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

+ CM(M) 1090/2017

MOHD IRSHAD

..... Petitioner

Through: Mr. Aman Leekha, Adv.

Versus

SURESH BALA & ORS

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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26.09.2017

Caveat No.855/2017

1. None appears for the caveators/respondents inspite of advance copy stated to have been given.
2. The caveat stands discharged.

CM No.35585/2017 (for exemption)

3. Allowed, subject to just exceptions.
4. The application is disposed of.

CM(M) 1090/2017

5. This petition under Article 227 of the Constitution of India impugns the order (dated 9th January, 2017 in CS No.1827/2016 of the Court of Additional District Judge (ADJ)-02, Shahdara, Karkardooma Courts, Delhi) of dismissal of the application of the petitioner/plaintiff under Order XXXIX Rules 1&2 of the Code of Civil Procedure, 1908 (CPC) and the order dated 19th July, 2017 of dismissal of the application filed by the petitioner/plaintiff for review of the order dated 9th January, 2017.

6. No remedy lies against the dismissal of application seeking review. Supreme Court recently in ***Land Acquisition Officer, Andhra Pradesh Vs. Ravi Santosh Reddy (Dead) By Legal Representatives*** (2016) 14 SCC 238, in the context of a Revision Petition under Section 115 of CPC, held that no Revision Petition lies against an order of dismissal of an application seeking recall of the earlier order and it is only the earlier order of which recall was sought against which remedy can be availed.

7. As far as the order dated 9th January, 2017 of dismissal of the application under Order XXXIX Rules 1&2 of CPC is concerned, the same is appealable under Order XLIII Rule 1(r) of CPC and it is the settled principle of law (see ***Sadhana Lodh Vs. National Insurance Co. Ltd.*** (2003) 3 SCC 524) that once the remedy under CPC or under any other statute is available, a petition under Article 227 of the Constitution of India does not lie.

8. Dismissed as not maintainable with liberty to the petitioner to avail appropriate remedy.

No costs.

RAJIV SAHAI ENDLAW, J.

SEPTEMBER 26, 2017

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