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

+ CM(M) 40/2017

R.P YADAV

..... Petitioner

Through

Mr.Shesh Dutt Sharma, Advocate

versus

TARA DEVI SHUKLA

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

13.01.2017

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By the present petition under Article 227 of the Constitution of India the petitioner seeks to impugn the order dated 21.9.2015 passed by the appellate court dismissing the appeal of the petitioner seeking to impugn the order dated 30.5.2014. The trial court by the said order dated 30.5.2014 dismissed the application under Order 39 Rule 1 and 2 CPC.

The respondent has filed a suit for permanent injunction to restrain the petitioner from carrying out construction on the adjoining property without leaving a portion measuring 6 Sq.Yards adjoining the property of the respondent in village Shakarpur Khas, Delhi. The claim of the respondent is that the petitioner sold the built up property in an area measuring 38 sq.yards vide sale documents dated 28.12.1990. However, after receiving possession it was found that the actual measurement is 32.5 sq.yards leaving a balance of 6 sq.yards. Hence the suit.

The petitioners filed a counter-claim seeking ad interim injunction to restrain the respondents from creating any hindrance and interference in the

smooth running of the business of the petitioner and further award an interim sum by way of damages of Rs.25,000/- per month. The bone of contention of this petition is that the trial court and the appellate court in the interim application filed by the petitioner have not granted interim sum/damages of Rs.25,000/- per month.

A perusal of the impugned order of the trial court would show that issue of payment of Rs.25,000/- per month is a matter that would require trial. The appellate court also noted that for damages the petitioner would require to bring evidence on record and the same cannot be granted, at this stage.

I have heard learned counsel for the petitioner. There is no infirmity in the impugned order as damages sought cannot be granted without leading evidence.

Petition is dismissed. All pending applications are disposed of.

JAYANT NATH, J

JANUARY 13, 2017

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