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

Date of decision: 27.09.2023

+ **CM(M) 1608/2023**

MS. SUPARNA BANERJEE

..... Petitioner

Through: Mr.Prosenjeet Banerjee and
Mr.Harkirat Singh, Advs.

versus

SHRI ATUL SAKHUJA & ORS.

..... Respondents

Through: Mr.Anuj Chaturvedi, SC, MCD and
Ms.Shreya Manjari, Advs. for R-3.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

CM APPL. 50671/2023 & CM APPL. 50672/2023(Exemption)

1. Allowed, subject to all just exceptions.

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2. This petition has been filed by the petitioner, who is the plaintiff in the Civil Suit, that is Civil Suit No.58330/2016, titled as *Suparna Banerjee v. Atul Sakhuja & Ors.*, pending adjudication before the Court of the learned Additional District Judge-01, New Delhi District, Patiala House Court, New Delhi (hereinafter referred to as 'Trial Court'), challenging the





order dated 16.09.2023 passed by the said Court by which the learned Trial Court adjourned the application filed by the petitioner herein under Order XXIII Rule 1(3) of the Code of Civil Procedure, 1908 (in short 'CPC') to 20th January, 2024.

3. The learned counsel for the petitioner submits that the petitioner has also filed an appeal under Section 347B(1)(h) of the Delhi Municipal Corporation Act, 1957, being Appeal no. 125/2009, which is pending adjudication before the learned Appellate Tribunal of the MCD. The petitioner seeks to withdraw her suit pending before the learned Trial Court without prejudice to her rights and contentions in the said appeal. He submits that though the application was of the nomenclature under Order XXIII Rule 1(3) of the CPC, the only liberty sought is that the withdrawal will be without prejudice to the rights of the petitioner in the appeal which is pending adjudication before the learned Tribunal.

4. He further submits that the learned Appellate Tribunal is awaiting the outcome of the suit and, therefore, not proceeding with the appeal filed by the appellant, and hence the urgency.

5. In spite of service of advance notice, none is appearing for the respondent nos.1 and 2.

6. The learned counsel for the respondent no.3 who appears on advance notice, does not oppose the prayer made as explained by the learned counsel for the petitioner before this Court and recorded hereinabove.

7. In view of the limited prayer now sought by the petitioner, the date of hearing of the application before the learned Trial Court is pre-poned,





treating the same to be as one under Order XXIII Rule 1(1) of the CPC and as one seeking withdrawal of the Suit without prejudice to the rights and contentions of the petitioner in the appeal filed by the petitioner herein and pending adjudication before the MCD Appellate Tribunal.

8. The parties shall appear before the learned Trial Court on 16.10.2023 for the adjudication of the application filed by the petitioner.

9. The learned counsel for the petitioner shall inform the date now fixed in the application to the learned counsel for the respondent nos.1 and 2 by way of a written communication at least a week prior to the date fixed.

10. The petition is disposed of in the above terms.

NAVIN CHAWLA, J

SEPTEMBER 27, 2023/ns/am

