant, since it is not necessary for the plaintiff to bind the applicant with the decision that may be rendered in the present suit, as the relief is directed against the defendant occupant alone. For the determination of the issues that may arise in the present suit directed against the defendant, it is not necessary to have the presence of the applicant to effectually and completely adjudicate the said issues. The applicant cannot claim that he is legally interested in the present action. He also cannot claim that the present litigation may lead to a result which will affect him legally, i.e. by curtailing his legal rights. If the applicant has his own cause of action, it is for him to prosecute the same independently.”

In other words, it is urged that the outcome of the subject suit would not be binding on the appellant.

Learned counsel appearing on behalf of the respondent No. 1 states that the clarification sought on behalf of the appellant is otiose, in view of the circumstance that the learned Single Judge has clearly observed so in the above-mentioned paragraph.

In view of the foregoing, the appeal is dismissed as withdrawn whilst reiterating the findings recorded in the paragraph 9 of the impugned order dated 2nd March, 2016. Pending applications also stand disposed off.

Needless to state that the parties are at liberty to prosecute independent proceedings *inter se*, if any, in accordance with law.

SIDDHARTH MRIDUL, J

DEEPA SHARMA, J

NOVEMBER 03, 2017/rs