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

+ **FAO(OS) 20/2018, CM APPLs.3512/2018 (stay) and 3513/2018 (delay)**

PRIYA KHOSLA & ANR Appellants

Through: Mr.M.Amanullah, Advocate.

versus

RAKESH KHOSLA & ORS Respondents

Through: Mr.K.K.Malhotra with
Mr.K.K.Bhalla, Advocates for R1 to
R5 and R7 to R12.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

% **25.11.2019**

1. This is an appeal directed against an order dated 5th September, 2013 whereby the learned Single Judge passed a preliminary decree in a partition suit being CS(OS) 1478 of 2011 in which the present Appellants are Defendant Nos.10 and 11.

2. A perusal of the impugned order reveals that when the preliminary decree was passed there was no appearance on behalf of the present Appellants before the learned Single Judge.

3. Even earlier, on failure of the present Appellants to file the written statement within time, by an order dated 13th May, 2013 the Joint Registrar

struck off the written statement of Defendant Nos. 9 and 10, as the same had been tendered without paying the costs, upon which condition the delay in filing the written statement was condoned.

4. It may be noted here that the said order dated 13th May, 2013 has attained finality, there being no challenge to it till date. Counsel for the Appellants points out that within a month of the preliminary decree having been passed in the absence of the present Appellants, their counsel filed an application being IA No.18071 of 2013 under Order IX Rule 13 CPC for setting aside the preliminary decree. That application is stated to be pending before the trial Court. It may be noted here that the suit is presently pending in the District Court, Saket.

5. Meanwhile, the present appeal has been filed in which notice was issued on 29th January, 2018 and further proceedings in the suit were stayed.

6. Learned counsel for the Respondents informed the Court that as of date no final decree has yet been passed in the suit and that in any event, there has been a stay since 29th January, 2018. It, therefore, appears that no further steps pursuant to the preliminary decree have been taken during the period of nearly 5 years, till this Court stayed the further proceedings in the suit.

7. Considering that the Appellants' application under Order IX Rule 13 CPC is yet to be disposed of by the trial Court, it is considered appropriate to dispose of the present appeal by directing that the said application should now be taken up forthwith by the learned trial Court and disposed of within

a period of 3 months from today and in any event not later than 2nd March, 2020.

8. The Court is conscious that any other order *qua* the impugned order would render the said application infructuous. It is therefore refraining from commenting on the merits of the impugned order. The said application under Order IX Rule 13 will be decided irrespective of the preliminary decree having been passed.

9. The appeal and the applications are disposed of in the above terms.

S. MURALIDHAR, J.

TALWANT SINGH, J.

NOVEMBER 25, 2019

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