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

+ CM(M) 512/2017

SURESH KIRAR

..... Petitioner

Through: Mr.Raj Kumar & Ms.Kalyani Lal,  
Advocates

versus

PREM SAGAR & ANR

..... Respondents

Through: None

**CORAM:**

**HON'BLE MS. JUSTICE PRATIBHA RANI**

**ORDER**

% **12.05.2017**

CM(M) 512/2017

1. The petitioner has invoked the extraordinary jurisdiction of this Court under Article 227 of the Constitution of India impugning the order dated 21<sup>st</sup> April, 2017 passed by learned Additional District Judge, Saket in RCA No.12/2017 and order dated 2<sup>nd</sup> May, 2017 passed by learned Additional District Judge, Tis Hazari Court with the prayer to direct/determine the competent Court to hear the first appeal filed by the petitioner against the order dated 6<sup>th</sup> March, 2017 in M.No.629880/2016 and judgment/decreed dated 25.04.2016 in Civil Suit No.417/1995 passed by learned Civil Judge, Tis Hazari, Delhi.

2. On 5<sup>th</sup> May, 2017, this Court has passed the following order:-

*“1. The petitioner has invoked the extraordinary jurisdiction of this Court under Article 227 of the Constitution of India impugning the order dated 21<sup>st</sup> April, 2017 passed by learned*

*Additional District Judge, Saket in RCA No.12/2017 and order dated 2<sup>nd</sup> May, 2017 passed by learned Additional District Judge, Tis Hazari Court with the prayer to direct/determine the competent Court to hear the first appeal filed by the petitioner against the order dated 6<sup>th</sup> March, 2017 in M.No.629880/2016 and judgment/decree dated 25.04.2016 in Civil Suit No.417/1995 passed by learned Civil Judge, Tis Hazari, Delhi.*

2. *Learned counsel for the petitioner has submitted that the petitioner herein was the defendant in Civil Suit No.417/1995 which was filed at the time when Civil Courts were functioning only at District Court, Tis Hazari, Delhi. The judgment in the said civil suit has been pronounced on 25<sup>th</sup> April, 2016 i.e. after bifurcation of Delhi in eleven judicial districts.*

3. *Learned counsel for the petitioner has further submitted that the first appeal bearing RCA No.12/2017 against the judgment and decree dated 25<sup>th</sup> April, 2016 was filed in District Court, Saket. However, the learned Additional District Judge-05, South District, Saket, while referring to Section 96 of Code of Civil Procedure, asked the petitioner to withdraw the said appeal and file the same in District Court, Tis Hazari, Delhi. Thereafter the petitioner filed the first appeal registered as RCA DJ No.71/2017 at District Court, Tis Hazari, Delhi where also his appeal was not entertained in view of the Notification No.5/Delhi High Court/Gaz./G-1/VI.E2(a)/2013 dated 19<sup>th</sup> February, 2013.*

4. *Learned counsel for the petitioner has submitted that warrants of possession in respect of the suit property have already been issued and though first appeal is a matter of right of the petitioner/judgment debtor, he has been rendered forum less and is also facing threat of being dispossessed.*

5. *The copies of the order dated 21<sup>st</sup> April, 2017 passed by learned Additional District Judge-05, South District, Saket and order dated 2<sup>nd</sup> May, 2017 passed by learned Additional District Judge-04, West District, Tis Hazari, Delhi have been placed on record at page No.108 and page Nos.110-111 respectively of this petition.*

6. *The order dated 21<sup>st</sup> April, 2017 reads as under:-*  
*'21.04.17*

*Fresh appeal received by way of assignment. It be checked and registered.*

*Present: Appellant in person.*

*Appellant submits that he wishes to withdraw the present appeal with liberty to file fresh with say that impugned judgment and order passed by Ld.Civil Judge, West District but due to some misconception/misinformation appeal has been filed in South District.*

*Request allowed.*

*The present appeal is dismissed as withdrawn with liberty to file appeal afresh before Court having competent jurisdiction.*

*File be consigned to record room.*

*Copy of order be given dassti.*

*Sd/-*  
*ADJ-05/South/Saket*  
*21.04.17'*

7. *The order dated 2<sup>nd</sup> May, 2017 is extracted as under:-*  
*'02.05.2017*

*Present :* *Sh. Raj Kamal, Advocate for the*  
*appellant along with appellant.*  
*Sh. Deeapak Gupta, Advocate for the*  
*respondent along with respondent.*

*Ld. counsel for the respondents submits that this Court has no territorial jurisdiction to try the*

*present appeal as the suit property is located in Malviya Nagar, New Delhi. Per contra, ld. counsel for the appellant submits that the appellant had initially filed the appeal before the South District, Saket Courts, New Delhi and on pointing out by Ld. ADJ, South District, Saket Court, New Delhi that it has no territorial jurisdiction to try the present appeal, the appellant withdrew the present appeal with liberty to file the same before the Court having competent jurisdiction.*

*Ld. counsel for the appellant further submits that as the present appeal has arisen out of the suit which was filed and decided by the Court of Ld. Civil Judge, West District, Delhi, this Court has territorial jurisdiction to try the present appeal being the concerned District. In response to the same, ld. counsel for the respondents has drawn attention of this Court to the order of Hon'ble High Court of Delhi bearing No.05/DHC/Gaz./G-1/VI.E2(a)/2013 dated 19.02.2013, as per which, fresh cases are directed to be filed in accordance with the jurisdiction assigned to the respective Courts. Note4 of the aforesaid order dated 19.02.2013 is reproduced hereunder as:*

*“4. Fresh cases or matters shall be presented to, filed in or allocated in accordance with the jurisdiction assigned to the respective courts.”*

*Perusal of the order dated 21.04.2017 passed by Ld. ADJ, South District, Saket Court, New Delhi shows that the appellant has himself withdrawn the appeal with liberty to file it before the Court having competent jurisdiction. However, in view of the Note4 of the aforesaid order of Hon'ble High Court of Delhi dated 19.02.2013, this Court has no territorial jurisdiction to proceed with the present appeal as the suit property is located in Malviya Nagar, New Delhi and the fresh cases are to be filed in accordance with the jurisdiction. Accordingly, the*

*present appeal is returned in original alongwith the documents to the appellant to be filed before the appropriate Court.*

*Considering the urgency shown in the present matter, Ahlmad is directed to return the original appeal along with the documents filed by the appellant, if any, after retaining the true copy of the same today itself.*

*File be consigned to the Record Room.*

*Copy of this order be given dasti, as prayed for.*

*Sd/-*

*ADJ04, WEST DISTRICT  
DELHI/02.05.2017'*

8. *In the given circumstances, Registry is directed to place on record the copy of the notification governing the subject regarding the jurisdiction of the Appellate Court where the appeal would lie in respect of the cases pending in Tis Hazari Court prior to bifurcation of Delhi in eleven judicial districts but decided after bifurcation.*

9. *List on 9<sup>th</sup> May, 2017.*

10. *Till next date of hearing, warrants of possession shall not be executed in respect of the suit property.*

11. *As prayed, copy of the order be given dasti to learned counsel for the petitioner under the signature of Court Master."*

3. On 9<sup>th</sup> May, 2017, Registry requested more time to submit the report and thereafter, the matter was adjourned for today i.e. 12<sup>th</sup> May, 2017.

4. Today, report has been received from the Registry which is to the following effect:-

*“Pursuant to direction of the Hon'ble Court, the undersigned has spoken to the District & Sessions Judge (HQ), Delhi today, who has informed that as per practice being followed the appeals against the judgment/decrees in the suits which were filed before bifurcation of NCT of Delhi into 11 separate districts and decided after such bifurcation are being filed in the district where the territorial jurisdiction lies i.e. where the subject matter of the suit situate.*

*Sd/-  
(Registrar General)”*

5. In view of the situation being clarified, the petitioner can file the appeal in the district having territorial jurisdiction over the subject matter.
6. The petition is disposed of.
7. A copy of this order be given dasti under the signature of the Court Master.

CM No.17262/2017

Dismissed as infructuous.

**PRATIBHA RANI, J.**

**MAY 12, 2017**

*‘pg’*