



2023:DHC:7860



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

% **Date of order : 11th October, 2023**

+ **C.R.P. 290/2023, CM APPL No. 52972/2023 & 52973/2023**

NAGENDRA MOHAN DASS Petitioner

Through: **Mr. Siddhartha Iyer, Advocate.**

versus

ARCHANA DASS Respondent

Through: **Mr. Rahul Sharma, Mr. Shrey Gupta
and Mr. Lokesh Chopra, Advocates.**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The present petition has been filed under Article 227 of the Constitution of India read with Section 115 and 151 of the Code of Civil Procedure, 1908, (hereinafter "CPC") praying as follows:

"i. To call for the records of C.S. DJ No. 131 of 2022, pending before the Ld. ADJ-III South East District, Saket Courts, New Delhi.

ii. To allow the present revision petition and set aside the order dated 25.07.2023, passed by the Court of the Ld. ADJ-III, South East District, Saket Courts, New Delhi in C.S. DJ No. 131 of 2022

iii. To allow the application under Order VII Rule 11 filed by the Petitioner herein, and dismiss the C.S. DJ No. 131 of 2022 pending before the ADJ-III, South East District, Saket District



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Court, New Delhi

iv. Pass any other Order as this Hon'ble Court may deem fit."

2. The relevant facts necessary for the adjudication of the present revision petition have been reproduced as under:

- a. The respondent is mother of the petitioner. Mrs. Radha Mitra is sister of the petitioner and she resides with her husband and two children. The respondent at present resides with Mrs. Radha Mitra. Shri Jogindra Mohan Dass, the late father of the petitioner and husband of the respondent, had purchased the property situated at Pocket K-12, Chittaranjan Park
- b. The plaintiff i.e., the respondent herein, had filed a civil suit bearing CS DJ No. 918/2019 praying for partition and damages from the defendant i.e., the petitioner herein, *qua* property bearing no. Pocket K-12, Ground Floor, Chittaranjan Park, South Delhi, Delhi-110019 (hereinafter "Suit Property"), claiming herself to be one of the legal heirs of the husband Late Sh. Jogindra Mohan Dass.
- c. The above said civil suit was withdrawn by the respondent with the permission of the learned Court below vide order dated 24th March 2021. The Court below, while allowing the withdrawal of the said suit granted liberty to file a fresh suit in terms of Order XXIII Rule 1 (3) of the CPC. The respondent then filed the present suit for seeking possession from the petitioner *qua* the same suit property which was the subject matter of the earlier suit on the basis of the relinquishment deed dated 21st May 1997. The fresh suit filed



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by the respondent was registered as civil suit bearing CS DJ No. 131/2022, before the learned Trial Court.

d. Thereafter, the petitioner had filed an application under Order VII Rule 11 of the CPC, seeking rejection of the respondent's plaint. The said application was dismissed by the learned ADJ-03, South East District, Saket Courts, New Delhi, vide order dated 25th July 2023.

e. Aggrieved by the same, the petitioner has approached this Court seeking revision of the impugned order dated 25th July 2023.

3. Learned counsel appearing on behalf of the petitioner submitted that the learned Trial Court erred in passing the impugned order dated 25th July 2023, and failed to take into consideration the entire facts and circumstances of the matter in hand.

4. It is submitted that the learned Trial Court failed to exercise its jurisdiction while adjudicating upon the petitioner's application filed under Order VII Rule 11 of the CPC.

5. It is submitted that the fresh suit instituted by the respondent on the same cause of action is barred by the law and due to the said reason, the fresh civil suit instituted by the respondent ought to be dismissed by the learned Court below.

6. It is submitted that the learned Trial Court failed to appreciate that Order XXIII Rule 1 (3) of the CPC, does not permit a party to make contradictory stands, and set out an entirely different case from what was originally set out.

7. It is submitted that any plaint, statement, averment made before a



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Court of law is accompanied with a declaration that the facts therein are true and correct, and it is a complete representation of the facts of the case as believed to be true by the party making such averments. It is also submitted that withdrawing a suit, once instituted and thereafter, completely altering the nature of the plaint is not permissible and is barred by the provisions of the CPC.

8. It is submitted that any statement made by a plaintiff in a Court of law in respect of a particular subject matter, would operate as an estoppel against the plaintiff from making any statement which is different from one previously made, is hit by principle of estoppel and ought not to even be taken on record.

9. It is submitted that by taking a plea which is inconsistent with a plea already been made is not permissible under Order VI Rule 17 of the CPC, as the same is contrary to the principle of estoppel.

10. It is further submitted that a necessary corollary to Order XXIII Rule 1 (3) of the CPC, is that withdrawal of a suit and filing a fresh suit in respect of the same subject matter does not in any manner entitles the plaintiff to amend his/her pleadings to an extent which would not be permissible under Order VI Rule 17 of the CPC, which is the provision defining the rules of amendment of pleadings. The limitations within which Order VI Rule 17 of the CPC, allows amendments to the pleadings, is also applicable upon a new plaint which is to be instituted in respect of the same dispute.

11. It is contended that any new plaint, filed after obtaining liberty from a court under Order XXIII Rule 1 (3) of the CPC, must necessarily, strictly comply with the stringent requirements of Order VI Rule 17 of the CPC, *qua* a plaintiff, failing which it would amount to creating a circuitous route by



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way of which the restrictions of Order VI Rule 17 of the CPC, can be avoided.

12. It is also contended that this would lead to a catastrophic situation, whereby, a litigant would be able to file a frivolous case before the Court, know the defense of their opposing party, and thereafter, file a different case overcoming the defenses taken by the defendant in the earlier suit.

13. It is therefore, submitted that the fresh civil suit instituted by the respondent (plaintiff) is liable to be dismissed since the same is barred by the law.

14. It is submitted that in view of the foregoing submissions, the instant petition may be allowed and the impugned order be set aside.

15. *Per Contra*, learned counsel appearing on behalf of the respondent vehemently opposed the instant petition and submitted that the same is liable to be dismissed being devoid of any merit.

16. It is submitted that the learned Court below had rightly passed the impugned order after taking into consideration the entire material placed on its record including the averments made on behalf of the parties.

17. It is also submitted that the learned Trial Court passed the impugned order as per the settled legal principles of law and there is no infirmity within the impugned order. It is further submitted that the instant petition is merely an abuse of process of law with the sole purpose of harassing the respondent.

18. It is submitted that there is no such amendment made to the plaint as has been alleged by the petitioner which drastically changes the nature of the plaint. Moreover, the respondent has acted as per the provisions of the law by way of withdrawing the earlier suit and filing the fresh suit.



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19. It is submitted that the respondent had instituted the earlier suit for partition of the Suit Property and the moment she realised that a relinquishment deed dated 21st May 1997, has been executed in her favour by her daughter and the petitioner, the respondent withdrew her earlier suit stating that due to her old age and ailing health, she could not remember the said deed. Therefore, since the respondent realised that she is the absolute owner of the said suit property, there cannot be a case for partition but a case for possession and accordingly, the liberty was taken by the learned Court below to institute a fresh civil suit.

20. It is further submitted that plaint does not suffer from any irregularity or illegality and there is no error apparent on the face of it which merits the rejection of the plaint being barred by law.

21. It is submitted that in view of the foregoing submissions, the instant petitioner may be dismissed.

22. Heard the learned counsel appearing on behalf of parties and perused the record.

23. Before delving into the analysis of the issues raised by way of the instant petition, it is pertinent to discuss the relevant laws applicable to the facts of the matter at hand.

24. Order VII Rule 11 of the CPC, the provision under which the present impugned order has been passed, empower the Courts to reject a plaint, if only on the basis of the averments in the plaint, it is evident that the plaint is liable to be rejected on the grounds enumerated in the provision.

25. The settled legal principle behind the said provision is that if on an entire and meaningful reading of a plaint, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to



sue, the Court should exercise power under Order VII Rule 11 CPC. The said legal proposition was enunciated by the Hon'ble Supreme Court in the judgment passed in *T. Arivandandam v. T.V. Satyapal*, (1977) 4 SCC 467. 26. In the matter of *Chhotanben v. Kiritbhai Jalkrushnabhai Thakkar*, (2018) 6 SCC 422, the Hon'ble Supreme Court has further reaffirmed the scope of provisions stating rejection of the plaint and held as under:

“17. These decisions have been noted in Church of Christ Charitable Trust and Educational Charitable Society v. Ponniamman Educational Trust [Church of Christ Charitable Trust and Educational Charitable Society v. Ponniamman Educational Trust, (2012) 8 SCC 706 : (2012) 4 SCC (Civ) 612], where this Court, in para 11, observed thus : (SCC p. 714, para 11)

“11. This position was explained by this Court in Saleem Bhai v. State of Maharashtra [Saleem Bhai v. State of Maharashtra, (2003) 1 SCC 557], in which, while considering Order 7 Rule 11 of the Code, it was held as under : (SCC p. 560, para 9)

‘9. A perusal of Order 7 Rule 11 CPC makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power under Order 7 Rule 11 CPC at any stage of the suit—before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Rule 11 of Order 7 CPC, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage, therefore, a direction to file the written statement without deciding the application under Order 7 Rule 11 CPC cannot but be procedural irregularity touching the exercise of jurisdiction by the trial



court.’

It is clear that in order to consider Order 7 Rule 11, the court has to look into the averments in the plaint and the same can be exercised by the trial court at any stage of the suit. It is also clear that the averments in the written statement are immaterial and it is the duty of the Court to scrutinise the averments/pleas in the plaint. In other words, what needs to be looked into in deciding such an application are the averments in the plaint. At that stage, the pleas taken by the defendant in the written statement are wholly irrelevant and the matter is to be decided only on the plaint averments. These principles have been reiterated in Raptakos Brett & Co. Ltd. v. Ganesh Property [Raptakos Brett & Co. Ltd. v. Ganesh Property, (1998) 7 SCC 184] and Mayar (H.K.) Ltd. v. Vessel M.V. Fortune Express [Mayar (H.K.) Ltd. v. Vessel M.V. Fortune Express, (2006) 3 SCC 100].”

27. On perusal of the abovementioned judgments, it can be inferred that insofar as the application under Order VII Rule 11 of the CPC, is concerned, for rejection of a plaint, the relevant facts which needs to be looked into for adjudicating upon an application are the averments made in the plaint.

28. Order VII Rule 11 of the CPC, has established a remedy which is purely independent and is made available to the defendant to challenge the maintainability of the suit itself, irrespective of the defendant’s right to contest the suit on merits. Instead, the word ‘shall’ is used, clearly implying, that it obligates a duty upon the Court in rejecting the plaint in case the said plaint is hit by any of the infirmities provided in the four clauses of Order VII Rule 11 of the CPC.

29. Now, since the present petition has been filed under Section 115 of the CPC, enforcing the revisional jurisdiction of this Court, this Court deems it fit to set out the settled legal principles in exercising the revisional powers of



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this Court. The petitioner in the present petition has urged this Court to exercise its revisional powers by deciding whether the learned Court below had exercised its jurisdiction illegally or irregularly.

30. It is a settled principle of law that if the erroneous decision by a subordinate Court results in exercising a jurisdiction not vested in it by law, or failing to exercise a jurisdiction so vested, a case for revision arises and, in such circumstances, the Court must exercise its revisional powers, but not otherwise. The same has been enunciated by the Hon'ble Supreme Court in the judgment of *Manindra Land and Building Corpn. v. Bhutnath Banerjee*, (1964) 3 SCR 495.

31. Further, the Hon'ble Supreme Court has reiterated the scope of Section 115 of the CPC, in *Baldevdas Shivlal v. Filmistan Distributors (India) (P) Ltd.*, (1969) 2 SCC 201, which was followed by the Hon'ble Supreme Court in *Frost (International) Ltd. v. Milan Developers & Builders (P) Ltd.*, (2022) 8 SCC 633. It held that the said provision includes jurisdiction alone, the irregular exercise, or non-exercise of it, or the illegal assumption of it. The mere fact that the decision of the trial court is erroneous due to a question of fact or a question of law does not amount to any illegality or material irregularity. It embarks upon a peculiar kind of limitation that needs to be followed in its true letter and spirit. The High Court shall not interfere merely, because the Court below has wrongly decided a particular application in a suit being not maintainable.

32. This Court is of the view that the plea of the revisionist can only be held to be maintainable where it is found that if the impugned order is allowed to stand, it would occasion a failure of justice or cause irreparable injury to the party against whom it was made.



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33. In view of the judgments mentioned above, it becomes evident that this Court has limited powers which can be exercised under Section 115 of the CPC. It is also prudent to apply the ratio observed in the judgments of the Hon'ble Supreme Court, by way of which, this Court finds that not every order of the learned Trial Court can be regarded as an order that can be put under the ambit of revisional jurisdiction of the High Court.

34. Now advertent to the facts of the present petition.

35. It is the case of the petitioner that the learned Trial Court ought to have allowed the petitioner's application filed under Order VII Rule 11 of the CPC, considering the fact that a fresh civil suit instituted by the respondent is barred by the law. It has been submitted by the learned counsel appearing on behalf of the petitioner that as per the provisions of Order XXIII Rule 1 (3) of the CPC read with Order VI Rule 17 of the CPC, the respondent cannot be permitted to institute a fresh suit on the ground that new facts have come into light since the respondent has now become aware about the defense of the petitioner (defendant) by way of the earlier civil suit which was ultimately withdrawn on the ground that the respondent has now realised that a relinquishment deed dated 21st May 1997, was executed, by virtue of which the respondent cannot seek partition and therefore, the respondent is now seeking possession of the suit property instead of partition. It is further stated that Order VI Rule 17 of the CPC, which empowers the Court to permit the either party to alter or amend its pleading, does not permit the parties to change the case set out by them as any major changes would be hit by estoppel. Thus, once the defense of the defendant has already been disclosed/divulged in the previous suit, the liberty sought by the plaintiff to withdraw the previous suit and to file the present suit has



been used by the plaintiff in a *malafide* manner therefore, the same is bad in law and thus, plaint is liable to be rejected under Order VII Rule 11 of the CPC.

36. The respondent, i.e., the plaintiff before the learned Trial Court had argued before the learned Court below that since the respondent is of old age and due to her ill health, she could not remember the existence of the above said relinquishment deed. Therefore, as soon as she had the knowledge regarding the said deed, she immediately approached the learned Trial Court and withdrew her suit with the due liberty from the learned Court below to institute a fresh civil suit.

37. The learned Trial Court passed the impugned order dated 25th July 2023, thereby, dismissing the petitioner's application filed under Order VII Rule 11 of the CPC. Relevant portion of the same has been reproduced as under:

“12. To decide the present application under Order 7 Rule 11 (d) CPC, it is a settled legal dicta that only the averments made in the plaint and the documents filed alongwith the plaint alone can be taken into consideration and this Court cannot consider the defence or the material submitted by the defendant for the purpose of rejecting the plaint. To sustain an application under Order 7 Rule 11 (d) CPC, it is necessary that the suit should appear to be barred by any law from the plaint itself.

x

x

x

14. Further, it is a settled law that an application under Order 6 Rule 17 CPC cannot be allowed to alter the nature of the suit or the relief prayed for, neither can inconsistent pleadings be raised by way of an application under Order 6 Rule 17 CPC. In the instant case, the relief prayed for by the plaintiff is based upon the registered relinquishment deed dated 21.05.1997 executed by her son i.e. the defendant and her daughter Radha Mitra in favor of the plaintiff. On the basis of the said deed the



plaintiff claims to be the full owner of the suit property. Therefore, a suit for partition could not have survived and in fact the nature of the suit has changed from that of partition to that of possession on the basis of ownership. The plaintiff, thus, cannot be said to be barred by law.

15. The contention of the applicant/defendant that the Court did not have the power to allow the application under Order 23 Rule 1 (3) CPC for withdrawal of the suit with liberty to file a fresh suit on the same cause of action and the order was bad in the eyes of law again is misplaced and cannot be raised by way of the present application. The remedy available with the applicant/defendant was to prefer an appeal against the said order. Once the applicant/defendant has not availed the judicial remedy available to him, the validity of the said order cannot be questioned at this stage before this Court and this Court cannot sit as a Court of appeal against the said order.

16. The other contention of the applicant/defendant that the present suit is hit by estoppel also has no merit to stand on its legs. The present suit is based upon a duly registered relinquishment deed which was purportedly executed by the defendant as one of the executors and was well aware of the same, therefore, it cannot be said that the defendant was misled by the pleadings of the plaintiff in the previous suit and, therefore, the doctrine of estoppel would not apply. Further, since the right is claimed on the basis of a registered document, estoppels cannot apply against law. Also, the present suit has been filed consequent to the liberty granted by a Court of law vide order dated 24.03.2021. Thus, the question of applicability of the doctrine of estoppel would not arise in the present case. It is important to note that the CPC even permits a review in case of the discovery of a new information/document which was not available at the time of the passing of the orders by the Court. By applying the said analogy, it can be safely held that upon the discovery of a new document which was not in the knowledge of a party at the time of the previous suit and which entitles a party to a substantive right, the party should be given an opportunity to establish his rights upon proving the said document and the applicant would have ample opportunity to challenge the



validity of the said document during the proceedings of the present suit.

x

x

x

19. In final conclusion, upon perusal of the plaint, the documents annexed with the plaint, the order dated 24.03.2021 in CS DJ No. 918/2019 and the contention of the parties, the present suit does not appear to be barred by law. It shall be open to the parties to lead evidence during the proceedings to prove the bar of law, if any. This Court at this stage sees no ground to reject the plaint. The present application is accordingly dismissed.”

38. Upon a bare perusal of the above quoted impugned order, it is observed by this Court that whilst adjudicating upon the petitioner’s application under Order VII Rule 11 of the CPC, the learned Trial Court passed a detailed and reasoned order. The learned Court below stated that as per the settled legal principles, the Court has to only consider the averments made in the plaint.

39. It has been observed by this Court that the respondent, i.e., the plaintiff before the learned Court below, has specifically averred in its plaint (in civil suit bearing No. CS DJ No. 131/2022) at paragraph no. 6, 7 and 8, that at the time of presenting the previous suit, the respondent had failed to file an important document i.e., the relinquishment deed dated 21st May 1997, *per se*, and the said deed could not be produced before the Court trying the previous suit since the respondent due to her old age and ailing health failed to remember the said document.

40. It has also been observed by this Court that the respondent in her fresh plaint has also mentioned that the above said deed was recently discovered by her, whereby, the defendant, i.e., the petitioner herein and the daughter of the respondent, i.e., Smt. Radha Mitra had jointly and unequivocally relinquished their share of the suit property in favour of the present



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respondent.

41. It has further been averred in the plaint that the said deed stands duly registered with the office of the sub-registrar of New Delhi as Document No. 5673 in Additional Book No. I, Volume No. 1144 on pages 36 to 37.

42. As stated above, only the averments made in the plaint are to be looked into for adjudication of an application under Order VII Rule 11 CPC, and the Court's power are restrained, as per which the Court cannot go beyond the contents of the plaint for deciding an application for rejection of a plaint.

43. It is evident that while considering the averments made in the plaint, the learned Trial Court followed the law laid down and enumerated in the provisions of Order XXIII Rule 1 (3) of the CPC, read with Order VI Rule 17 of the CPC.

44. This Court is of the view that the application for rejection of the plaint has to show that suit is barred by law and the said bar should appear from the pleadings of the plaintiff itself. To the contrary, vide order dated 24th March 2021, the plaintiff is at liberty to file a fresh suit and the same has been ordered by a Court of law, in the exercise of its power under Order XXIII of the CPC. Therefore, this Court is not satisfied with the argument of the petitioner that the respondent cannot institute a fresh suit because the same is barred by the law due to the reason that the subject matter of the previous suit and the fresh suit along with the cause of action is same.

45. Also, since the order dated 24th March 2021, whereby, the respondent was permitted to withdraw her previous suit with a liberty file a fresh suit has not been challenged by the petitioner in this petition, this Court is of the considered view that the merits and contentions *qua* the illegality of the said order cannot be discussed due to the reason that the said order is not the



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subject matter of this petition.

46. Moving further, the petitioner has contended that Order VI rule 17 of the CPC, does not permit the parties to change the case set out by them. It has been submitted that taking a plea which is inconsistent with a plea already been made is not permissible under the above said provisions as the same is contrary to the principle of estoppel.

47. This Court has observed that the learned Trial Court in its impugned order held that the fresh suit is based upon a duly registered relinquishment deed which was purportedly executed by the defendant, i.e., the present petitioner as one of the executors and he was well aware of the same, therefore, it cannot be said that the defendant was misled by the pleadings of the plaintiff in the previous suit and, therefore, the doctrine of estoppel would not apply. Further, since the right is claimed on the basis of a registered document, estoppel cannot apply against law. This Court is of the view that the said stance taken by the learned Trial Court is right and there is no illegality or irregularity within the said observation due to the reasons which are twofold. *Firstly*, the respondent had been given due liberty by the Trial Court to institute a fresh suit and *secondly*, the fresh suit was instituted on the basis of the duly registered relinquishment deed which was discovered at a later stage of the previous suit and that the said previous suit was withdrawn on the ground of discovery of the said document. Thus, the same cannot be said to be barred by the law of estoppel.

48. Moreover, the law *qua* the principle governing Order VI Rule 17 of the CPC, states that a plea of amendment cannot be allowed to alter the nature of the suit or the relief prayed for, neither can inconsistent pleadings be raised by way of an application under the said provision. As such, in the instant



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case, the relief prayed is for the possession of the suit property by virtue of the relinquishment deed dated 21st May 1997, and the previous suit was regarding partition of the suit property. The learned Trial Court in this regard held that on the basis of the said deed the plaintiff claims to be the full owner of the suit property. Therefore, this Court is inclined to affirm the said view of the learned Court below that a suit for partition could not have survived and in fact the nature of the suit has changed from that of partition to that of possession on the basis of ownership. The plaintiff, thus, cannot be said to be barred by law.

49. Since, it has been established that only the averments made in the plaint are germane, therefore, the learned Trial Court did not exercise its jurisdiction in contravention to the settled law. This Court is inclined to affirm the observations made by the learned Trial Court since it is a settled law that any contentions raised in any other pleading including either the written statement or the application under Order VII Rule 11 of the CPC, itself, cannot be considered, for rejection of a plaint. While following the said law point, the learned Court below proceeded to dismiss the petitioner's application since it found no ground is being made out for rejecting the respondent's plaint.

50. In light of the above, this Court is of the view that while adjudicating the petitioner's application filed under Order VII Rule 11 of the CPC, the learned Trial Court rightly decided the same and in consonance with the law laid down by the Hon'ble Supreme Court.

51. This Court, does not find any force in the propositions put forth by the petitioner and, is of the view that the petitioner has failed to make out his case to seek the intervention of this Court under its revisional jurisdiction.



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52. There is nothing in the impugned order which suggests that there is any error of jurisdiction or other error which goes to the root of the matter, therefore, calling for the intervention of this Court under Section 115 of the CPC.

53. In view of the above discussions of facts and law, this Court finds no infirmity in the impugned order dated 25th July 2023, passed by the learned ADJ-03, South East District, Saket Courts, New Delhi, in civil suit bearing No. CS DJ No. 131/2022.

54. For all the aforesaid reasons, no merit is found in this revision petition and the same is accordingly dismissed along with the pending applications, if any.

55. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

OCTOBER 11, 2023

pa/ryp/db

Click here to check corrigendum, if any