

\$~9

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

+ CM(M) 536/2017

SATYA PRAKASH & ORS

..... Petitioners

Through: Mr. Achal Gupta and Ms. Annie Rais,
Adv.

Versus

NATHO DEVI (THROUGH LRS) & ANR

..... Respondents

Through: Ms. Neha Kapoor, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

%

18.07.2017

CMs No.18213/2017 & 18214/2017 (both for exemption)

1. Allowed, subject to just exceptions.
2. The applications are disposed of.

RC.REV. 536/2016 & CMs No.18212/2017 (for stay) & 19212/2017 (u/S 151 CPC)

3. This petition under Article 227 of the Constitution of India impugns the order dated 29th April, 2017 (of the Court of Additional District Judge (ADJ)-01 (Central), Tis Hazari Courts, Delhi in M No.61282/2016 of dismissal of an application filed by the petitioner/appellant under Order XLI Rule 27 of the Code of Civil Procedure, 1908 (CPC).
4. Though notice of the petition has not been issued but vide order dated 19th May, 2017 passing of final order/judgment in the appeal has been stayed.

5. It has been held in *Savitri Devi Vs. Gayatri Devi* (2010) 114 DRJ 327 that an application under Order XLI Rule 27 of CPC is to be heard along with appeal.
6. Notwithstanding the said position in law, unfortunately the counsels continue to press applications under Order XLI Rule 27 CPC separately from the appeal and the Courts continue to pronounce thereon.
7. It has also been held in the judgment aforesaid that against an order on an application under Order XLI Rule 27 of CPC, *de hors* the decision of the appeal, no remedy lies.
8. Thus, the petition is disposed of with liberty to the petitioner to, if remains aggrieved from the order in the appeal, in the remedy thereagainst, also challenge the order of rejection under Order XLI Rule 27 of CPC.
9. Needless to state that the interim order dated 19th May, 2017 stands vacated. The learned ADJ to now proceed with the hearing of the arguments and decision of the appeal.
10. Both the counsels state that since there is an order of time bound disposal of the appeal, neither of them will seek adjournment.

Copy of this order be given *dasti*.

RAJIV SAHAI ENDLAW, J.

JULY 18, 2017
bs..