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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) No.635/2017 & CM No.25580/2017 (for stay).
DEEPAK BHALLA A K A DOLLY BAWA Petitioner
Through: Mr. Adarsh B. Dial, Sr. Adv. with Mr.
Shellen Kumar Bajaj, Adv.
versus
AMIT BAWA AND ANR. Respondents
Through: Mr. Rajeeve Mehra, Sr. Adv. with
Mr. Jalaj Aggarwal and Ms. Shruti
Aggarwal, Adv.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW
ORDER
% **21.07.2017**

CM No.25581/2017 (for exemption).

1. Allowed, subject to just exceptions.
2. The CM stands disposed of.

CM(M) No.635/2017 & CM No.25580/2017 (for stay).

3. This petition under Article 227 of the Constitution of India impugns the ad interim order (dated 4th May, 2017 in CS No.50194/16 of the Court of Senior Civil Judge – Cum – Rent Controller (South – East) District, Saket Courts, New Delhi) *inter alia* on an application of the petitioner / plaintiff under Order XXXIX Rule 4 of the Code of Civil Procedure, 1908 (CPC).
4. The petition was entertained and notice thereof issued.
5. The senior counsel for the respondents / defendants has rightly contended that the remedy against an order on an application under Order XXXIX Rule 4 of the CPC is of an appeal under Order XLIII Rule 1(r) of the CPC and this petition would thus be not maintainable.

6. The senior counsel for the petitioner / plaintiff first tried to contend that the Constitutional remedy can always be invoked, arguing that the order is gross. However upon being asked, whether not the same grounds can be urged in appeal, states that the petitioner / plaintiff does not want to file any appeal against the order and only seeks a direction to the learned Senior Civil Judge to consider the application under Order XXXIX Rule 4 of the CPC expeditiously.
7. Vide the impugned order dated 4th May, 2017 the learned Senior Civil Judge has posted the application for further hearing for today.
8. The senior counsel for the respondents / defendants states that the counsel for the petitioner / plaintiff before the learned Senior Civil Judge sought adjournment today on account of pendency of this petition.
9. Accepting the statement of the senior counsel for the petitioner / plaintiff and on the condition that the petitioner / plaintiff shall not prefer any appeal against the order dated 4th May, 2017, the learned Senior Civil Judge is requested to consider preponing the date in the matter from that given of 25th October, 2017.
10. The petitioner / plaintiff to file an application in this regard before the Court of Senior Civil Judge, (South – East) District, Saket Courts, New Delhi by tomorrow i.e. 22nd July, 2017. The counsel for the respondents / defendants to also send their representative to the Court at 1400 hours on 24th July, 2017 when the learned Senior Civil Judge is requested to consider preponing the date of hearing from that given of 25th October, 2017.
11. The petition is disposed of.

12. The date of 22nd September, 2017 before this Court stands cancelled.
Dasti.

RAJIV SAHAI ENDLAW, J

JULY 21, 2017
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