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

+ **FAO(OS) 93/2017, CM APPL. No.12368/2017**

ABHA GUPTA & ANR.

..... Appellants

Through: Mr. Arvind Nigam, Senior Advocate with
Ms. Manali Singhal, Mr. Prosnjeet Banerjee,
Mr. Mikhil Sharda, Mr. Rohit Kaul,
Mr. Deepak Singh Rawat, Ms. Vinita
Saidharan and Ms. Princy Ponan, Advocates.

versus

RASHMI NAGRATH & ORS.

..... Respondents

Through: Mr. Manish Sharma, Advocate for
respondent No. 1 to 3.
Mr. Jeenesh Nagrath, Advocate for
respondents No. 4, 6 and 7.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER

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29.05.2017

1. The appellants/plaintiffs are aggrieved by the order dated 16.03.2017 passed in CS(OS) No. 239/2017 instituted by them for partition and permanent injunction in respect of premises No.2 Tolstoy Marg, New Delhi.
2. Mr. Nigam, learned Senior Advocate appearing for the appellants states that the present suit was adjourned *sine die* vide order dated 29.10.2011, in view of the joint submissions made by the learned counsel for the parties that SLP No.2213/2009 (filed by the respondent Nos.1, 2 and 3) was pending adjudication before the Supreme Court. On the said date, two applications were listed for consideration before the learned Single Judge i.e. IA No.2008/2009, filed by the appellant/plaintiff under Order VI Rule

17 CPC and IA No. 2272/2008, filed by the respondents No.4, 6 and 7 under Order VII Rule 11 CPC. The said applications were also disposed of as not pressed by the respective parties with liberty granted to them to file fresh applications, if required, when the suit would be finally heard and disposed of.

3. Under the impugned order dated 16.03.2017, noting that the two SLPs, one filed by the respondent Nos.1, 2 and 3 (SLP No.2213/2009) and the other filed by the respondent Nos.5 and 8 (SLP No.2587/2009), are still pending in the Supreme Court, and there was no reason given in the order dated 29.11.2010, whereby the suit was adjourned *sine die*, the learned Single Judge has opined that there was no ground to adjourn the suit. Instead, counsel for the appellants/plaintiffs were called upon to satisfy the Court about the maintainability of the said suit and the case was adjourned to 26.04.2017.

4. Aggrieved by the aforesaid order, the appellants have filed the present appeal. Learned counsel submits that a request was made to the learned Single Judge to defer the hearing in the suit to a date after 26.05.2017, as the present appeal was directed to be listed on the said date. However, on 26.05.2017, the appeal was transferred to another Bench and that is how it has been listed before this Court today.

5. Learned counsel for the parties jointly state that though the appeals pending before the Supreme Court were directed to be listed for final arguments by the Registrar of the Supreme Court during the summer vacations, they were subsequently deleted from the causelist on a request received from the counsel for the contesting parties, details whereof are not readily available with them.

6. We are further informed that the suit is listed before the learned Single Judge today itself, for hearing arguments on its maintainability.

7. Mr. Nigam, learned Senior Counsel appearing for the appellants states that the appellants will suffer irreparable loss and injury if they are called upon to address arguments on the maintainability of the suit without first being permitted to file an application under Order VI Rule 17 CPC, for seeking amendment of the original plaint.

8. We may note that before passing the impugned order dated 16.03.2017, the learned Single Judge had passed an order on 19.12.2016, calling upon the parties to come prepared and answer as to why the suit proceedings ought to be adjourned *sine die* to await the outcome of the pending SLPs before the Supreme Court. That was a sufficient hint to both sides to take appropriate steps to file fresh applications, when they knew that their earlier applications stood disposed of vide order dated 29.11.2010. Despite the same, neither did the appellants file an application for seeking amendment of the plaint in the suit nor did the respondents file an application asking for rejection of the plaint.

9. Be that as it may, as learned counsel for the parties states today that the appellants/plaintiffs shall be filing an application under Order VI Rule 17 CPC for seeking amendment of the plaint at the earliest and a similar assurance is given by learned counsel for the respondent Nos.4, 6 and 7 that a fresh application under Order VII Rule 11 CPC shall be filed, we deem it appropriate to dispose of the present appeal with a request to the learned Single Judge to defer hearing arguments on the maintainability of the suit listed today, to enable both sides to file the applications. The said applications shall be filed by the parties within four weeks while exchanging

copies to each other. Pleadings in respect of the applications shall be completed by the parties well in time so that arguments can be addressed on the date that may be fixed by the learned Single Judge in the suit.

10. Accordingly, the present appeal is disposed of along with the pending application.

HIMA KOHLI, J

SANGITA DHINGRA SEHGAL, J

MAY 29, 2017

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