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

+ **FAO(OS) 298/2017**

BHUWAN MOHAN & ORS

..... Appellants

Through: Mr. Suhail Dutt, Sr. Advocate with Mr. Rajnish Sinha, Mr. Nikhil Jain, Ms. Shreya Kohli and Mr. Azhar Alam, Advocates.

versus

LALIT MOHAN & ORS

..... Respondents

Through: Mr. P. Chidambaram, Sr. Advocate, Mr. Dayan Krishnan, Sr. Advocate with Mr. Abhimanyu and Ms. Ambha Goel, Advocates for R-1 to 5.

Mr. Balaji Subramanian and Mr. Ishan Banerjee, Advocates for R-6.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

06.12.2018

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Senior advocate appearing for the respondent Nos. 1 to 5, on instructions, states that impugned order dated 9th October, 2017, holding that there was prior permission under Section 92 of the Code of Civil Procedure, 1908 (Code for short), can be set-aside. He states that the respondents have already filed the application under Section 92 of the Code before the single Judge.

2. In view of the statement made by the counsel for the respondent Nos. 1 to 5 we set-aside the impugned order dated 9th October, 2017, in which the

learned single Judge held that there was prior leave of the Court under Section 92 of the Code.

3. We clarify that the application filed under Section 92 of the Code would be considered and decided by the single Judge on merits. We have not made any observations or comments in this regard.

4. We are informed that the Chartered Accountant appointed vide order dated 9th October, 2017 in IA No 7561/2017, has submitted his report to which objections have been filed by the appellant. The affect on the report etc would be examined by the single Judge. We do not make any comment in this regard.

5. Learned senior advocate appearing for the appellant submits that they would raise the question of maintainability of the civil suit in view of the impugned order being set-aside and for other reasons. Learned senior advocate for the respondents, however, contesting the said submission states that the civil suit would be maintainable. As recorded above, we have not commented or made any observations on the application under Section 92 of the Code. We have also not commented on maintainability of the suit.

6. The appeal is allowed, in the aforesaid terms without any order as to costs.

SANJIV KHANNA, J.

ANUP JAIRAM BHAMBHANI, J.

DECEMBER 06, 2018
MR