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

+ **CM(M) 17/2017 & CM Nos.406-07/2016**

PATASI DEVI Petitioner

Through Mr.Satish Dabas, Advocate
versus

V VISMITA PURI & ANR Respondents

Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **06.01.2017**

CM No.406/2016 (*exemption*)

Allowed subject to all just exceptions.

CM(M) No.17/2017 & CM No.407/2016 (*stay*)

1. By the present petition filed under Article 227 of the Constitution of India, the petitioner seeks to impugn the order dated 10.08.2015 by which an application filed under Order 39 Rule 2A CPC by the plaintiffs/respondents was allowed and the respondents were given liberty to get the said demolished portion of the wall restored back as it were on the date of filing of the suit. The SHO concerned was directed to ensure that there is no interference in compliance of the orders of this court by the plaintiffs or any other party/person. The respondents were cautioned to carry out construction only for the purpose of reconstruction of the demolished wall at the front along with the gates and lock and nothing more.

2. The background facts are that the respondents have filed a suit for permanent and mandatory injunction against the petitioner. The trial court vide order dated 27.06.2006 relying upon the report of the local

commissioner held that the respondent is in possession of the suit property and directed that the possession of the property be maintained in terms of the report of the local commissioner.

3. I have heard the learned counsel for the petitioner.

4. The essential submissions of the learned counsel for the petitioner is that firstly the impugned order has the effect of disposal of the suit. Secondly, he submitted that the findings of fact recorded by the trial court in the impugned order are based on no evidence.

5. So far as the second submission is concerned, the trial court has given reasons for the findings recorded namely that the petitioner has pleaded contradictory facts i.e. on the one hand they admitted that a boundary wall and iron gate have been demolished, and on the other hand, they have claimed that none of them existed at the spot. The trial court also relied upon the report of the local commissioner as reflected in the order dated 27.06.2006 whereby it was recorded that the respondents appear to be in possession of the two properties. Hence, the contention that no facts were available before the trial court to arrive at its conclusions is a contention without merit.

6. Regarding the contention that the suit stands disposed of, there is no such direction passed in the impugned order. At best, the findings recorded are *prima facie* for the purpose of disposal of the application filed by the respondents.

7. In view of the above, the petition stands disposed of.

JAYANT NATH, J.

JANUARY 06, 2017/v