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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CM(M) 904/2016

SHALINI CHAUHAN

..... Petitioner

Through Mr.(name not given), Adv.

versus

DALIP & ORS

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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14.09.2016

1. By the present petition the petitioner seeks to impugn the order dated 28.7.2016 by which an application filed under Section 151 CPC for adjournment of the Suit was dismissed. As per the Petition the plaintiff/petitioner has filed a suit for possession and permanent injunction stating that he purchased the suit property from respondent No.1/defendant No.1 Shri Dalip. It was averred that the said respondent No.1 has not handed over possession of the said plot. The petitioner has also filed a criminal complaint under section 156 (3) Cr.PC before the Metropolitan Magistrate, Patiala House Courts, New Delhi. The petitioner filed the present application stating that the defendants are known to each other and cheated the plaintiff and hence it was prayed that the Hon'ble Court may please adjourn the case till disposal of the criminal case filed by the plaintiff.
2. The trial court vide impugned order noted that there is no provision of law which would require that the civil case shall be stayed and shall not be decided till a decision is rendered by the criminal court. It also noted that appreciation of evidence in criminal cases and civil cases is done differently. Hence, the application was dismissed.
3. Learned counsel for the petitioner to support his contention has relied

upon the judgment of the Supreme Court in *M.S.Sheriff vs. The State of Madras and Others*, [1954] SCR 1144 wherein the Supreme Court held as follows:-

“As between the civil and the criminal proceedings we are of the opinion that the criminal matters should be given precedence. There is some difference of opinion in the High Courts of India on this point. No hard and fast rule can be laid down but we do not consider that the possibility of conflicting decisions in the civil and criminal courts is a relevant consideration. The law envisages such an eventuality when it expressly refrains from making the decision of one court binding on the other, or even relevant, except for certain limited purposes, such as sentence or damages. The only relevant consideration here is the likelihood of embarrassment.”

4. Hence the court had clarified that the possibility of conflicting decisions in the civil and criminal courts is not a relevant consideration. The only relevant consideration was likelihood of embarrassment.

5. In the present case it is the case of the petitioner that he has been cheated upon by the respondents who despite having received full consideration for the property are not handing over physical possession of the property to him. There is no averment of any embarrassment arising to the petitioner. There is no merit in the petition. Same is dismissed.

6. The Metropolitan Magistrate is however requested to proceed with the matter without awaiting for adjudication of the civil court and uninfluenced by the proceedings of the civil court.

JAYANT NATH, J

SEPTEMBER 14, 2016

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