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

+ C.R.P. 140/2016

BAL KISHAN TYAGI

..... Petitioner

Through: Mr. Arvind Chaudhary, Advocate

versus

NAND KISHORE TYAGI & ANR.

..... Respondents

Through: Ms. Trisha Nagpal, Advocate with
Mr. Sameer Vashisht, Adv. for R-1.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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07.05.2018

The petition at hand challenges the order dated 09.07.2016 passed by the additional district Judge (ADJ) on the file of the civil suit (CivDJ/612109/16) of the first respondent, whereby the application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC) of the petitioner (first defendant in the suit) seeking rejection of the plaint filed to seek decree of specific performance and permanent injunction was dismissed.

After some hearing, the counsel for the first respondent (plaintiff of the case), on instructions, submitted that she concedes to the petition being allowed and the impugned order be set aside, but requests that the plaintiff may be allowed to withdraw the suit since it is not properly drafted and structured, request being for liberty to be granted to institute a fresh suit on the same cause of action.

The counsel for the petitioner (first defendant in the suit) submitted that he has no objection to the request for liberty to be granted, but the same be made subject to law of limitation, which was the bone of contention in the present proceedings as well. The second respondent herein was the second defendant before the trial court. He despite notice has chosen not to appear or participate in these proceedings.

Having regard to the above facts and circumstances and submissions, the impugned order is set aside. The suit of the first respondent, as aforesaid, is dismissed as withdrawn. The said first respondent (plaintiff of the suit) will have the liberty to institute a fresh suit, but subject to law of limitation and be in accordance with law.

This disposes of the present revision petition.

R.K.GAUBA, J.

MAY 07, 2018

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