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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO 210/2025 & CM APPL. 46226/2025**
ANJUBEN ALIAS ANJU

.....Appellant

Through: Mr. Amit Agrawal, Mr. Rahul Kukreja
and Ms. Lakshmi Nair, Advocates.

versus

SMT SANGEETA & ORS.

.....Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE MANOJ JAIN

ORDER

% **31.07.2025**

1. The appellant is plaintiff before the learned Trial Court and admittedly the suit in question was dismissed on 13.11.2024.
2. However, the dismissal was, primarily, for the reason that no evidence was led by the plaintiff.
3. After such dismissal of the suit, an application was filed by the plaintiff seeking restoration of his suit and, initially, the learned Trial Court allowed such restoration *vide* order dated 08.01.2025.
4. However, later on, the learned Trial Court was of the view that restoration should not have been allowed without seeking response from the defendants and, therefore, notice was issued to all the defendants.
5. On such next date i.e. 07.05.2025, the learned Trial Court, however, came to the conclusion that such restoration application under Section 151 CPC was not maintainable and, since the suit had been dismissed, the

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appropriate remedy was either to file an appeal or a review application.

6. Resultantly, the abovesaid application under Section 151 CPC has been dismissed.

7. Therefore, apparently the plaintiff is back to square one.

8. Learned counsel for the petitioner submits that the application which plaintiff had moved was, though, labelled as one under Section 151 CPC, for all purposes, it was an application under Order IX Rule 9 CPC seeking restoration of the suit which had been dismissed for *non-prosecution*, and not on merits.

9. He submits that in view of the above, the present appeal would be maintainable under Order XLIII (1)(c) CPC and in this regard he strongly relies upon *Harsukh B. Gohel vs. Vinod Kumar Bindlish and Others: 2014 SCC OnLine Bom 152*.

10. Issue notice to respondent through all permissible modes, returnable on 04.12.2025. Notice be also issued through counsel.

MANOJ JAIN, J

JULY 31, 2025/ss/pb