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

+ C.R.P. 158/2016 & CM No.34465/2016 (for stay)

RAHIMUDDIN Petitioner

Through: Mr. S.H. Nizami, Adv.

Versus

SHAHEEN PARVEEN @ SHEHNAZ PARVEEN Respondent

Through: Mr. Sukhbir Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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06.09.2017

1. This proceeding, initially filed as second appeal and numbered as RSA No.279/2016 and ordered on 20th September, 2016 to be converted into a Revision Petition under Section 115 of the Code of Civil Procedure, 1908 (CPC), impugns the order dated 10th May, 2016 in RCA No.58/2015 (UID No.02401C0403752015) of the Court of Additional District Judge-II (Central District), Tis Hazari Courts, Delhi allowing the appeal under Order XLIII Rule 1(d) of CPC filed by the respondent against the order dated 1st June, 2015 in M No.25A/2014 of the Court of Civil Judge-11 (Central), Tis Hazari Courts, Delhi of dismissal of the application filed by the respondent under Order IX Rule 13 of CPC for setting aside of the *ex-parte* judgment and decree dated 4th August, 2014 in Civil Suit No.501/13/11 (UID No.02401C0559472011) of the Court of Civil Judge-11 (Central District), Tis Hazari Courts Delhi; resultantly, the application under Order IX Rule 13 CPC has been allowed and the *ex-parte* judgment and decree dated 4th August, 2014 set aside and the respondent given an opportunity to contest the suit.

2. This petition was entertained and notice thereof ordered to be issued.

3. The counsels have been heard.
4. There being no order in this proceeding of stay of proceeding in the suit pursuant to the order impugned, the proceedings in the suit, are underway.
5. During the hearing, it has been informed that the respondent, in execution of the *ex-parte* decree, has deposited the decretal amount in the Executing/Suit Court and which is lying deposited.
6. After hearing the counsels, it is deemed appropriate to dispose of this petition by directing that the decretal amount lying deposited in the Executing Court together with interest accrued thereon be released in favour of the petitioner/plaintiff on the condition that the petitioner/plaintiff undertakes to this Court to, in the event of the suit being dismissed or being decreed for a lesser amount, within thirty days thereof and subject to further order, if any in appeal thereagainst, refund to the respondent/defendant the amount so received/received in excess, together with interest @ 8% per annum from the date of receipt till the date of refund.
7. The counsel for the petitioner/plaintiff on behalf of the petitioner/plaintiff furnishes such undertaking to this Court.
8. Cautioning the petitioner/plaintiff through counsel, of the consequences of breach of undertaking given to the Court, the said undertaking is accepted and the petitioner/plaintiff is ordered to be bound thereby.
9. The petition is thus disposed of in terms of above.

No costs.

RAJIV SAHAI ENDLAW, J.

SEPTEMBER 06, 2017/bs..

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