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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RSA 99/2018 and C.M. Appl. Nos. 26602-03/2018

NARESH KUMAR JAIN (DECEASED) THR LRS Appellants

**Through: Mr. Ankit Jain and Mr. Vishal
Saxena, Advocates.**

versus

SANJIV KUMAR JAIN & ORS

..... Respondents

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

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18.07.2018

1. This appeal was argued at length. At the stage of dictation of the judgment a passover was sought by the counsel for the appellants to take instructions.

2. After passover, learned counsel for the appellants says that the appellants before the first appellate court, one of which is the present appellant, had filed an application under Order 41 Rule 27 CPC before the first appellate court to allow additional evidence, but the first appellate court has not decided this application either by the impugned judgment dated 14.3.2018 or otherwise.

3. I have put it to counsel for the appellants that an application can

only be allowed or disallowed on the same being pressed, and to which it is stated that the application under Order 41 Rule 27 CPC was pressed before the first appellate court but was not decided.

4. Accordingly, liberty is prayed from this Court to file an appropriate application before the first appellate court on this aspect.

5. As agreed, while disposing of this appeal as not pressed, liberty is granted to the appellants to file an appropriate application before the first appellate court with respect to the stated case of having pressed the application under Order 41 Rule 27 CPC but not decided, however, as agreed it is further made clear that in case only if the first appellate court holds that the application was pressed and had to be allowed, would then any issue arise further with respect to challenge on merits to the judgment of the trial court, but in case the appellants fail in the application which would be filed before the first appellate court with respect to the claim of the appellants that the application under Order 41 Rule 27 CPC was not decided though pressed. In case however the said application under Order 41 Rule 27 is dismissed or it is held to be dismissed otherwise as not having been pressed then any further appeal will not lie against the impugned judgment dated

14.3.2018, but appellants can always challenge the order passed by the first appellate court with respect to the order by which the application under Order 41 Rule 27 is now hereafter dismissed on merits or is held to be dismissed as not pressed by the first appellate court.

6. This appeal is accordingly disposed of as not pressed, but with the aforesaid liberty.

VALMIKI J. MEHTA, J

JULY 18, 2018

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