



2025:DHC:2340



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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of Decision: 3rd April, 2025

+ CM(M) 625/2023 & CM APPL. 19254/2023

SH. TONI

.....Petitioner

Through: Mr. Umesh Suri and Mr. Avinash Suri,
Advocates

versus

SMT. KAJAL

.....Respondent

Through: Ms. Laveena, Advocate

CORAM:
HON'BLE MR. JUSTICE MANOJ JAIN
J U D G M E N T (oral)

1. A suit was instituted by Mr. Toni through his paternal uncle Mr. Chander Saini (since deceased) and *vide* order dated 26.07.2022, the suit has been dismissed, being not maintainable on the ground that it has not been instituted by an authorized person.
2. According to learned counsel for petitioner/plaintiff, said Mr. Toni was a drug-addict and while under the influence of drugs, he had executed a *Sale Deed* and the suit was filed for declaring such *Sale Deed* as null and void.
3. It is pointed out by learned counsel for petitioner that said Mr. Toni had appeared before the learned Trial Court and made a statement that he had not authorized Mr. Chander Saini to file any such suit and merely for the aforesaid reason, learned Trial Court has dismissed the suit without even deciding the application which had been filed under Order XXXII CPC whereby a request had been made to the learned Trial Court seeking appointment of guardian for him. It is submitted that the dismissal was not



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warranted merely on the basis of said statement of Mr. Toni, who was not having mental capacity to comprehend the import of his such statement and was not even capable by reason of his mental infirmity, to make a statement, even. It is also apprised that thereafter, matter has even been amicably settled between the parties and such settlement took place on 01.04.2025 before Mediation Centre, Dwarka Court Complex, New Delhi and other side is also agreeable for declaring the *Sale Deed* as null and void.

4. Copy of such settlement is also stated to have been filed vide Diary No. 2297546/2025.

5. Be that as it may, fact remains that application, which had been filed under Order XXXII CPC, has yet not been adjudicated and the Court should have come to a definite opinion, either way, only after comprehensive enquiry as envisaged under Order XXXII CPC and to that extent, the observation that the suit has not been properly instituted seems premature and thus unsustainable.

6. In view of the above, order dated 26.07.2022 is hereby set aside with direction to the learned Trial Court to have a re-look on the matter and to return a finding after comprehensive consideration of the aforesaid application moved under Order XXXII CPC. It will be also open to Court to assess the medical condition of plaintiff Mr. Toni who is stated to be of 'unsound mind' before passing any order in this regard. It will be also open to Court to seek report about his medical condition from any State/Government Hospital.

7. Present petition, along with all the pending applications, stands disposed of in the aforesaid terms.



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8. A copy of this order be given *dasti* under the signatures of the Court Master.

(MANOJ JAIN)
JUDGE

APRIL 3, 2025 /dr/SS