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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ CM(M) 307/2017 and CM No.10602/2017 (for stay).  
SUDESH CHHIKARA AND ANR ..... Petitioners  
Through: None.  
versus  
BALJEET SINGH AND ORS ..... Respondents  
Through: Mr. Vikas Yadav, Adv. for R-1 to 7  
and 9 to 11.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

**ORDER**

% **26.10.2017**

1. This petition under Article 227 of the Constitution of India impugns the order (dated 16<sup>th</sup> February, 2017 in Suit No.57/2017 of the Court of Additional District Judge-07 (West), Tis Hazari Courts, Delhi) of dismissal of an application filed by the petitioners / plaintiffs under Order XXXIX Rules 1&2 of the Code of Civil Procedure, 1908 (CPC) in a suit for possession under Section 6 of the Specific Relief Act, 1963 (SRA).
2. Though the Registry raised an objection as to the maintainability of the petition but on insistence of the counsel for the petitioners / plaintiffs the petition was listed before this Bench subject to the said office objection. On submissions of the senior counsel for the petitioners / plaintiffs on 21<sup>st</sup> March, 2017 that the impugned order was not appealable and therefore the petition was maintainable, the petition was entertained and notice thereof ordered to be issued and vide *ex parte* ad interim order dated 21<sup>st</sup> March, 2017, the respondents / defendants restrained from creating third party

interest in respect of the suit property and it was further directed that the construction if any being carried out by the respondents / defendants would be at their own risk and cost and subject to the outcome of the suit.

3. Today none has appeared for the petitioners / plaintiffs; however one gentleman claiming to be Kanhaya Lal, Clerk of Mr. D.P. Kaushik, Advocate states that Mr. D.P. Kaushik, Advocate is on his way and seeks passover. The matter, if passed over, is unlikely to reach again.

4. The senior counsel for the petitioners / plaintiffs, on 21<sup>st</sup> March, 2017, did not cite any law as to how the petition is maintainable.

5. Order XLIII Rule 1(r) of the CPC provides for the remedy of appeal against an order on application under Order XXXIX Rules 1&2 of the CPC. Merely because the suit is filed under Section 6 of the SRA would not affect the applicability of Order XLIII Rule 1(r) supra. Though against an order or decree passed in such a suit, an appeal does not lie and only the remedy of Revision is available but the same cannot be said with respect to an order on the application under Order XXXIX Rules 1&2 of the CPC in such a suit. The purport of prohibiting appeals against the order or decree in such a suit under Section 6 of the SRA is that such a suit does not entail any question of title to immovable property and only a question of prior possession and date of possession. However, the said factor would have no relevance for the purposes of an appeal under Order XLIII Rule 1(r) of the CPC.

6. The Supreme Court, in *Sadhana Lodh Vs. National Insurance Corporation Ltd.* (2003) 3 SCC 524 has held that once remedy under CPC or any other statute is available, Article 227 cannot be invoked.

7. The petition is thus not maintainable.

8. The petition is therefore dismissed as not maintainable.

No costs.

**RAJIV SAHAI ENDLAW, J**

**OCTOBER 26, 2017**

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