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

+ **CM (M) 948/2016**

VIKAS K CHADHA

..... Petitioner

Through: Mr. J. C. Mahindroo, Advocate with
Petitioner in person.

versus

M/S SUPER NEEDLE COLLECTION
PRIVATE LTD.

..... Respondent

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

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03.02.2020

1. None appears for the Respondent, though they have been appearing in the past. The matter was listed on 30th January, 2020 on which date also there was no appearance for the Respondent.
2. The present petition arises out of the impugned order dated 7th April, 2016 by which the application under Order VII Rule 11 CPC was allowed and the plaint has been rejected by the Trial Court. Mr. Vikas K. Chadha, Petitioner herein/Plaintiff (*hereinafter 'Plaintiff'*) filed a suit for recovery of Rs.7,280/- as *mesne* profits and other user charges. The suit was filed in 2011 and an application under Order VII Rule 11 CPC was filed seeking dismissal of the suit for want of cause of action. The said application has been allowed by the Trial Court and the suit has been dismissed by recording that there was a final settlement between the parties, which was recorded on 15th March, 2010 and hence the suit was not maintainable.
3. Mr. J. C. Mahindroo, ld. counsel for the Petitioner has pointed to the Court that in the earlier proceedings, vide order dated 26th November, 2013,

the Plaintiff was permitted to sue for remaining electricity and water charges, if any, found due later. In view of the liberty given therein, the present suit came to be filed seeking recovery of Rs.7,280/-, which was paid to the Delhi Jal Board as water charges for consumption during the period when the Defendant was in occupation of the premises.

4. The Trial Court has not considered the order dated 26th November, 2013 while rejecting the suit of the Plaintiff. The said order reads:

“... In this view of the matter, liberty prayed by the plaintiff in his application under order 2 rule 2 CPC is allowed although in the sence that this court permits the plaintiff in terms of order 2 Rule 3 CPC to sue for the remaining electricity charges later found due if any. ...”

Clearly, there was liberty, which was granted to the Plaintiff to file a suit for recovery of electricity charges. In any event, if the Respondent had any outstanding bills towards electricity or water consumption during the time when it was in occupation, the same would be recoverable. The trial court has to adjudicate the same. Accordingly, the impugned order dated 7th April, 2016 is set aside. The suit is restored to its original number and position.

5. The petition is disposed of in the above terms. Parties to appear before the Trial Court on 18th March, 2020.

PRATHIBA M. SINGH, J.

FEBRUARY 03, 2020/dk