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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of decision: 29th August, 2024***+ **CM(M) 3267/2024 & CM APPL. 49670-49671/2024****SURESH SETHI**

.....Petitioner

Through: Mr. Saurabh Dev Karan Singh with
Mr. Nipun Arora and Ms. Annanya
Mehan, Advocates.

versus

RAJ RANI

.....Respondent

Through: Mr. Bharat Bhushan with Mr. Manoj
Kumar, Mr. Budhpriay Gautam and
Ms. Manisha, Advocates.**CORAM:****HON'BLE MR. JUSTICE MANOJ JAIN****J U D G M E N T (oral)**

1. Petitioner had been defending a suit for mandatory injunction filed by his mother.
2. Such suit was eventually decreed in favour of his mother (respondent herein).
3. The Petitioner, i.e. defendant filed an appeal before the Court of the learned District Judge, North, Rohini, Delhi by filing RCA DJ 23/2024.
4. However, the issue of maintainability of appeal was raised and the learned First Appellate Court came to the conclusion that in view of the valuation of the suit, the appeal was maintainable before the Court of learned Senior Civil Judge/Additional Senior Civil Judge,



Rohini, Delhi.

5. However, fact remains that despite passing such order on 20.08.2024, such First Appellate Court called for the Trial Court Record and fixed up the matter for arguments on 19.10.2024. In the interregnum, when the appellant had prayed for stay, even such request was declined.

6. Such order is under challenge.

7. After hearing arguments for some time, learned counsel for the petitioner states that in terms of the abovesaid directions passed by the said learned First Appellate Court, he would file appeal afresh before the competent Court. He submits that he would make appropriate request before such Appellate Court of Senior Civil Judge seeking stay of the execution of the decree in question. He prays that he may be given a breather of one week only so as to enable him to file such appeal before the Court of learned Senior Civil Judge/Additional Senior Civil Judge.

8. Learned counsel for the respondent appears on advance notice and states that the respondent is in her nineties and she had to file the present suit on account of the act and behavior of her son and keeping in mind her age, it is a fit case where no further indulgence should be granted to the petitioner herein, else she will not be in a position to enjoy the fruits of the decree.

9. Fact remains that respondent has also no qualm with respect to



the impugned order whereby it has been observed that the appeal is maintainable before the Court of learned Senior Civil Judge/Additional Senior Civil Judge.

10. It is apprised that a Bailiff has already been appointed and the warrants are to be returned tomorrow i.e. 30.08.2024.

11. Keeping in mind the peculiar circumstances which have arisen in the case in hand, as despite the fact that the learned Court of District Judge was of the view that the appeal was not maintainable before it and while observing the same, it also called for Trial Court Record and has kept the matter for arguments, there is a need to safeguard the interest of the petitioner.

12. It is also because of the fact that since the appeal continues to remain pending before a Superior Court, the petitioner is not in a position to file another appeal, impugning the same order, before the Court of learned Senior Civil Judge/Additional Senior Civil Judge.

13. Fact remains that the learned counsel for the petitioner states that he does not wish to press the present petition anymore and would take immediate steps for the purposes of filing the appeal afresh and, therefore, the present petition is, hereby, disposed of as not pressed with direction that the petitioner would file appeal, as undertaken by him, before the Court of learned Senior Civil Judge/Additional Senior Civil Judge, and would also be at liberty to move appropriate application before such Court seeking any permissible relief. It will be up to said First Appellate Court of learned Senior Civil



Judge/Additional Senior Civil Judge to consider such request and to decide the same in accordance with law, after hearing both the sides.

14. However, in the interregnum, let the execution may not be proceeded further for a period of one week to be reckoned from today so as to enable the petitioner to file appeal and to seek relief, if any.

15. Keeping in mind the fact that the respondent is in her nineties, it is expected that the learned First Appellate Court of learned Senior Civil Judge/Additional Senior Civil Judge shall consider any such appeal as expeditiously as possible.

16. This Court also wishes to clarify that such Court of learned Senior Civil Judge shall not get swayed by any observation made in this order.

17. A copy of this order be given Dasti to both the sides under the signatures of the Court Master.

(MANOJ JAIN)
JUDGE

AUGUST 29, 2024
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