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

+ **RFA(OS) 35/2020**

DILAWAR SINGH RAWAT

..... Appellant

Through: Mr. K.R. Chawla and Ms. Renu
Verma, Advs.

Versus

ANJANEYA BISANPUR AGRO INDUSTRIES PVT LTD

& ANR.

..... Respondents

Through: Mr. Gaurav Mitra, Mr. Vibhav
Mishra, Ms. Aditi Gupta, MR. Satvik
Bajaj and Ms. Smriti Dua, Advs. for
R-1.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

ORDER

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22.09.2020

[VIA VIDEO CONFERENCING]

CMs No.23384/2020 & 23385/2020 (both for exemption)

1. Allowed, subject to just exceptions and as per extant rules.
2. The applications are disposed of.

RFA(OS) No.35/2020 & CM No.23383/2020 (for ex-parte ad-interim order)

3. This Regular First Appeal (RFA) Original Side (OS), as permitted to be preferred against a judgment and decree of a Single Judge of this Court exercising Ordinary Original Civil Jurisdiction, has been filed impugning the judgment dated 17th August, 2020 of a Single Judge of this Court, allowing CM(M) No.1729/2019, under Article 227 of the Constitution of India, preferred against the order dated 22nd November, 2019 of the Court of Additional District Judge (ADJ)-03 (South), Saket, New Delhi dismissing an application, filed by the respondent no.1/plaintiff in CS/DJ/No.490/2018 of

that Court, under Order XII Rule 6 of the Code of Civil Procedure, 1908 (CPC) for decree on admissions of the suit for recovery of possession of immovable property; the Single Judge, while exercising supervisory jurisdiction under Article 227 of the Constitution of India, finding the order of the ADJ to be erroneous and in failure of the exercise of jurisdiction and having been passed ignoring the law laid down by this Court and thus being perverse, has set aside the said order of the ADJ and consequently, while allowing the application of the appellant/plaintiff under Order XII Rule 6 of the CPC, passed a decree for possession, in favour of the respondent No.1/plaintiff and against the appellant and respondent No.2/defendants.

4. Being of the view that the decree having been passed by a Single Judge of this Court, though in exercise of jurisdiction under Article 227 of the Constitution of India, this RFA(OS) is not maintainable, the counsel for the appellant has been asked to address.

5. It is felt that there is a difference in the decree passed by a Single Judge of this Court in exercise of Ordinary Original Civil Jurisdiction and a decree passed by this Court while exercising revisional or supervisory or appellate jurisdiction against the orders of the Civil Judges/ADJs, while exercising such jurisdiction, whenever the order of the Civil Judge/ADJ denying a decree is found to be erroneous and liable to be set aside, while setting aside the order, decree has to necessarily follow and though passed by a Single Judge of this Court, cannot be equated with a decree passed by a Single Judge of this Court while exercising Ordinary Original Civil Jurisdiction in adjudication of suits permitted to be filed directly before this Court.

6. The law in this regard is not in dispute. Reference can be made to

Ashok K. Jha Vs. Garden Silk Mills (2009) 10 SCC 584, *Ram Kishan Fauji Vs. State of Haryana* (2017) 5 SCC 533, *Jogendrasinhji Vijaysinghji Vs. State of Gujarat* (2015) 9 SCC 1, *Ramesh Chandra Sankla Vs. Vikram Cement* (2008) 14 SCC 58 and *Umaji Keshao Meshram Vs. Radhikabai* AIR 1986 SC 1272, all holding that against an order of the High Court in exercise of jurisdiction under Article 227 of the Constitution of India no intra court appeal lies.

7. The counsel for the respondent no.1/plaintiff appearing on advance notice, in addition has referred to *Shalini Shyam Shetty Vs. Rajendra Shankar Patil* (2010) 8 SCC 329.

8. The counsel for the appellant/defendant No.1 refers to *Namdeo Devangan Vs. Seetaram* AIR 1998 MP 148, which is a judgment of the Single Judge of the Madhya Pradesh High Court, holding that the words "any Court exercising original jurisdiction" in Section 96 of the CPC have to be read to mean that if the original jurisdiction has been exercised by any Court, the decree passed shall be deemed to be a decree by a Court exercising original jurisdiction and taking any other view shall lead to absurdity and render the litigant remediless.

9. In view of the clear enunciation on the subject by the Supreme Court, though we do not deem it necessary to discuss the judgment of the Single Judge of the Madhya Pradesh High Court, but we mention that the words 'decree passed by any Court' in Section 96 of the CPC are followed by the words 'exercising original jurisdiction'. Certainly, the Single Judge of this Court exercising supervisory jurisdiction under Article 227 of the Constitution of India cannot be said to be exercising original jurisdiction. The reasoning adopted by the appellant in preferring this appeal is erroneous

for this reason also.

10. Not only so, this Court exercises ordinary original jurisdiction, of entertaining suits above a certain pecuniary value, by virtue of Section 5 of the Delhi High Court Act, 1966. The appeals from the decrees of the Single Judge exercising such jurisdiction, to the Division Bench lie under Section 10 of the said Act and which also provides for appeals from the judgment and decree of the Single Judge exercising jurisdiction under Section 5 of the Act. Again, the Single Judge exercising supervisory jurisdiction under Article 227 of the Constitution of India, was not exercising jurisdiction under Section 5 of the Delhi High Court Act.

11. The counsel for the appellant/defendant No.1 has also referred us to *Deep Chand Vs. Land Acquisition Officer* AIR 1994 SC 1901 but which is pertaining to the Land Acquisition Act, 1894 and reliance whereon is not apposite.

12. In view of the aforesaid, the counsel for the appellant/defendant No.1 withdraws the appeal and states that court fees on the appeal has also been paid.

13. The appeal is dismissed as withdrawn.

14. A certificate entitling the appellant to refund of the court fees paid be issued and handed over to the counsel for the appellant.

RAJIV SAHAI ENDLAW, J.

ASHA MENON, J.

SEPTEMBER 22, 2020

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