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

+ RFA 932/2017 & CM Nos. 39902/2017 (stay) & 39903/2017
(exemption)

RAJNI

..... Appellant

Through: None.

versus

JASWANT SINGH

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

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07.11.2017

1. No one appears for the appellant in spite of three calls.
2. It is noted that the present Regular First Appeal is filed against the order of the trial court dated 29.8.2013 decreeing the suit for not filing the leave to defend application. In law, once the leave to defend application is not filed an Order 37 CPC suit necessarily has to be decreed because on service of summons for judgment, the leave to defend application has to be filed within the prescribed period and admittedly after service of summons for judgment appellant/defendant did not file an application under Order 37 CPC within the prescribed period.
3. In my opinion, appellant is better advised to file an application under

Order 37 Rule 4 CPC instead of the present appeal because in the present appeal this Court can do nothing because admittedly the leave to defend application was not filed after service of summons for judgment.

4. Since no one appears for the appellant, the appeal is dismissed in default and for non-prosecution.

VALMIKI J. MEHTA, J

NOVEMBER 07, 2017

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