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

+ CM(M) No.959/2017 & CM No.32280/2017 (for stay)

ARFA PARVEEN Petitioner

Through: Mr. Bankim K. Kulshrestha and Mr.
Vivek Bhadoria, Advs.

versus

UNION OF INDIA Respondent

Through: None.

AND

CM(M) No.960/2017 & CM No.32283/2017 (for stay).

JASNEET KAUR Petitioner

Through: Mr. Bankim K. Kulshrestha and Mr.
Vivek Bhadoria, Advs.

versus

UNION OF INDIA Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **05.09.2017**

CM No.32281/2017 (for exemption) and CM No.32282/2017 (exemption from filing Trial Court Record) in CM(M) No.959/2017 and CM No.32284/2017 (for exemption) and CM No.32285/2017 (exemption from filing Trial Court Record) in CM(M) No.960/2017.

1. Allowed, subject to just exceptions.

2. The applications stand disposed of.

CM(M) No.959/2017 & CM No.32280/2017 (for stay) and CM(M) No.960/2017 & CM No.32283/2017 (for stay).

3. These petitions, both under Article 227 of the Constitution of India, impugn identical but separate orders (both dated 21st August, 2017 in MCA No.03/16 and MCA No.02/16 of the Court of Senior Civil Judge, Shahdara, Karkardooma Courts, Delhi) dismissing as not maintainable the appeals

filed by the petitioners under Order XLIII Rule 1(r) of the Code of Civil Procedure, 1908 (CPC) against identical orders dated 3rd February, 2015 of the Additional Civil Judge / Commercial Civil Judge (Shahdara), Karkardooma Courts, Delhi on applications under Order XXXIX Rules 1&2 of the CPC in suits filed by the petitioners / plaintiffs.

4. Each of the petitioner / plaintiff instituted the suit from which these petitions arise, for permanent injunction to restrain the Union of India (UOI) / Railways from blocking the common passage to the property of each of the petitioner / plaintiff. The suits were accompanied with applications for interim relief. Vide *ad interim* orders dated 3rd February, 2015 in the said suits, the respondent / defendant / UOI / Railways was restrained from constructing a wall at point B and point D respectively on the site plan filed along with each of the suits but subject to the condition that each of the petitioner / plaintiff within seven days (i) furnish FDR for the sum of Rs.35,000/- as security for costs of the respondent / defendant / UOI / Railways for defending the suits; (ii) the petitioners / plaintiffs file an affidavit clearly affirming that the site plans as filed by the petitioners / plaintiffs with the plaints were correct; (iii) the petitioners / plaintiffs filing an affidavits that there was no other passage to the property of the petitioners / plaintiffs; and, (iv) the petitioners / plaintiffs informing the counsel for the respondent / defendant / UOI / Railways about compliance of the said conditions.

5. The petitioners / plaintiffs, aggrieved from the condition of deposit of Rs.35,000/- as aforesaid, filed the appeals aforesaid and against the dismissal as not maintainable whereof these petitions have been preferred.

6. The learned Senior Civil Judge has in the impugned order recorded that the petitioners / plaintiffs are not aggrieved from any of the other conditions imposed except the condition for deposit of Rs.35,000/- and the counsel for the petitioners / plaintiffs on enquiry confirms.
7. I have enquired from the counsel for the petitioners / plaintiffs that if the petitioners / plaintiffs have not complied with the conditions and which were to be complied with within seven days for the interim injunction to come into force, whether the respondent / defendant / UOI / Railways has already constructed the wall. It has further been enquired, whether the said time of seven days has been extended.
8. The counsel for the petitioners / plaintiffs states that the time of seven days has not been extended.
9. The result is that on account of non-fulfilment of the conditions contained in the order dated 3rd February, 2015, there is no stay or interim order in favour of the petitioners / plaintiffs.
10. Though in view of the aforesaid, it appears that the entire exercise is infructuous but the counsel for the petitioners / plaintiffs has also been heard on merits.
11. The learned Senior Civil Judge / Commercial Civil Judge, while imposing the condition for furnishing FDR for the sum of Rs.35,000/- as security for costs, has clarified that the said direction was being made under Rule 1 of Order XXV of the CPC.
12. The contention of the counsel for the respondent / defendant / UOI / Railways before the Senior Civil Judge was that the direction being in exercise of powers under Rule 1 of Order XXV of the CPC, was not

appealable before the Senior Civil Judge.

13. The said contention has found favour with the Senior Civil Judge who has dismissed the appeals as not maintainable against a direction under Order XXV Rule 1 of the CPC.

14. The contention of the counsel for the petitioners / plaintiffs before this Court is that the appeal was maintainable since the direction under Order XXV Rule 1 of the CPC was in the course of deciding an application under Order XXXIX Rules 1&2 of the CPC.

15. However at the time of dictation, the counsel for the petitioners / plaintiffs states that it is not his contention.

16. On pointed enquiry, whether according to him the order was appealable or not inasmuch as the challenge in these petitions is to the order of the Senior Civil Judge and not to the order of Additional Civil Judge / Commercial Civil Judge, the counsel replies that according to him the order was appealable “but his contention is that there could be no order which was both revisable as well as appealable”.

17. The aforesaid contention of the counsel is ambivalent since the grievance is only with respect to the condition of deposit of Rs.35,000/- and not with respect to any other thing; either the said condition could be appealable or revisable and the contention that the said direction is both, is not sustainable.

18. Be that as it may, it may be noted that the counsel for the petitioners / plaintiffs in support of his contention that the direction under Order XXV Rule 1 of the CPC was bad, cites the judgment dated 13th February, 2009 in CS(OS) No.493/2006 titled ***New Machine Co. Ltd. Vs. S.B. Air Controls***

Pvt. Ltd. (MANU/DE/4039/2009) where this Court dismissed the application under Order XXV Rule 1 of the CPC as frivolous and misconceived.

19. Though Additional Civil Judge / Commercial Civil Judge has in the impugned order clarified that the direction was in exercise of powers under Order XXV Rule 1 of the CPC but in my view the Civil Court *de hors* the powers under Order XXV Rule 1 of the CPC is entitled to, as condition for grant of interim stay, impose conditions on the party in whose favour interim order is being granted. Reference if any required in this regard can be made to *Delhi Automobile Ltd. Vs. Economy Sales* 55 (1994) DLT 39 and which has been thereafter followed by me in *Tekla Corporation Vs. Survo Ghosh* AIR 2014 Del 121. Even thereafter, Supreme Court since in *Abhimanyoo Ram Vs. State of Uttar Pradesh* (2008) 14 SCC 73 followed in *Ruchika Cables Pvt. Ltd. Vs. The Secretary (Labour)* 2010 (117) DRJ 73 has held that the Courts while granting interim order and / or vacating the same should be careful and cautious to balance the equities flowing from the said order.

20. It cannot be forgotten that in the present case the respondent / defendant / UOI / Railways has been restrained from constructing a wall which can safely be presumed to be a work for public purpose or for a public project. Supreme Court in *Oil & Natural Gas Corporation Ltd. Vs. Saw Pipes Ltd.* (2003) 5 SCC 705 justified levy of liquidated damages observing that when the loss is caused to a public project, the loss cannot be quantified easily inasmuch as no particular person or Government suffers and it is the people who suffer and whose loss cannot be quantified.

21. Considering that the respondent / defendant / UOI / Railways was being restrained, the learned Civil Judge was fully justified in imposing the condition impugned.

22. I may mention that though I have travelled beyond the reason which has been given by the Senior Civil Judge for holding the appeals as not maintainable but it was felt that instead of remanding the matter to the Senior Civil Judge for deciding the matter in appeal, this Court should clarify, more so since the exercise is academic inasmuch as the interim order, for coming into force of which the condition aforesaid was imposed, no longer survives.

23. For this reason there is no merit in these petitions; dismissed.

24. No costs.

25. The counsel for the petitioners / plaintiffs seeks Certificate under Article 134 of the Constitution of India.

26. In the aforesaid facts, no case for grant of Certificate is made out.

Dasti.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 05, 2017

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