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

+ **CS(OS) 542/2013**

PAWAN KUMAR Plaintiff
Through: Mr. Sandeep Bajaj, Advocate with
Mr. Devansu Jain, Advocate.

versus

RAJ KUMAR & ANR Defendants
Through: Mr. R.K. Bedi, Advocate for
defendant No.1.
Mr. Sajan K. Singh, Advocate with
Ms. Anjali Jain, Advocate for
defendant No.2.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

ORDER
% **30.10.2018**

I.A. 14879/2018 in CS(OS) 542/2013

Present application has been filed under Order 23 Rule 1 CPC by the plaintiff seeking withdrawal of the suit.

In the present application, it has been averred that plaintiff and defendant No.1 have settled the matter amongst themselves by way of an out of Court settlement with the assistance of elders and friends.

However today, learned counsel for defendant No.2-mother opposes the withdrawal of the suit. He points out that in a partition suit, all the parties are plaintiffs.

Though the legal proposition canvassed by the learned counsel for

defendant No.2-mother is sound in law, yet as the defendant No.2 has neither filed any pleadings nor set up her case, this Court permits the plaintiff to withdraw the present suit after giving liberty to the defendant No.2-mother to file a fresh suit within a period of eight weeks.

With consent of the parties, it is directed that the interim order dated 20th March, 2013 shall continue to subsist for another period of eight weeks.

With the aforesaid observations, present application stands disposed of.

I.A. 14880/2018 in CS(OS) 542/2013

The plaintiff has filed the present application seeking refund of the excess Court fees paid in terms of the Court Fees (Delhi Amendment) Act, 2012 (for short “Act, 2012”).

Learned counsel for plaintiff submits that the Act, 2012 had enhanced the Court fees payable by the plaintiff and accordingly the plaintiff had paid the court fees in terms of the amended provision.

Since the Act, 2012 has been quashed vide judgment dated 09th October, 2013 of the Division Bench of this Court in *WPC No. 4770/2012, Delhi High Court Bar Association and Anr. Vs. Govt. of NCT of Delhi and Anr.*, the plaintiff is entitled to refund of excess court fees.

Registry is directed to calculate the Court fees in terms of the Act prior to the amendment and the Division Bench’s judgment and a certificate in terms thereof be issued to the plaintiff within four weeks.

Accordingly, the application stands disposed of.

MANMOHAN, J

OCTOBER 30, 2018

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