

\$~21

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

+ EX.F.A. 31/2018

PREM SINGH

..... Appellant

Through: Mr. Sanat Kumar, Sr. Adv. with Mr.
Ravi Joshi, Adv.

Versus

GIRDHARI LAL DHARA

..... Respondent

Through: Mr. Neeraj Yadav & Ms. Aditi
Sharma, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

%

01.10.2018

1. This Execution First Appeal invoking Order XXI Rule 97 of the Code of Civil Procedure, 1908 (CPC) was preferred against the orders / judgments [dated 1st June, 2018 and 17th July, 2018 in Ex.No.23918/2016 of the Court of Additional District Judge-01 (Central)] dismissing the objections of the appellant / defendant / judgment-debtor and issuing warrants for recovery of possession of immovable property.
2. The appeal came up first before this Court on 20th July, 2018 when, though *prima facie* observing that the reasoning of the Executing Court appeared to be correct but for the reason of this being a First Appeal, notice thereof was ordered to be issued and the warrants issued were ordered to be allocated for a date after the date of hearing before this Court.
3. The senior counsel for the appellant / defendant / judgment-debtor and the counsel for the respondent / plaintiff / decree-holder were heard on 28th September, 2018 when after some arguments, the senior counsel for the appellant / defendant / judgment-debtor sought adjournment.

4. Today, the senior counsel for the appellant / defendant / judgment-debtor, under instructions, states that this appeal is not maintainable and he withdraws the same with liberty to file appropriate proceedings.
5. The counsel for the respondent / plaintiff / decree-holder opposes, contending that the appeal is maintainable and after fully arguing, the appellant / defendant / judgment-debtor cannot have recourse to a second round.
6. Be that as it may, since the appellant / defendant / judgment-debtor is withdrawing the appeal, it is deemed appropriate to dismiss the appeal as withdrawn with liberty as sought and leaving it open to the respondent / plaintiff / decree-holder to, in the appropriate proceedings if any taken, to contend that the remedy of appeal was available and the appellant / defendant / judgment-debtor having withdrawn the same, is not entitled to any other remedy.
7. It is ordered accordingly.
8. Needless to state, the interim orders stand vacated.

Dasti.

RAJIV SAHAI ENDLAW, J

OCTOBER 01, 2018

‘gsr’..