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

+ **FAO 284/2016 & CM No. 22536/2016**

SARLA DEVI JAISWAL Appellant
Through: **Mr. Ankit Jain, Adv.**

versus

VIMAL JAISWAL Respondent
Through: **Mr. Rajesh Yadav and Ms. Ruchira Arora, Advocates.**

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER
% **10.08.2017**

1. This appeal is disposed of with the consent order that the impugned judgment dated 20.2.2016 remanding the suit for fresh decision to the trial court is set aside and it is observed that the first appellate court will now decide the first appeal on merits as per the record of the trial court. It is noted that as per Order 41 Rule 24 CPC once the record of the trial court is complete, the first appellate court has no power to remand the matter and remand is only permissible under Order 41 Rule 23 CPC when the suit is only decided on a preliminary issue or when fresh evidence has to be led/re-trial is necessary as provided under Order 41 Rule 23A CPC.

2. I however make it clear that I have not observed in any manner one way or the other, for or against any of the parties to the suit with respect to the merits of the cases of the respective parties, and all aspects which were in issue before the trial court, and resulting in the judgment of the trial court dated 18.10.2014 which is challenged before the first appellate court, will be decided by the appellate court in accordance with law.

3. The appeal is disposed of accordingly.

4. Parties to appear before the District and Sessions Judge (North East), Karkardooma Courts, Delhi on 4.9.2017 and the District and Sessions Judge will mark the first appeal for disposal to a competent court in accordance with law.

5. The records of the trial court and the first appellate court be sent back so that the same are available to the District and Sessions Judge on the date fixed.

VALMIKI J. MEHTA, J

AUGUST 10, 2017

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