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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 6389/2017 & CM 26429/2017
SIGMN KHAJA MOHIDDIN BHASHA SHAIK Petitioner
Through: Md.Irshad Hanif, Adv.

versus

UOI AND ORS Respondents
Through: Mr.A.K.Gautam, Adv.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER
% **28.07.2017**

Learned counsel for the respondents is present on an advance notice.

As limited issue arises for consideration, we have heard the learned counsel for the petitioner and respondents and with the consent of the parties, we are disposing of the writ petition at the admission stage itself. Learned counsel for the respondents has waived the right to file counter affidavit.

Learned counsel for the respondents at the outset has submitted that the issue raised before the Tribunal is covered by the decision dated 15th December, 2016 of the Supreme Court in Civil Appeal no.8643/2009 titled *Mohammed Zubair Corporal No.781467-G vs. Union of India & Ors.* In particular, our attention is drawn to paragraphs 5 and 10.

Learned counsel for the petitioner, however, submits that a number of matters relating to interpretation of the Rules of Indian

Army have not been disposed of and are pending before the Supreme Court.

Learned counsel for the respondents on the other hand submits that in these matters, other issues are also raised.

However, during the course of hearing, learned counsel for the parties submit that the Summary Court Martial proceedings can continue and in case they are decided on or before 23rd August, 2017, the final order will not be given effect to till 23rd August, 2017.

Learned counsel for the petitioner has drawn our attention to paragraph 3 of the order dated 11th July, 2017 and submits that the observations made therein foreclose the arguments. It amounts to firm and conclusive determination on merits. We would observe that the observations made in paragraph 3 of the order dated 11th July, 2017 are prima facie and should not be treated as final and conclusive or binding as the matter has not been decided and has been listed for final hearing on 23rd August, 2017, as is noted in the order dated 11th July, 2017.

Learned counsel for the respondents has asserted that the petitioner has been taking adjournments specially after pronouncement of the decision of the Supreme Court in Mohammed Zubair (supra). Learned counsel for the petitioner submits that he will argue the matter on 23rd August, 2017.

We clarify that it will be open for the Armed Force Tribunal to pass appropriate orders when the matter comes up for hearing on 23rd August, 2017 and in case any adjournment is granted, it would also decide whether not to extend or continue with the statement regarding

implementation of order if any passed in the Summary Court Martial proceedings.

We clarify, we have not expressed any opinion on merits.

The writ petition is disposed of in the aforesaid terms.

Dasti to both parties.

SANJIV KHANNA, J

NAVIN CHAWLA, J

JULY 28, 2017

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