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

+ CM(M) 1226/2016 & CM Nos.44195-96/2016

VINOD KUMAR Petitioner

Through Mr.Daleep Dhayani, Advocate

versus

PREM WATI & ORS Respondents

Through Mr.S.C.Singhal, Advocate

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **10.01.2017**

1. By the present petition filed under Article 227 of the Constitution of India, the petitioner seeks to impugn the order dated 14.09.2016 by which his application under Order 14 Rule 5 CPC for framing of additional issues was dismissed.
2. The petitioner sought framing of the following additional issues:
 - “1. Whether the counter claim of the defendant is barred by time? OPD.
 2. Whether the counter claim of the defendant is barred by Order 2 Rule 2 of CPC? OPD.”
3. So far as the proposed issue No.1 is concerned, the learned counsel for the petitioner agrees that it is covered by the issues already framed. As far as the proposed issue No.2 is concerned, the contention of the learned counsel for the petitioner is that the respondents earlier had also filed a counter claim making similar averment and that the counter claim was withdrawn without liberty to file a fresh counter claim. Hence, he submits

that the counter claim filed by the respondents is barred under Order 2 rule 2 CPC.

4. Needless to say that the petitioner is obviously quoting the incorrect position of law and what he wants to say is that the suit is barred under Order 23 Rule 1(4) CPC.

5. Granting leave and liberty to the petitioner to file appropriate application before the trial court for framing of additional issues about the suit allegedly barred under Order 23 Rule 1(4) CPC, if he so desires, the present petition is disposed of.

6. In case, such application is filed by the petitioner before the trial court, the trial court may adjudicate upon it as per law uninfluenced by observation made by this court in the present petition.

7. All the pending applications are also disposed of.

JAYANT NATH, J.

JANUARY 10, 2017/v