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

+ **MAT.APP.(F.C.) 151/2019 & C.M.No.25586/2019**

PURNIMA SHARMA Appellant

Through: Mr.L.K.Singh and Mr.Raj Kumar,
Advocates.

versus

SHEKHAR SHARMA Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MR. JUSTICE TALWANT SINGH

ORDER

% **27.05.2019**

1. The appellant is aggrieved by an order dated 18.03.2019, passed by the learned Judge, Family Court rejecting the suit filed by her for declaration/cancellation etc. on the ground that the same is barred under Order 23 Rule 1(3) CPC.

2. Learned counsel for the appellant states that prior to filing the subject suit, the appellant had filed a suit for the same relief, which was listed before the learned Civil Judge (Suit No.9464/2016). On 29.09.2016, learned counsel for the appellant had sought leave to withdraw the said suit with liberty to file a fresh suit based on the same cause of action on the ground that there were technical defects.

3. It is the version of the appellant that such liberty was granted by the

learned Civil Judge while dismissing the captioned suit. However, on a perusal of order dated 29.09.2016, the submission made by learned counsel for the appellant is not borne out. The order dated 29.09.2016 only records that the suit filed by the appellant was being dismissed as withdrawn. No leave was granted to the appellant to file a fresh suit on the same cause of action.

4. We have enquired from learned counsel for the appellant as to whether his client had approached the learned Civil Judge for clarification/modification of the order dated 29.09.2016. He concedes that no such steps were taken under an assumption that leave was granted as prayed for. He now seeks leave to withdraw the present appeal while reserving the right of his client to approach the Civil Judge in Suit No.9464/2016, for modification/clarification of the order dated 29.09.2016.

5. Leave as prayed for, is granted. The present appeal is disposed of as not pressed alongwith the pending applications.

HIMA KOHLI, J.

TALWANT SINGH, J.

MAY 27, 2019

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