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

+ **CM(M) 83/2025**

JAISON MATHEW

.....Petitioner

Through: Dr. Amit George, Mr. Alex Joseph,
Mr. Mayank Dwivedi, Mr. Alan Sabu
& Ms. Medhavi Bhatia, Advocates

versus

SIJU N JOSE

.....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

% **16.01.2025**

CM APPL. 2701/2025 (Exemption)

Allowed, subject to all just exceptions.

Application stands disposed of.

CM APPL. 2700/2025 (Stay)

1. Present petition under Article 227 of the Constitution of India seeks permission to set aside the impugned order dated 28.09.2024 passed by the trial court.
2. Petitioner is stated to be involved in the two suits filed by the respondent bearing No. Civ DJ 743/2023 and Civ DJ 756/2023, both seeking recovery of different sum of money.
3. Petitioner filed written statement, taking objection in the subsequently filed suit that the same is barred under Order 2 Rule 2 CPC.



4. Trial Court vide order dated 28.09.2024, framed issues including the issue as to whether the suit was barred under Order 2 Rule 2 CPC.
5. Learned counsel submits that despite having framed the issue, same was not taken up as a preliminary issue, and therefore, the order dated 28.09.2024, passed by the learned trial court, is flawed and perverse.
6. Order dated 28.09.2024 does not reveal that petitioner made any request before the trial court for taking up the aforesaid issue as a preliminary issue for disposal.
7. After part submissions, learned counsel of petitioner seeks permission to withdraw the present petition seeking liberty to file requisite application before the trial court, urging that the aforesaid issue be taken up as a preliminary issue. He further submits that he may also be permitted to make request before the trial court for waiver of cost imposed upon the petitioner for delay in filing the written statement.
8. Statement made by the learned counsel is taken on record and petition is dismissed as withdrawn, with liberty to file requisite application before the trial court within a period of two weeks.

RAVINDER DUDEJA, J.

JANUARY 16, 2025

RM