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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Date of Decision: 05th May, 2025*

+ CM(M) 752/2025 & CM APPL. 24380/2025 & CM APPL.
24382/2025

KAMAL KISHORE @ KAMAL MALHOTRAPetitioner

Through: Mr. Rahul Kumar, Advocate

versus

ARUN KUMAR MALHOTRARespondent

Through: Mr. Rajesh Bhatia, Mr. Hemant
Kakkar and Mr. Shivam Advocates
along with Respondent

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

CM APPL. 24380/2025 (exemption)

Exemption allowed, subject to all just exceptions.

CM(M) 752/2025 & CM APPL. 24382/2025

1. Petitioner is defending a suit for declaration and permanent injunction.
2. During pendency of the suit, defendant, with the permission of learned Trial Court, amended his written statement.
3. During further pendency of the suit, defendant moved an application under Order XIV Rule 5 CPC with request that in view of the objections taken in the amended written statement, let additional issues be framed.



4. Aforesaid application was allowed in part and request for framing of issues regarding valuation and pecuniary jurisdiction was declined, holding that no such ground was taken in the written statement. Learned Trial Court was also of the view that objections taken in the written statement was regarding maintainability on the ground of *res judicata* and not under Order II Rule 2 CPC and, therefore, no issue to said effect has either been framed.

5. The attention of this Court has been drawn towards *amended written statement* which does incorporate objections regarding valuation and pecuniary jurisdiction as well as *qua* order II Rule 2 CPC.

6. It seems that while considering the aforesaid application moved by defendant under Order XIV Rule 5 CPC, due to some oversight or inadvertence, the learned Trial Court has, merely, considered the previously filed written statement and not the amended written statement.

7. Learned counsel for respondent/plaintiff has also joined the proceedings through *videoconferencing* on advance notice and submits that he would have no objection if the learned Trial Court is requested to consider the application afresh, in light of the averments made in the *amended written statement*. He, at the same time, supplements that even if such amended written statement is considered, there is no requirement of framing any further additional issue.

8. Be that as it may, in view of the aforesaid admitted facts, the present petition is disposed of with request to learned Trial Court to re-consider the application moved by the defendant under Order XIV Rule 5 CPC and dispose of the same after hearing the parties and after considering the *amended written statement* filed by the defendant. Such disposal be made, without getting prejudiced to its earlier order dated 24.08.2024.



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9. All the pending applications also stand disposed of.
10. It is clarified that this Court has not given any observation on the merits of the case, as such.

(MANOJ JAIN)
JUDGE

MAY 5, 2025/dr/js