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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ RSA 38/2017, CM No.3744/2017 (for stay) & CM No.1532/2018 (u/S 151 CPC).

TEK CHAND JAIN

..... Appellant

Through: Mr. Rajesh Aggarwal, Adv.

versus

RANJEET SINGH SETHI & ORS

..... Respondents

Through: Mr. Shekhar Dasi, Adv. for R-2&3.

Mr. Rajesh Mahendru, Adv. for LR
of R-5.

Mr. Saurabh Banerjee, Adv. for R-
6,7&10.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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11.09.2018

1. This Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) has been preferred against the judgement [dated 21st October, 2016 in RCA No.5266/2016 of the Court of Additional District Judge-01, New Delhi] dismissing the appeal preferred by the appellant under Order XLIII Rule 1 of the CPC.

2. The appeal came up first before this Court on 30th January, 2017, when notice thereof was ordered to be issued. The appeal, since then, is being adjourned from time to time for service of the respondents which still remains incomplete.

3. It has been enquired from the counsel for the appellant, as to how the present appeal is maintainable.

4. The counsel for the appellant states that since the First Appeal has been dismissed, a Second Appeal would lie. Attention is also drawn to

page 73 of the paper book, being the order dated 4th July, 2011 of this Court in CM(M) No.1294/2005 then preferred by the appellant and which was withdrawn to prefer the First Appeal aforesaid.

5. Though in the order dated 4th July, 2011 itself, mention is made of the remedy of appeal under Order XLIII of the CPC, but the counsel for the appellant still, against the order in an appeal under Order XLIII of the CPC, has preferred this Second Appeal.

6. The law carves out a distinction between an appeal under Order XLI and an appeal under Order XLIII of the CPC. While against the judgment and decree in an appeal under Order XLI, a Second Appeal is provided, against a judgment in a Appeal under Order XLIII of the CPC, a Second Appeal is barred by Section 104(2) of the CPC.

7. In spite of the same being put to the counsel for the appellant at the beginning of the hearing only, the counsel for the appellant insisted on addressing arguments.

8. The appeal is totally misconceived and is dismissed with costs of Rs.5,000/- to be deposited with the Delhi High Court Advocates Welfare Trust as a pre-condition for the appellant taking any other proceeding with respect to the orders from which this appeal was preferred.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 11, 2018

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