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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ C.R.P. 195/2023 and CM APPL. 37654/2023, CM APPL. 37655/2023

MANOJ SHARMA

..... Petitioner

Through: Mr. Madan Lal Sharma, Ms. Vidhi Kumar, Ms. Disha Sharma, Ms. Tejaswini Verma and Mr. Vikrant Malwal, Advs.

versus

MS BABLI

..... Respondent

Through: Mr. Mohak Bhadana, Adv. (DHCLC)

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

% **ORDER**
01.02.2024

1. Having heard learned counsels for the parties and on perusal of the record, I find that the impugned order dated 28.03.2023 is not sustainable in law.
2. Briefly stated, a suit for declaration and possession was filed by the petitioner/plaintiff and when the matter was at the stage of recording of evidence of the parties, an application under Order XXIII Rule 1 CPC was moved by the petitioner/plaintiff, seeking withdrawal of the suit, with liberty to file a fresh suit on the premise that there was a technical defect, inasmuch as the details of the property had not been correctly specified.
3. Learned counsel for the petitioner has relied upon the decisions



in (i) **V. Rajendran and Another v. Annasamy Pandian (Dead) Through Legal Representatives Karthyayani Natchiar** (2017) 5 Supreme Court Cases 63 and (ii) **R.K. Agrawal and Abhay Manohar Sapre** AIR 2017 Supreme Court 5587.

4. Ex facie, the impugned order dated 28.03.2023 is not sustainable. Merely because the case is at the stage of plaintiff's evidence, the same is not a sufficient ground so as to not allow withdrawal of the suit. The petitioner/plaintiff cannot be legally compelled to proceed with the suit if he does not wish to do so. It is acknowledged before this Court that the respondent/defendant is in continuous and uninterrupted possession of the property in question. There shall be caused no prejudice to the respondent/defendant, except that he should be compensated for having been subjected to this protracted litigation. Further, the issues raised by the respondent/defendant shall remain open to be agitated in the manner provided by law.

5. Accordingly, the impugned order dated 28.03.2023 is hereby set-aside, and the petitioner/plaintiff be allowed to withdraw his suit subject to the petitioner/plaintiff making a payment of Rs. 25,000/- to the respondent/defendant by way of exemplary costs before the learned Trial Court on the next date of hearing. The petitioner/plaintiff shall be at liberty to file a fresh suit on the same cause of action, if permitted by law.

6. The present civil revision petition along with pending applications stands disposed of.

DHARMESH SHARMA, J.

FEBRUARY 1, 2024/sp