



2024:DHC:514



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

+ **EX.F.A. 5/2024 and CM APPL. 4083-85/2024**

SUNITA

..... Appellant

Through: Mr. C.B. Singh, Advocate

versus

MUKESH KUMAR

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER (ORAL)

23.01.2024

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1. This first appeal has been preferred against an order passed by the learned Civil Judge as the Executing Court.
2. I queried of learned counsel for the appellant as to how a first appeal could lie against an order of the Civil Judge to the High Court.
3. Mr. C.B. Singh, learned counsel for the appellant, submits that the appellant had in fact filed a first appeal RCA 124/2023 before the learned ADJ, but that, on the learned ADJ opining, on 11 December 2023, that he had no jurisdiction to entertain the appeal, was constrained to file the present appeal before this Court.
4. The order dated 11 December 2023 passed by the learned ADJ in RCA 124/2023 reads thus :



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“RCA No. 124/23
Sunita vs. Mukesh Kumar

11.12.2023

Present: Sh. C.B Singh, Ld. Counsel for the Appellant a/w
Appellant.
Sh., Ld. Counsel for the Respondent a/w Respondent.

The service has been effected upon the respondent.

TCR has been received.

Ld. Counsel for the respondent has filed reply to the present appeal alongwith reply to application under Section 151 CPC and also under Section 5 of the Limitation Act. Copy supplied to the appellant.

It is submitted by the Ld. Counsel for the appellant that the execution petition from which the present appeal has arisen is coming up for hearing on 19.01.2024.

Relist the matter for arguments on the present appeal on 11.01.2024.

At this stage, Ld. Counsel for the appellant submits that he seeks liberty to withdraw the present appeal with liberty to prefer a petition under Article 227 of the Constitution of India before the Hon'ble High Court of Delhi.

Liberty granted.

Separate statement of the Ld Counsel for appellant is recorded to this effect.

In view of the statement, present appeal stands dismissed as withdrawn.

File be consigned to Record Room after necessary due compliance.

Sd/-
(Sachin Sood)
ADI-01, (Central)
THC, Delhi, 11.12.2023”



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5. The order does not disclose any opinion having been expressed by the learned ADJ that he has no jurisdiction to deal with the matter. Rather, it appears that the appellant withdrew the appeal with liberty to file a writ petition before this Court under Article 227 of the Constitution of India. The learned ADJ appears to have allowed the appeal to be withdrawn and granted liberty as sought.

6. In the first place, it needs to be clarified that the learned ADJ could not have granted liberty to approach this Court. Liberty can only be granted to approach a Court which is jurisdictionally equal or lower in hierarchy to the Court granting liberty. Liberty connotes permission, and the learned ADJ could not have granted permission to the appellant to approach this Court.

7. Be that as it may, having said that he wanted to withdraw the appeal, with liberty to file a petition under Article 227 of the Constitution of India, it is difficult to understand how the appellant chose instead to file the present first appeal before this Court.

8. Mr. Singh submits that in fact, he never sought permission to withdraw the appeal and that this was a direction passed by the learned ADJ.

9. If that is the case, the remedy with the appellant would be to move the learned ADJ stating that he had never sought to withdraw the appeal with liberty to move a petition under Article 227 of the



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Constitution of India.

10. Needless to say, this Court is expressing no opinion on the correctness of the said submission.

11. Mr. Singh seeks leave to withdraw the appeal, to approach the learned ADJ in appropriate proceedings.

12. Without expressing any opinion on whether any fresh proceedings before the learned ADJ would be maintainable, this appeal is permitted to be withdrawn as sought.

C.HARI SHANKAR, J

JANUARY 23, 2024

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Click here to check corrigendum, if any