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

+ **FAO(OS) 557/2015**

HABEEB KHAN

..... Appellant

Represented by: Mr.B.S.Maan, Mr.Paritosh
Tomar, Mr.Vishal Maan, Advs.

versus

DELHI DEVELOPMENT AUTHORITY

..... Respondent

Represented by: Mr.Rajiv Bansal, Sr.standing
counsel instructed by
Ms.Niharika Ahluwalia,
Ms.Arpita, Ms.Pragya, Advs.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

08.03.2016

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CM 21964/2015

1. Respondent is served and appears through counsel as above.
2. For the reasons stated in the application 5 days delay in filing the appeal is condoned.

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1. Having heard learned counsel for the parties we dispose of the appeal setting aside the direction in the second paragraph 3 of the impugned order, which reads as under:

“3. Accordingly, though this matter is adjourned in the interest of justice, it is made clear that unless the plaintiff files the revenue record showing possession of the plaintiff from July 1987 till date, the suit for injunction would be dismissed on the next date of hearing or unless the suit is amended to make the same include the claim of relief of possession.”

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2. Suffice it to state that that on August 24, 2015 the suit filed by the appellant was listed for admission before the learned Single Judge. Counsel for DDA appeared, presumably on advance knowledge obtained. Impugned order dated August 24, 2015 does not record that DDA has filed a caveat.
3. The impugned order notes that the appellant's suit is for injunction and would obviously be on the plea that the appellant is in possession of the suit land. The impugned order records that according to the appellant possession of the suit land post-acquisition was taken only on paper but as a matter of fact the appellant remained in possession.
4. The direction in the second paragraph 3 of the impugned order has been noted by us hereinabove.
5. Suffice it to state that possessions can be proved by evidence, one of which would be revenue record. The direction in the second paragraph 3 in the impugned order is peremptory and could not have been issued, recording that if the plaintiff does not show possession in the revenue record the suit for injunction would be dismissed on the next date.
6. Clarifying that whether case was made out to grant an ad-interim order is a different issue vis-a-vis the maintainability and continuation of a suit for injunction, based on title and possession, sans revenue records filed along with the plaint.
7. Without expressing any opinion on the merits we dispose of the appeal setting aside the second paragraph 3 in the impugned order dated August 24, 2015.
8. No cost.

CM 21962/2015 (stay)

Disposed of as infructuous.

PRADEEP NANDRAJOG, J.

MUKTA GUPTA, J.

MARCH 08, 2016
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