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

+ CM(M) 1049/2016 & CM Nos. 38539/2016, 38540/2016 &
38541/2016

KULDEEP SINGH (NOW DECEASED) THROUGH
GHUVINDER KAUR

..... Petitioner

Through: Mr. Pramod Ahuja with Ms. Amita
Sachdeva, Advocate.

versus

AZADPUR AGRICULTURE PRODUCE MARKET COMMITTEE
(AAPMC) & ORS

..... Respondents

Through: Mrs. Avnish Ahlawat with Ms. Palak
Rahmetra, Advocates for R-1.
Mr. Vaibhav Agnihotri with
Mr. Raghavendra Pratap Singh,
Advocates for R-5.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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19.03.2018

The civil suit (Suit no.381/13) of the petitioner seeking a decree of permanent injunction against the respondents was dismissed by order dated 24.10.2013 “*for want of evidence*”, the decree-sheet in terms of the said order having been directed to be drawn accordingly, the parties having been left to bear their own costs.

The petitioner took out appeal (RCA no.70/13) before the court of additional district judge which was dismissed as not maintainable by order dated 13.01.2014. The learned counsel for the respondent fairly concedes that the dismissal of the suit under Order XVII Rule 3

(a) of the Code of Civil Procedure, 1908 being a decree, the appeal under Section 96 CPC is the only appropriate remedy, the recourse to which could not have been denied.

In the facts and circumstances, the petition is allowed. The impugned order of the first appellate court is set aside. The appeal of the petitioner against the dismissal of the suit by order dated 24.10.2013 is revived on the file of additional district judge who may proceed to consider it on merits and adjudicate thereupon in accordance with law. The pending applications also stand disposed of.

The parties are directed to appear before the concerned first appellate court on 18th April, 2018.

R.K.GAUBA, J

MARCH 19, 2018

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