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

+ CM(M) 656/2017 & CM No.22586/2017 (for stay)

GARHDESIYA BHRATR MANDAL

..... Petitioner

Through: Mr. Sanat Kumar, Sr. Adv. with Mr.
Kamal Kapoor & Mr. Virendra
Rawat, Advs.

Versus

SHAMBHU PRASAD GWARI

..... Respondent

Through: Mr. Subhash C. Datt & Ms. Sunita
Sain, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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06.07.2017

1. This petition under Article 227 of the Constitution of India impugns the orders dated 17th May, 2017 and 8th June, 2017 of the Additional Senior Civil Judge on an application under Order XXXIX Rules 1 and 2 of the CPC.
2. This petition was filed before the Vacation Judge and came up before this Court on 19th June, 2017 when notice thereof was issued and an interim order passed.
3. The counsel for the respondent appears.
4. I have enquired from the senior counsel for the petitioner that the challenge being to an order on an application under Order XXXIX Rules 1 and 2 of the CPC, whether not the remedy of appeal under Order XLIII Rule 1(r) of the CPC is available.

5. The senior counsel for the petitioner without addressing the said aspect wants to contend on the merits. He also contends that the impugned order is beyond the prayers in the suit.
6. However the senior counsel agrees that the said ground can be taken in appeal also.
7. The senior counsel for the petitioner states that the CM (M) petition be converted into an FAO.
8. In the last three days on this Roster, I am finding this practice to be rampant and it is felt that unless such petitions under wrong provision of law and which are not supposed to be filed in this Roster before which the matter is listed are rejected with liberty to avail of appropriate remedy, the petitions will continue to be filed. Moreover in the present case appeal will have to be filed before the District Judge.
9. Accordingly, the petition is rejected as not maintainable.
10. The petitioner would however have liberty to avail of the appropriate remedy in law.
11. The interim order in this petition is extended till 12th July, 2017 to enable the petitioner to, if desirous of availing the appropriate remedy, seek interim order therein. However, if there is no interim order till 12th July, 2017, the interim order dated 19th June, 2017 in this petition shall cease to exist/operate.

Dasti under signature of Court Master.

RAJIV SAHAI ENDLAW, J.

JULY 06, 2017/‘gsr’..