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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 2674/2024**
SH SANJAY RASTOGI Petitioner

Through: Mr. Somnath Bhattacharya, Advocate.

versus

SH SUNIL RASTOGI & ORS. Respondents
Through:

CORAM:
HON'BLE MR. JUSTICE MANOJ JAIN

ORDER

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02.07.2024

CM(M) 2674/2024&CM APPL.36214/2024 CM APPL. 36213/2024(for grant permission to bring on record order)

1. Respondent had filed a suit for recovery and the petitioner herein is defendant No. 1 in such suit.
2. Copy of such plaint has also been annexed as Annexure P-3.
3. Though, it has been filed as a 'summary suit' under Order XXXVII CPC for recovery of Rs. 16,00,000/-, there is an over writing and cutting whereby, the nature of suit has been converted into an ordinary suit.
4. Moreover, there is a specific order in this regard as on 22.11.2019, learned counsel for the plaintiff (respondent herein) submitted before the learned Trial Court that though, the suit had been filed under Order XXXVII CPC, the same be treated as simple suit for recovery.
5. However, the suit was decreed as if the suit was still summary in nature.

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6. The petitioner herein put an appearance before the learned Trial Court and moved application under Order IX Rule 13 of CPC read with Order XXXVII Rule 4 CPC praying therein that order dated 04.08.2023, under which the decree had been passed, may be set aside.
7. Learned counsel for the petitioner also made a submission before the learned Trial Court that since the suit had already been treated as a normal recovery suit, it could not have been decreed under Order XXXVII CPC.
8. Learned Trial Court, noticing that there was a confusion regarding the nature of the suit gave petitioner an opportunity to defend the suit but subject to a condition that he would deposit Rs. 8,00,000/- in shape of FD in the name of the Court.
9. Such order is under challenge.
10. The grouse of the petitioner is precise and simple.
11. It is argued that since the suit had already been converted into an ordinary suit, there was no reason or occasion for the learned Trial Court to have invoked the provisions contained under Order XXXVII CPC and, therefore, without recording any kind of evidence, judgement could not have been rendered.
12. It has also been submitted by learned counsel for petitioner that since the above order was not complied with, the decree has already been confirmed by the learned Trial Court on 31.05.2024. CM APPL. 36213/2024 has been filed seeking permission to bring on record the subsequent development as contained in order dated 31.05.2024.
13. It is noticed that earlier, when this petition was entertained by this Court for the first time on 28.05.2024, the petitioner was directed to take steps so that notice is issued, by all permissible modes, to the respondents and



returnable date was 07.11.2024.

14. Though the petitioner has taken steps, as per the report of registry the process is yet to be issued.

15. Mr. Somnath Bhattacharya, learned counsel for petitioner has stated that in view of the above said significant development, the petitioner is required to challenge the aforesaid final order dated 31.05.2024 whereby, the decree has been confirmed. He seeks permission to withdraw the present petition with liberty to challenge the impugned order in question herein as well as subsequent order dated 31.05.2024 by filing appropriate petition.

16. In view of the aforesaid, the permission is hereby granted and the present petition is dismissed as withdrawn. However, liberty, as prayed for, is granted.

17. The next date of 07.11.2024 stands cancelled.

MANOJ JAIN, J

JULY 2, 2024/SW