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

+ RSA 43/2017

NOTI

..... Appellant

Through: Mr.K.S.Singh, Mr.Rahul &
Ms.Tripta, Advocates

versus

SCINDHIYA POTTERIES & SERVICES (PVT) LTD..... Respondent

Through: None

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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08.02.2017

RSA 43/2017

1. The appellant, who was impleaded as defendant in Civil Suit No.29/91, has questioned the legality of the order dated 22nd July, 2016 whereby the First Appellate Court set aside the findings of the learned trial Court on the issue of valuation of the suit for the purpose of Court fee and jurisdiction that the valuation being ₹5,25,000/-, was beyond the pecuniary jurisdiction of the learned trial Court and ordered the return of the plaint for presentation before the Court having the jurisdiction.

2. In view of the finding by the learned Trial Court on the issue of valuation of the suit to be beyond the pecuniary jurisdiction of the learned Civil Judge, though the parties have led their evidence on all issues, no finding was given on the other issues.

3. Vide impugned order dated 27th July, 2016, the First Appellate Court

by the common judgment disposed of the appeals being RCA No.47/16/06 and RCA No.48/16/06 and set aside the finding on issue no. 2 on valuation of the suit for purpose of Court fee and jurisdiction observing as under:-

*“23. One has to keep in mind the valuation to be ascertained is for court fees and jurisdiction, therefore, factors to be kept in mind in ascertaining such valuation will be different than factors to be kept in mind for ascertaining the valuation for payment of stamp duty, for ascertaining the acquisition award etc. Market value within the meaning of section 7(v) of Court Fee Act should be taken as given by the plaintiff on the face of it unless contrary is proved by the defendant for leading cogent evidence to show that valuation given is not proper. In the present case, as it has been noted earlier defendant has not led any evidence, therefore I find that finding of the trial court to conclude that valuation for the purpose of court fee is Rs.5,25,000 being on the outer limit of the valuation as given by PW2, is legally incorrect and unsustainable. **While deciding the issue I find that valuation as given in the plaint will be deemed to be correct for want of any contrary evidence from the side of defendant. Therefore, while I decide this issue by holding that suit was properly valued for the purpose of court fee and jurisdiction.***

24. Since Trial Court has failed to give its findings on all the other issues as enumerated above, therefore, I find that present case is completely covered under order 41 Rule 23 CPC and therefore, matter is liable to be remanded back to the Trial Court for deciding all the issues in both the suits on the basis of evidence already recorded. Therefore, while setting aside the impugned judgment matter is being remanded to the ld. Sr. Civil Judge with the directions for either keeping these matters with himself or to assign to any other Civil Judge under his jurisdiction for deciding all the issues in these two matter in the light of findings given by this court, as early as possible preferably

within six months from today as matter is already very old and pertains to year 1991. With these directions appeal stands disposed off. Matter is being remanded back to the court of Ld. Sr. Civil Judge through Ld. District and Sessions Judge.”

4. This being the second appeal, the question as to whether the valuation of the suit for purpose of Court fee and jurisdiction given by the plaintiff is correct in the absence of any evidence led to the contrary by the other side does not give rise to any substantial question of law.

5. Since the issue relating to valuation of the suit for purpose of Court fee and jurisdiction has been decided at the final stage when the evidence has already been concluded, after interfering with the findings of learned Trial Court on that issue, the First Appellate Court had no option but to remand the case to the learned trial Court to decide all the issues on the basis of evidence led by the parties.

6. In view of the above, no substantial question of law is raised in this appeal.

7. The appeal is dismissed.

CM No.4578/2017

Dismissed as infructuous.

PRATIBHA RANI, J.

FEBRUARY 08, 2017

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