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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO 375/2016 & C.M.No. 29108/2016 (for stay) & C.M.No. 34447/2016**

UNION OF INDIA & ANR. Appellants
Through: Mr. Kamla Kant Jha, Senior Panel
Counsel with Dr. Arvind Goel

Versus

ROHIT KUMAR & ORS. Respondents
Through: Mr. Shailender Babbar, Advocate
for respondents No. 1 to 3
Mr. Juginder Sukija, Advocate for
respondent No.5

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

ORDER
27.09.2016

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1. In a suit for recovery, declaration, permanent and mandatory injunction, impugned order of 12th May, 2016 directs the parties to maintain *status quo*, which is under challenge in this appeal.

2. Learned counsel for appellants assails the impugned order on the ground that the impugned order has been passed without taking into consideration the mandate of Section 80 of CPC and respondents-plaintiffs' have no locus to maintain the suit. It is submitted that no waiver under Section 80 of CPC was sought by respondents-plaintiffs and there is an apparent collusion between respondents-plaintiffs and their employer and that respondents-plaintiffs' suit is not maintainable and so,

continuance of *status quo* order adversely affects the appellants.

3. On the other hand, learned counsel for respondents-plaintiffs submits that waiver of notice under Section 80 of CPC was sought and the aforesaid provision has been complied with and that the continuance of *status quo* order is justified in the facts of this case.

4. During pendency of this appeal, an application [C.M.No. 3447/2016] has been filed by respondent No.5-employer seeking direction to appellant to perform their part of Development Agreement of 26th October, 2016 and for quashing letters of 16th February, 2016 and 6th May, 2016 respectively.

5. Upon preliminary hearing afforded to both the sides and on perusal of impugned order, it is deemed appropriate to direct the trial court to decide the application for stay within two weeks from the date already fixed before the trial court. Such a course is being adopted because a bare perusal of the trial court's order sheets (*Annexure-1*) reveals that on the first day, no interim directions were passed and notice of the suit was issued to the appellants and on the next date, time was sought by appellants to file written statement and so, *status quo* was directed to be maintained. On 17th May, 2016, a date was sought by appellants for filing the written statement and interim order was continued till 30th May, 2016.

6. Since appellants were not abiding the *status quo* order, therefore, an application under Order 39 Rule 2A of CPC was filed by respondents-plaintiffs on 30th May, 2016 and the said application, along with application for stay, is said to be pending consideration before the trial court. In such a situation, it cannot be said that the trial court is

unnecessarily prolonging the *status quo* order. However, considering the fact that appellants are challenging the locus of respondents-plaintiffs to maintain the suit, the application for interim relief ought to be decided by the trial court with expedition.

7. In view of the aforesaid, while not taking into consideration the merits of this case, this appeal is disposed of with direction to trial court to offer an opportunity of hearing to the parties on the stay application on the date fixed and within two weeks thereof, the stay application be decided by the trial court by passing a speaking order. It will be open to respondent No.5 to file similar application as C.M.No. 3447/2016 before the trial court.

8. With aforesaid directions, this appeal and applications are disposed of.

(SUNIL GAUR)
JUDGE

SEPTEMBER 27, 2016

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