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

+ **CS(OS) 240/2020**

PUNEET GOEL

.....Plaintiff

Through: **Mr. Vivek Srivastav and Ms. Parul
Bhardwaj, Advs.**

versus

AJAY NAGPAL & ANR.

.....Defendants

Through:

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER

12.07.2024

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**I.A. 33130/2024 (under Order 23 Rule 1 Sub Rule 3, read with Section
151 CPC for permission to withdraw the present suit with liberty to
institute a fresh suit)**

1. This is an application under Order 23 Rule 1 CPC read with 151 CPC filed by the plaintiff seeking withdrawal of the present suit.
2. The learned counsel appearing on behalf of the plaintiff submits that originally the suit has been filed seeking specific performance of agreement to sell dated 11.06.2018. However, no alternative relief of recovery was sought in the said suit.
3. He submits that one of the defendants i.e. defendant no. 2 is behind bars for the past several months and for the said reason the agreement to sell stands frustrated, which has necessitated seeking of an alternative relief for



recovery.

4. He submits that an application seeking amendment of the plaint was filed under Order VI Rule 17 CPC by the plaintiff, however, the same was rejected by this Court *vide* order dated 29.04.2024 granting liberty to the plaintiff to file a separate suit. In support of his submission, the learned counsel has invited the attention of the Court to para 11 of the aforesaid order.

5. In view of the averments made in the application, as well as, regard being had to the submissions made by learned counsel, the present application is allowed.

6. The suit is dismissed as withdrawn with liberty to the plaintiff to file fresh suit for recovery.

7. The application stands disposed of.

8. The next date of hearing in the suit i.e. 30.07.2024 is cancelled.

VIKAS MAHAJAN, J

JULY 12, 2024

N.S. ASWAL