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

+ **TR.P.(C.) 158/2016**

ANITA SHAH

..... Petitioner

Through: Mr. Anuj Jain, Adv.

Versus

ANIL GAMI & ANR

..... Respondents

Through: Mr. Pravir K. Jain, Adv.

AND

CM(M) 393/2017

ANITA SHAH

..... Petitioner

Through: Mr. Anuj Jain, Adv.

Versus

ANIL GAMI & ANR

..... Respondents

Through: Mr. Pravir K. Jain, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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13.09.2017

1. CM (M) No.393/2017 under Article 227 of the Constitution of India impugns the order [dated 25th January, 2017 in Civil Suit No.2246/16/13 of the Court of Additional District Judge-01 (ADJ), East District, Karkardooma Courts, Delhi] dismissing the application of the petitioner / plaintiff for amendment of plaint to enhance the valuation, to bring back to this Court the suit, which originally instituted in this Court was on enhancement of minimum pecuniary jurisdiction of this Court transferred to the District Court.
2. Notice of the petition was ordered to be issued and the counsel for both the respondents appears.

3. Since the Full Bench of this Court in *Subhashini Malik Vs. S.K. Gandhi* 233 (2016) DLT 83 has held that the plaintiff has an absolute discretion in this regard, it is deemed appropriate to allow the CM(M) No.393/2017 and to set aside the impugned order dated 25th January, 2017 therein. Resultantly, the application of the petitioner / plaintiff for enhancement of valuation will stand allowed.
4. The counsel for the petitioner / plaintiff states that he will within two weeks pay the additional court fees payable on the enhanced valuation.
5. Transfer Petition (Civil) No.158/2016 has been filed for transfer of aforesaid suit to this Court owing to the pendency in this Court of Test Case No.82/2015.
6. The question, whether the Test Case and the suit are to be consolidated or tried together is to be gone into by the Court before which the Test Case and the suit come up.
7. Now that the CM (M) No.393/2017 has been allowed and as a result whereof the Court of ADJ would not have the pecuniary jurisdiction to entertain the suit, it is ordered that on payment of additional court fees as aforesaid by the petitioner / plaintiff, the file of CS(OS) No.1286/2013 be transferred to this Court be listed on 22nd November, 2017 on the Ordinary Original Civil Jurisdiction of this Court before the same Court before which Test Case No.82/2015 is pending.

The petitions are disposed of.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 13, 2017/‘gsr’..

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