

(2023) 03 DEL CK 0158

In the Delhi High Court

Case No : Civil Suit (OS) No. 275 Of 2017, Review Petition No. 76 Of 2023

Anil Kumar Gupta

APPELLANT

Vs

Ajit Kumar

RESPONDENT

Date of Decision : 22-03-2023

Acts Referred:

Code Of Civil Procedure, 1908 — Section 114, 151, Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 2A

Citation : (2023) 03 DEL CK 0158

Hon'ble Judges : Mini Pushkarna, J

Bench : Single Bench

Advocate : A.K. Sharma, Hemlata Rawat Aayushmaan Vatsyayana

Final Decision : Dismissed

Judgement

Mini Pushkarna, J

REVIEW PET.76/2023

1. The review petition has been filed under Section 114 read with Section 151 CPC seeking review of the order dated 27.10.2022.

2. Learned counsel appearing for the review petitioner/ defendant submits that by order dated 27.10.2022, certain directions had been passed by this Court in IA No. 5610/2020, which is an application under Order 39 Rule 2A CPC. Learned counsel submits that since there are no orders under Order 39 Rules 1 and 2 CPC, therefore, the application under Order 39 Rule 2A CPC was not maintainable. She relies upon the judgment passed by the Hon'ble Supreme Court in Food Corpn. of India v. Sukh Deo Prasad, (2009) 5 SCC 665, in support of her submissions.

3. It is seen from the record that this Court has neither disposed of the said application, IA No. 5610/2020 filed under Order 39 Rule 2A CPC nor has adjudicated upon the maintainability of the said application.

4. In view thereof, it is clear that the said application under Order 39 Rule 2A CPC is still pending before the Roster Bench. Since this Court has not passed any final order in the said application under Order 39 Rule 2A CPC, submissions on the maintainability of the said application, as such would have to be made before the Roster Bench.

5. At this stage, learned counsel appearing for the review petitioner seeks liberty to withdraw the present review petition. She further submits that liberty may be granted to her to raise all the contentions with regard to maintainability of the application under Order 39 Rule 2A CPC before the Roster Bench.

6. Liberty is granted to the review petitioner/ defendant to make appropriate submissions before the Roster Bench.

7. Needless to state, if after hearing the application under Order 39 Rule 2A CPC on merits, the Roster Bench comes to a conclusion that the said application is not maintainable, any order passed in the said application, would not survive.

8. In view of the aforesaid, the present review petition is dismissed as withdrawn.