

#A-46

% 24.10.2011

Present: Mr. Hiren Dasan, Advocate, for the petitioner.

+CM (M) No. 1255/2011 & CM No. 19688/2011

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The order impugned before this Court is the order dated 12.10.2011; the appellate court in the appeal filed under Section 96 of the Code of Civil Procedure had issued notice of the appeal and passed the following order:-

"In view of the undertaking given by counsel for the appellant to deposit decretal amount and willingness to handover the possession. The operation of judgment and decree is stayed subject to deposition of decretal amount within 10 days and notice of appeal be issued thereafter for 17.11.2011 to the respondent."

Contention before this Court is that a conditional leave could not have been granted and notice of the appeal could not have been issued subject to a condition; for this proposition reliance has been placed upon (2004) 7 SCC 337 Devitheatre Vs. Vishwanath Raju. Impugned order has noted that an undertaking had been given by the counsel for the appellant to deposit the decretal amount and his willingness to handover

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the possession; in view of this undertaking the impugned order as noted supra; judgment relied upon by learned counsel for the petitioner has no application. Petition is without any merit.

Dismissed.



INDERMEET KAUR, J

OCTOBER 24, 2011

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