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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ RSA 94/2019 & CM APPL. 20500/2019, CM APPL.  
37837/2022, REVIEW APPLN. 213/2022

RAKESH KUMAR SHARMA ..... Appellant  
Through: Ms. Kiran Sharma, Adv.

versus

MOTHER DAIRY FRUIT & VEGETABLES PVT LTD  
..... Respondent  
Through: Mr. Raavi Birbal, Adv. for Mr.  
Raj Birbal, Sr. Adv.

**CORAM:**  
**HON'BLE MR. JUSTICE C. HARI SHANKAR**

% **ORDER**  
**30.08.2022**

**REVIEW APPLN. 213/2022**

1. This review application under Order XLVII Rule 1 read with Section 151 of the CPC, seeks review of order dated 3<sup>rd</sup> August 2022, passed by this Court in CM 34199/2022.

2. The order dated 3<sup>rd</sup> August 2022 reads as under:

**“CM APPL. 34199/2022 in RSA 94/2019**

1. CM 32488/2022, which contains prayer identical to the prayers advanced in this application, was withdrawn by the appellant on 26<sup>th</sup> July 2022.

2. This application is, therefore, clearly misguided. It is accordingly dismissed.

3. Ms. Kiran prays for fixation of the date in the appeal, which presently stands adjourned to 23<sup>rd</sup> August

2022.

4. At her request and with consent of learned Counsel for the respondent, the date is re-notified for 30<sup>th</sup> August 2022.”

3. As noted, the aforesaid order dated 3<sup>rd</sup> August 2022, refers to an earlier order dated 26<sup>th</sup> July 2022 passed by this Court, which reads thus:

**“CM No.32488/2022**

1. This is an application which seeks permission to the applicant to be appointed as a guardian of the appellant, who is missing.

2. This Court has, on an earlier occasion, already questioned the maintainability of the appeal at the instance of an appellant who is missing.

3. Ms. Kiran, learned Counsel for the appellant seeks leave to withdraw this application to move an appropriate application.

4. The application is dismissed as withdrawn.

**RSA 94/2019**

5. Re-notify on 23<sup>rd</sup> August, 2022.

6. It is made clear that on the next date of hearing, the learned Counsel should be ready to advance arguments on the maintainability of the present appeal and any application that learned Counsel chooses to file should be filed within 10 days from today.”

4. Clearly, there is no error in the order dated 3<sup>rd</sup> August 2022. The petitioner had initially filed an application being CM 32488/2022, under Section 151 of the CPC, for appointment of a guardian of the

appellant. The court had, on 26<sup>th</sup> July 2022, pointed out to Ms. Kiran, learned Counsel for the petitioner/applicant, that there was no provision in the CPC to appoint a guardian for an appellant who was missing.

5. Indeed, if the appellant is missing, the very maintainability of the appeal would be highly debatable, which is what was also noted in the order dated 26<sup>th</sup> July 2022. It was for this reason that, on 3<sup>rd</sup> August 2022, when an identical application was filed by the appellant, invoking, for the said purpose, Order XXXII Rule 15 of the CPC, the application was rejected.

6. There is no error of fact or of law in the order dated 3<sup>rd</sup> August 2022.

7. Nonetheless, as Ms. Kiran has passionately argued that a guardian could be appointed by this Court, for the missing appellant, under Order XXXII Rule 15 of the CPC, the court has examined the matter.

8. Order XXXII Rule 15 of the CPC reads as under:

**“ORDER XXXII-**

**Suits by or Against Minors and Persons of Unsound Mind**

**[15. Rules 1 to 14 (Except rule 2A) to apply to persons of unsound mind—** Rules 1 to 14 (except rule 2A) shall, so far as may be, apply to persons adjudged, before or during the pendency of the suit, to be of unsound mind and shall also apply to persons who, though not so adjudged, are found by the Court on enquiry to be incapable, by reason of any mental infirmity, of protecting their interest when suing or being

sued.”

9. It is clear that Order XXXII Rule 15 CPC envisages appointment of guardians only to protect the interests of persons who are adjudged to be of unsound mind or, even if not so adjudged, are found, on enquiry by the Court, to be incapable of prosecuting their case by reason of mental infirmity.

10. Neither situation applies in the present case.

11. This Court is unaware of any provision in the CPC, which enables the court to appoint a guardian for an appellant who is missing.

12. This review application, therefore, is devoid of merits and is accordingly dismissed.

**RSA 94/2019 & CM APPL. 20500/2019, CM APPL. 37837/2022**

13. List this appeal on 26<sup>th</sup> September 2022, on which date Ms. Kiran, learned Counsel for the appellant, would address arguments on whether, as the appellant is missing, this appeal can be maintained at all.

**C. HARI SHANKAR, J.**

**AUGUST 30, 2022**

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