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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ FAO(OS) 513-514/2011

PRAKASH KHATTAR Appellant
Through : Mr.Rakesh Tiku, Sr. Advocate with
Mr.Prakash Gautam, Advocate.

versus

SHANTA JINDAL & ORS Respondents
Through : Mr.Ved Prakash Sharma, with
Ms.Amrit K.Obroi, Advocates.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE S.P.GARG

% ORDER
01.11.2011

Caveat No.964/2011

Counsel as above appears for the caveators/respondents and
hence the caveat is discharged.

C.M.No.19601/2011

31 days delay in filing the appeal is condoned.

C.M.No.19600/2011

Allowed, subject to just exceptions.

FAO(OS) 513-514/2011

1. Learned counsel for the appellant states that since evidence has been directed to be recorded and was being recorded and at that stage the ex-parte ad-interim injunction in favour of the appellant has been vacated, vide impugned order dated 04.07.2011, the appellant would not press the appeal if the Division

FAO(OS) 513-514/2011

page 1 of 3

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the digital data is as per the physical
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Bench would make an observation and issue one direction.

2. The observation sought from us is that notwithstanding the conclusive and determinative words used by the learned Single Judge while deciding an interim application, it may be clarified that the same are just a prima-facie expression of an opinion by the learned Single Judge on the subject: Whether the appellant would be entitled to an interim injunction in that the final judgment would be with reference to the evidence led.

3. Needless to state, the law is settled. Reflecting upon the facts at an interim stage, any expression of opinion by a Court, is always treated as a prima-facie opinion, for the reason the final opinion has to be expressed with reference to the evidence led and facts proved. Thus, we clarify that observations/opinions recorded in the impugned order dated 04.07.2011 shall be treated as a prima-facie reflection on the dispute by the learned Single Judge and that the final decision in the suit would be with reference to the evidence led.

4. The direction which is sought is to conclude the suit as expeditiously as possible and preferably within 6 months from today.

5. Mr.Ved Prakash Sharma, learned counsel for the respondents, points out that the evidence of the appellant/plaintiff has been closed and the defendants have filed an application seeking dismissal of the suit with reference to Order 17 of the Code of Civil Procedure. But, learned counsel simultaneously informs that the appellant/plaintiff has filed an application praying that the order closing appellant's/plaintiff's evidence be recalled and an opportunity be granted to lead evidence.

6. Thus, disposing of the appeal by recording that the same has

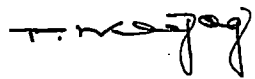
not been pressed, we express a request to the learned Single Judge that the two applications, one filed by the plaintiff and the other by the defendants, which have a bearing on the order closing evidence of the plaintiff be decided urgently preferably before the winter recess and if plaintiff is granted an opportunity to lead evidence, endeavor would be made to dispose of the suit preferably before the ensuing summer vacations of the year 2012.

7. The appeal stands disposed of as not pressed, with the observation as above with further observation that if the subject property is sold by the respondents pending disposal of the suit, information thereof would be given to the learned Single Judge by filing an application containing disclosure of the particulars of the sale within a week of the sale being made and that the said sale would be subject to further orders which may be passed and no equities would be created in favour of the purchaser.

8. No costs.

C.M.No.19599/2011

Dismissed as not pressed.


PRADEEP NANDRAJOG, J.


S.P. GARG, J.

NOVEMBER 01, 2011
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