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

+ **RSA 133/2024 and CM APPL. 42801/2024**

SH BABU LAL BAGORIYA AND ORSAppellants

Through: Ms. Aakanksha Kaul and Mr.Akash
Saxena, Advocates.

versus

SH LEKH RAJ BHARTI AND ANRRespondents

Through: Mr.Vivek Kumar Tandon, Ms.Mamta,
Ms.Perna, Mr.Mayank and
Mr.Harshit, Advocates for R-1.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

% **03.12.2024**

1. Heard learned counsel appearing on behalf of the appellants on the question of admission.
2. Learned counsel for the appellants contends that the civil suit bearing RCA DJ No.143 of 2019 was filed for injunction, whereas, the Courts below have gravely erred in treating the aforesaid civil suit to have been filed under Section 91 of the Civil Procedure Code, 1908 (hereinafter referred to as 'CPC'). She submits that if that been so, the suit ought not to have been entertained unless there was a permission from the Advocate General or the suit was filed by two or more persons with the leave of the Court. She then contends that in view of the aforesaid, the findings rendered by the first Appellate Court suffer with material illegality and infirmity.
3. The aforesaid submissions that have been made on behalf of the



appellants are strongly opposed by the learned counsel appearing on behalf of the respondent.

4. I have perused the findings rendered by the Courts below and the material available on record.

5. A bare perusal of the plaint would indicate that the same has been filed by the sole plaintiff/respondent. Neither there appears to be any permission by the Advocate General, nor there appears to be any order granting leave to maintain the said civil suit. It is, thus, seen that legally, the concerned civil suit cannot be said to have been filed under Section 91 of the CPC. In any case, as to whether the suit *simpliciter* for injunction is maintainable and whether irrespective of invoking the provisions of Section 91 of the CPC, the plaintiff /respondent was entitled for any relief is concerned, the same can strictly be adjudicated after hearing learned counsels for both the parties.

6. The Court, therefore, deems it appropriate to admit the instant appeal on the following substantial question of law:-

(i) *Whether under the facts of the present case, when the suit was filed by the sole plaintiff/respondent in his personal capacity can the same still be treated to have been instituted under Section 91 of the CPC, without adhering to the requirement stipulated therein.*

7. Also heard learned counsel for the appellants on CM APPL. 42801/2024, praying for stay of the impugned order.

8. The respondent no.1 is already represented by Mr. Vivek Kumar Tandon, Advocate and he prays for some time to file the reply to the stay application.

9. Let the same be filed within a period of four weeks from today.



10. On appellant taking necessary steps, let notice of application bearing CM APPL. 42801/2024 be issued to respondent no.2, by all permissible modes, returnable on the next date of hearing.
11. List CM APPL. 42801/2024 on 14.01.2025.
12. The record of the Trial Court be also requisitioned and made available in the digital record of this Court on the next date of hearing.
13. List the appeal on 21.03.2025.

PURUSHAINDR KUMAR KAURAV, J

DECEMBER 3, 2024

Nc/dp