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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 08.01.2018

RFA(OS) 89/2016 & CM Nos.42235-36/2016 & 44918/2016

PREETI SEHGAL

..... Appellant

versus

SARLA SEHGAL AND ANR

..... Respondents

Advocates who appeared in this case:

For the Appellant : Mr. Arun Maitri, Advocate with Ms. Radhika Chandershekhar,
Advocate

For the Respondents : Mr. B.B. Gupta, Advocate with Ms. Prity Sharma and Ms. Rijuta
Mohanty, Advocates

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MS. JUSTICE DEEPA SHARMA

J U D G M E N T

SIDDHARTH MRIDUL, J (ORAL)

1. The present Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 read with 10 of Delhi High Court Act, 1966, assails a preliminary decree dated 20.01.2016, passed by a learned Single Judge of this Court in CS(OS) No.585/2011; tilted as '*Preeti Sehgal vs. Sarla Sehgal & Anr.*'.

2. It is an admitted position that the impugned judgment and preliminary decree dated 20.01.2016 was impugned by the appellant in FAO (OS) No.54/2016; titled as "*Preeti Sehgal vs. Sarla Sehgal & Anr.*", which after a detailed hearing came to be dismissed on merits by a Division Bench of this Court vide order dated 30.05.2016.

3. It is further an admitted position that the appellant sought a review of the said order dated 30.05.2016, by way of Review Petition No.308/2016, which also came to be dismissed vide order dated 12.08.2016.

4. The appellant then assailed the said order dated 30.05.2016 by way of a Special Leave Petition, being SLP No.19233/2016, which also came to be dismissed as withdrawn, on the submission made by learned counsel appearing on behalf of the appellant, vide order dated 20.10. 2016.

5. The matter did not rest there and the appellant sought another review of the said order dated 30.05.2016, by way of Review Petition No.507/2016, which also came to be dismissed as withdrawn, on the submission made by learned counsel appearing on behalf of the appellant, vide order dated 02.12.2016.

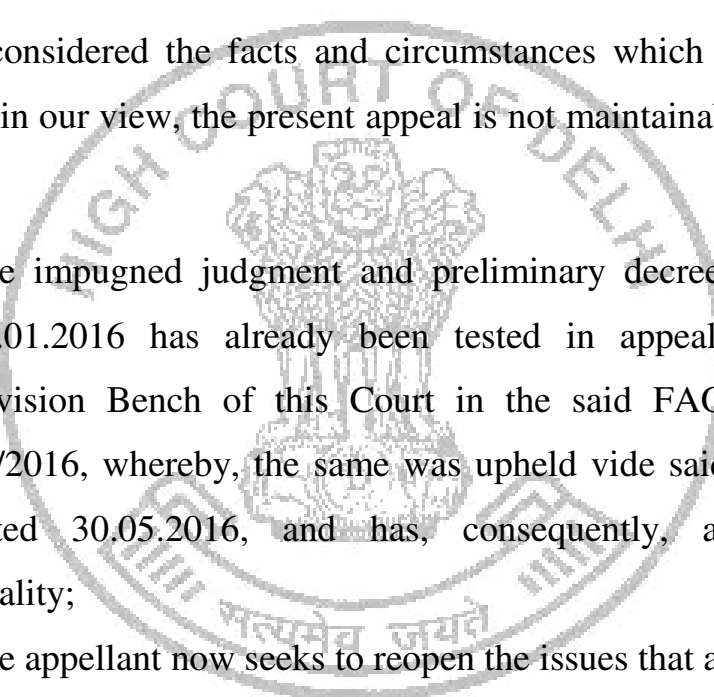
6. A plain reading of the above would reflect that the said order of the Division Bench dated 30.05.2016, which assailed the impugned judgment and preliminary decree dated 20.01.2016, has attained finality. It is further observed that the said order dated 30.05.2016 was rendered after hearing learned counsel appearing on behalf of the parties, on merits.

7. It is also relevant to observe that the present appeal assailing the impugned judgment and preliminary decree dated 20.01.2016 was instituted

on behalf of the appellant during the pendency of the said Review Petition No.507/2016.

8. The submission made on behalf of the appellant is that the present appeal has a larger scope than the said FAO (OS) 54/2016; instituted by them against the very same impugned judgment and preliminary decree dated 20.01.2016, and that the institution of the said FAO (OS) 54/2016 was due to an inadvertent error on the part of the appellant.

9. Having considered the facts and circumstances which obtain in the present appeal, in our view, the present appeal is not maintainable, inasmuch as:

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- (i) The impugned judgment and preliminary decree dated 20.01.2016 has already been tested in appeal by a Division Bench of this Court in the said FAO (OS) 54/2016, whereby, the same was upheld vide said order dated 30.05.2016, and has, consequently, attained finality;
 - (ii) The appellant now seeks to reopen the issues that arose in the said FAO(OS) 54/2016, on the specious ground that she fell into an inadvertent error in instituting that appeal, rather than the present one, against the impugned judgment and preliminary decree dated 20.01.2016;
 - (iii) The appellant now seeks a review/reversal of the said order of the Division Bench of this Court dated 30.05.2016, by way of the present appeal, which is patently impermissible in law; and

- (iv) The appellant is attempting to wriggle out of the finality of the impugned judgment and preliminary decree dated 20.01.2016, as upheld by the said order of the Division Bench dated 30.05.2016 in FAO (OS) 54/2016; by ingeniously asserting that the institution of the said FAO (OS) 54/2016 was an inadvertent error on her part.

10. In view of the foregoing, we are in complete agreement with the observations made by the predecessor Bench, as recorded in the order dated 06.07.2017, to the effect that “.....*The appellant has now filed the present RFA (OS) 89/2016 impugning the same order which was the subject matter of FAO (OS) 54/2016. The appellant will explain now the present RFA (OS) is maintainable when the FAO (OS) was dismissed on merits*”; and have tested the present appeal on that cornerstone. The result, in our view, having heard learned counsel appearing on behalf of the parties, is that the present appeal is not maintainable on account of the circumstance that the said FAO (OS) 54/2016; assailing the very same impugned judgment and preliminary decree dated 20.01.2016, was dismissed on merits by way of said order dated 30.05.2016 passed therein, which order has attained finality.

11. We are, therefore, of the view that the appellant is liable to compensate the other side for having agitated his grievance against the impugned judgment and preliminary decree 20.01.2016; after it had attained finality, repeatedly and, thereby, also consumed precious court time.

12. Resultantly, the appeal is dismissed with cost quantified to the sum of Rs.20,000/- to be deposited with the Juvenile Justice Board, Delhi, within a

period of two weeks from today. All pending applications also stand disposed of.

**SIDDHARTH MRIDUL
(JUDGE)**

JANUARY 08, 2018
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**DEEPA SHARMA
(JUDGE)**

