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

% ***Date of Decision: 05th November, 2024***

+ CM(M) 217/2019

USHA RANI

.....Petitioner

Through: Mr. Sanjay Katyal, Advocate

versus

KAVINDRA SINGH & ORS

.....Respondents

Through: Mr. Pardeep Gupta with Mr. Rakshit
Rathi, Advocates for Respondent
No.1 and 2 (through V.C.)
Mr. Akash Bharioke, Advocate for
respondent No.3.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Petitioner is defending a suit for injunction and declaration.
2. During pendency of the above said civil suit, learned Trial Court framed three issues on 23.10.2013.
3. It seems that after framing of issues, defendant No.1 raised objection regarding the maintainability of the suit and said aspect was considered by the learned Trial Court on 03.04.2017 and accepting the contention made by defendant No.1, the suit was dismissed as not maintainable.
4. The above said order was challenged by filing an appeal under Section 96 of CPC before the concerned Court of learned District Judge and learned District Judge, vide order dated 28.11.2018,



allowed the appeal and referred the matter back to the learned Trial Court to proceed with the trial.

5. Such order is under challenge herein.

6. The above said order dated 28.11.2018 passed by the learned Appellate Court would indicate that the learned Appellate Court was under the assumption that some application had been moved by defendant No.1 under Order VII Rule 11 CPC and it seems that keeping in mind the constricted scope of appreciation while dealing with any such application, the learned Appellate Court had set aside the above said order dated 03.04.2017.

7. It is informed by both the sides that the suit in question is at the stage of PE.

8. As noted, impugned order would indicate that the learned Appellate Court was under the impression that some application had been moved by defendant No.1 under Order VII Rule 11 CPC, which was never the case.

9. Since the trial is already proceeding ahead and the case is already at an advanced stage of plaintiff's evidence, no purpose would be served by asking the learned Appellate Court to consider the above said appeal afresh and, therefore, it will be in the fitness of things if the present petition is disposed of with direction to the learned Trial Court to re-consider the aspect of maintainability of the suit at the stage of final arguments, without getting influenced by the observations made either by the learned Trial Court in its order dated 03.04.2017 or, for that matter, the order passed by the learned Appellate Court on 28.11.2018.



2024:DHC:8558



10. It is also informed that the petitioner herein i.e. Ms. Usha Rani is 78 years of age and is also stated to be indisposed and, therefore, the learned Trial Court is requested to expedite the disposal of the above said suit.

11. Needless to say, both the sides would render due assistance and cooperation in this regard to the learned Trial Court.

12. The petition stands disposed of in the aforesaid terms.

(MANOJ JAIN)
JUDGE

NOVEMBER 05, 2024/st