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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) No.1037/2017 & CM No.34134/2017 (for stay).
SHIV KUMAR SHARMA Petitioner
Through: Mr. Jitesh Talwani, Adv.
versus
MAMTA JUNEJA Respondent
Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **20.09.2017**

CM No.34135/2017 (for exemption) and CM No.34136/2017 (exemption from filing complete Trial Court record).

1. Allowed, subject to just exceptions.
2. The applications stand disposed of.

CM(M) No.1037/2017 & CM No.34134/2017 (for stay).

3. This petition under Article 227 of the Constitution of India impugns the order (dated 9th August, 2017 in CS No.114/17 of the Court of District & Sessions Judge, Shahdara District, Delhi) of dismissal of applications of the petitioner / plaintiff under Order XXXIX Rule 10 and under Order XXXVIII Rule 5 of the Code of Civil Procedure, 1908 (CPC).

4. Orders under both of the said provisions are appealable under Order XLIII Rule 1 (q) and (r) of the CPC. I may mention that though Order XXXIX Rule 1(q) does not expressly refer to Rule 5 but Rule 5 is only the invoking Section and the order is under Rule 6 and which has been made appealable.

5. On enquiry from the counsel for the petitioner as to why, instead of appeal this petition under Article 227 of the Constitution of India has been

Preferred, he says that his “client asked him to do so”.

6. It is not understandable as to since when the Advocates have started taking legal advice from their clients including as to the provision of law under which the order has to be challenged.

7. The counsel for the petitioner now attributes motives to the Judge who has passed the order.

8. It is not understandable that when the counsel himself is to blame and does not know or has not been studying the law, what is his right to blame the Judge and which appears to be nothing but a face saving exercise.

9. The petition is dismissed with costs of Rs.10,000/- payable to the Delhi High Court Bar Association Lawyers’ Social Security and Welfare Fund, New Delhi.

10. List on 21st September, 2017 for the counsel for the petitioner to furnish proof of deposit of costs.

11. On assurance of the counsel for the petitioner that he will be careful in future, the cost is waived.

12. The matter need not be listed tomorrow i.e. 21st September, 2017.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 20, 2017

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