

#A-64

% 24.10.2011

Present: Mr. Sudhir Nandrajog, Sr. Advocate with Mr. Dhanjai Rana, Advocate for the petitioner.

+ CM No. 19706/2011 (exemption) in CM(M) No. 1259/2011

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Exemption allowed subject to just exceptions.

CM(M) No. 1259/2011

The order impugned before this court is the order dated 12.09.2011 vide which a finding prima facie was found in favour of the plaintiff, the defendants had been enjoined/restrained from interfering with the possession of the suit property. Petitioner is aggrieved by this order. Contention of the petitioner is that the plaintiff is not in physical possession of the suit property; it is the defendant who is in possession of the same. He prays that a local commissioner be appointed to verify this factum.

After some arguments, learned counsel for the petitioner seeks permission of this court to withdraw this petition with liberty to move an appropriate application under Order 26 Rule 9 of the Code of Civil Procedure (hereinafter referred to as the

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'the Code') to get a commission executed for the said purpose; he is granted permission to do so before the First Appellate Court who has passed the impugned order; needless to state that after receiving the report of the Local Commissioner, the First Appellate Court shall pass an order afresh on the application under order 39 Rules 1 & 2 of the Code i.e. if it is so required. It is further needless to state that notice of the application under Order 26 Rule 9 of the Code would be issued to the non-applicant/plaintiff before passing any such order.

With these directions, petition is disposed of.

Copy of the order be given dasti under the signatures of the Court Master.



INDERMEET KAUR, J

October 24, 2011
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