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

+ **C.R.P. 73/2019**

RAJENDER KUMAR Petitioner

Through: Mr. Ankit Jain, Mr. Siddhant Nath and
Mr. Sarvesh Rai, Advocates.

Versus

PANKAJ TYAGI & ORS. Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% **20.03.2019**

CM No.13338/2019 (for exemption)

Allowed, subject to all just exceptions.

The application stands disposed-off.

C.R.P. 73/2019 & CM No.13337/2019 (for stay)

A suit had earlier been filed by the petitioner seeking annulment of certain Sale Deeds. It was decreed. The present respondents' appeal against the Decree was dismissed. Now, the respondents have filed a suit pleading that the said decree and the subsequent order of the High Court was passed fraudulently.

Mr. Jain, the learned counsel for the petitioner submits that the suit would be barred, not only by the principle of *res judicata* but it is also not maintainable in view of the clear orders of this Court in the appeal. He also relies upon the judgment of this Court in CS(OS) No.1705/2005, titled as



‘Mr. S.K. Sikka & Anr. vs. Hindustan Papers Corporation Ltd. & Ors.’, 2006 (87) DRJ 478, decided on 07.02.2006, which held, *inter alia*, as under:-

“8. The plaintiff seek declaration for nullifying the judgments of the trial court, High Court of Karnataka as well as the apex court on the alleged ground of fraud and further decree for a sum of Rs.55.15 lakhs towards cost and harassment and mental agony, court fee paid by the plaintiff, interest accrued thereon, legal, administrative and travelling expenses is claimed for.

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12. In my considered view, the plaint neither discloses the cause of action nor is maintainable in law. The plaint is barred by law since it seeks a declaration that the judgment of the apex court is not binding on the parties and no recovery should be made in terms of the judgment of the apex court. The apex court has in fact modified the decree and it is not within the purview of this court to declare the said decree as null and void. The claim for damages arose only on account of the fact that the plaintiffs were not liable for the amount which has not been found sustainable by the apex court.

13. The present plaint is clearly an attempt only to evade the execution of the decree modified by the apex court and is thus a clear abuse of the process of law. Merely because a plaint is filed, summons are not liable to be issued in normal course without perusal of the plaint and verification whether such a plaint would be maintainable. If such a plaint is not maintainable, then the plaint is liable to be rejected under Order 7 Rule 11 of the Code.”

The learned counsel further submits that in view of the above, the impugned order dismissing the petitioner’s application under Order VII Rule



11 CPC is erroneous. It is the petitioner's case that in the appeal, the respondent had alluded to fraud i.e. there was collusion between the petitioner and respondents No. 3 to 5 i.e. a fraud having been played by the respondent, therefore, this issue was also considered by the Court.

Issue notice.

Let notice be served upon the respondent by way of ordinary process, Speed Post, through approved courier, including *dasti* and through counsel as well, returnable on 24.04.2019.

NAJMI WAZIRI, J.

MARCH 20, 2019

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