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

+ C.R.P. 238/2017

NARESH KUMAR JAIN ..... Petitioner  
Through: Mr. Sunil K. Jain, Adv.

Versus  
LALLAN SHAH ..... Respondent  
Through: None.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

**ORDER**

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**01.11.2017**

**CM No.39376/2017 (for exemption)**

1. Allowed, subject to just exceptions.
2. The application is disposed of.

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3. This Revision Petition under Section 115 of the Code of Civil Procedure, 1908 (CPC) impugns the order [dated 5<sup>th</sup> September, 2017 in Review Petition No.1/2017 of the Court of Additional District Judge-03 (ADJ), North-West District, Rohini Courts, Delhi] of dismissal of the application filed by the petitioner / defendant for review of the order [dated 5<sup>th</sup> December, 2016 in CS No.362/2014 of the Court of ADJ-03, North-West District, Rohini Courts, Delhi] of dismissal of the application of the petitioner / defendant for leave to contest the suit under Order XXXVII of the CPC filed by the respondent / plaintiff and the consequent money decree against the petitioner / defendant.

4. I have at the outset enquired from the counsel for the petitioner / defendant as to how this Revision Petition is maintainable.
5. The counsel for the petitioner / defendant states that since there is no remedy of appeal against the order of dismissal of review application, Revision Petition would lie.
6. Supreme Court recently in ***Land Acquisition Officer, Andhra Pradesh Vs. Ravi Santosh Reddy*** (2016) 14 SC 238 has reiterated that no Revision Petition lies against the order of dismissal of an application for review or for recall of an earlier order and the remedy is to be availed against the order of which review / recall was sought.
7. The counsel for the petitioner / defendant states that he remembers a judgment holding that Revision Petition lies against the dismissal of an application for review but is not carrying the same and has no particulars thereof.
8. He then states that the petition be treated as against the order dated 5<sup>th</sup> December, 2016.
9. Against an order of dismissal of an application for leave to defend the suit under Order XXXVII of the CPC and passing of a money decree, as held by this Court in ***Goldwin Technology (P) Ltd. Vs. Electronic Components and Tuners*** (2010) 172 DLT 334 and ***Hira Lal and Son Vs. Lakshmi Commercial Bank*** (1984) 25 DLT 33 (SN) (DB) the remedy is only by filing an appeal against the decree and not by challenging the order of dismissal of the application for leave to defend. The petitioner / defendant thus will have to prefer an appeal under Section 96 of the CPC and by complying with the formalities thereof. The counsel for the petitioner /

defendant however wants me to, in this proceeding only, hear on merits.

10. The same is not permissible.

11. Dismissed as not maintainable.

No costs.

**RAJIV SAHAI ENDLAW, J**

**NOVEMBER 01, 2017**

‘gsr’..