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

+ **FAO(OS) 46/2020**

SIDDHARTH RAI

..... Appellant

Through Mr. P.P. Malhotra, Sr. Advocate with
Mr. A.K. Panda, Advocate.

versus

ANANT NARAYAN RAI & ORS.

..... Respondents

Through Mr. Pinky Anand, Sr. Advocate with
Ms. Pratibha Singh, Advocate.

Mr. Tanvir Nayar and Mr. Samar Khan, Advocates
for R-2 to 7.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

% **02.09.2020**

HEARD THROUGH VIDEO CONFERENCING

C.M. No.21317/2020 (exemption)

Allowed, subject to all just exceptions.

FAO(OS) 46/2020 & C.Ms. No.21314/2020 (stay) & 21316/2020 (delay)

1. The appellant/defendant No.1 is aggrieved by the observations made by the learned Single Judge in the order dated 10.7.2020 whereunder, it has been held that the plea taken by him that the suit be dismissed at the threshold, is not acceptable. As a result, the plaint was registered and summons issued in the suit which is listed on 4.9.2020.

2. Mr. P.P. Malhotra, learned Senior Advocate appearing for the appellant/defendant submits that the learned Single Judge ought not to have registered the plaint as the suit itself is not maintainable.

3. If that is so, then by now, the appellant/defendant No.1 ought to have moved an application for rejection of the plaint, as provided for under Order VII Rule 11 CPC. Only after a finding is returned by the learned Single Judge on the said application and if the grievance of the appellant survives thereafter, would an appeal lie.

4. We are therefore not inclined to entertain the present appeal only on the ground that the plaint has been registered and summons have been issued in the suit.

5. While reserving the right of the appellant/defendant No.1 to move an appropriate application in the suit praying inter alia for rejection of the plaint in accordance with law, the present appeal is disposed of. Needless to state that if such an application is moved by the appellant/defendant No.1, both the parties shall be entitled to take all the pleas that may be available to them, both on facts and in law.

HIMA KOHLI, J

SUBRAMONIUM PRASAD, J

SEPTEMBER 2, 2020

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