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

+ **CM(M) 3866/2024 & CM APPL. 67685/2024 EXEMPTION**

SANJEEV MALHOTRA

.....Petitioner

Through: Ms. Ridhima Malhotra and Mr.
Kushagra Ojha, Advocates.

versus

INDER MONGIA

.....Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

10.02.2025

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1. This is a petition under Article 227 of the Constitution of India, impugning the order dated 24.09.2024, passed by learned Senior Civil Judge, whereby the review application filed by the petitioner has been dismissed.
2. None appeared on behalf of respondent when the matter was called.
3. Petitioner is defendant No. 1 in the suit filed by the respondent, seeking declaration, mandatory injunction and possession.
4. While the suit was pending, learned trial court vide order dated 16.02.2022, *suo moto* raised queries with respect to maintainability of the suit on two grounds, namely, the “non-registration of agreement from which the suit emanates” and also “the improper valuation of the suit and affixation of court fees”. Parties were directed to file their written submissions on the issue raised by the learned court.



5. Parties filed their respective written submissions. A perusal of the order dated 27.07.2022 reveals that after hearing arguments on the issue of maintainability, the matter was reserved for orders.
6. It appears that while the matter was reserved for orders on the above mentioned issues, respondent moved an application under Order 2 Rule 2 CPC on 01.02.2023 and petitioner was directed to file reply to the said application.
7. Application under Order 2 Rule 2 CPC was dismissed vide order dated 30.05.2024. However, while dismissing the said application, the case was fixed for plaintiff's evidence in ignorance of the fact that the issue of maintainability of the suit as raised vide order dated 16.02.2022 was yet to be adjudicated upon.
8. The review application filed by the petitioner was dismissed vide order dated 24.09.2024 for the reason that no ground for review was made out in the application.
9. The limited grievance of the petitioner is that the question of maintainability should be decided before directing the parties to lead their evidence.
10. I find merit in the argument of the learned counsel, inasmuch as, the question of maintainability of the suit goes to the root of the case, and therefore, should be decided before taking the evidence on record with regard to the merits of the case.
11. The petition is therefore disposed of with direction to the trial Court to decide the question of maintainability, as propounded vide order dated 16.02.2022, as per law.



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

RAVINDER DUDEJA, J

FEBRUARY 10, 2025/vp