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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 1058/2025 & CM APPL. 35084-35085/2025**
DINESH SINGHAL

.....Petitioner
Through: Mr. Rakesh Chander Agarwal with
Mr. Kartic Kumar Agarwal and Mr. G
S Arora, Advocates.

versus

DEEPAK JAIN & ANR.

.....Respondent
Through: Mr. Siddharth Gupta, Advocate for
R-2.

CORAM:
HON'BLE MR. JUSTICE MANOJ JAIN

ORDER
29.05.2025

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1. Order XLIII Rule 1(a) reads as under:-

"1. Appeal from orders.—An appeal shall lie from the following orders under the provisions of section 104, namely: —

(a) an order under rule 10 of Order VII returning a plaint to be presented to the proper Court [except where the procedure specified in rule 10A of Order VII has been followed];"

2. Thus, it is very clear from the abovesaid provision that an appeal would be maintainable only where a plaint is directed to be returned.
3. Petitioner herein is defendant before the learned Trial Court and when he moved an application under Order VII Rule 10 CPC seeking return of the plaint, his such application was, rather dismissed on 01.06.2023.

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4. Against such dismissal, there is no provision of filing an appeal and, therefore, the very filing of any such Miscellaneous Appeal was against the statutory provision and the appeal was not maintainable.
5. It seems that such aspect was not appropriately considered by the Registry of the District Courts or, for that matter, by the learned First Appellate Court itself.
6. The challenge in the present matter is with respect to the abovesaid order passed by the First Appellate Court.
7. The abovesaid order dated 26.09.2024 is clearly *non est* order.
8. After hearing arguments for some time, learned counsel for the petitioner seeks to withdraw the present petition with liberty to file appropriate petition under Article 227 of Constitution of India challenging order dated 01.06.2023 whereby application moved under Order VII Rule 10 CPC was dismissed
9. In view of the above, the present petition is disposed of as not pressed.
10. Liberty, as prayed, is granted.

MANOJ JAIN, J

MAY 29, 2025/sw/PB