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

+ **FAO(OS) 254/2017**

NAVEEN GUPTA

..... Appellant

Through: Mr. Sudhir Nandrajog, Sr. Adv.
and Mr. Puneet Mittal, Sr. Adv.
with Mr. N.K. Kantawala, Mr.
Vikas Rohtagi and Ms. Akanksha
Saini, Advs.

versus

DEEPA MITTAL & ORS

..... Respondent

Through: Mr. Prashant Mehta, Adv.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

ORDER

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18.09.2017

CAV. No.823/2017

Since the learned counsel for the respondents has entered appearance, caveat stands discharged.

CM No.34106/2017 (*exemption*)

Allowed, subject to all just exceptions.

CM stands disposed of.

FAO (OS) No.254/2017

1. The appellant assails the impugned order dated 08.09.2017 passed by the learned Single Judge in I.A. No.10113/2017 which was filed by the appellant herein (plaintiff in the suit) under Order XXXIX Rule 1 & 2 of CPC in CS (OS) No.386/2017.

2. We are informed by Mr. Sudhir Nandrajog, learned Senior Counsel appearing for the appellant herein that the learned counsel for the respondents herein (defendants in the suit) had appeared after service of notice before the learned Single Judge. Mr. Nandrajog makes a strong grievance with regard to the observations and findings made by the learned Single Judge in Para Nos.6 and 8 of the impugned order dated 8th September, 2017, contending that the same have been made without there being any reply to the application from the side of the defendants.

3. It is further submitted by Mr. Nandrajog, learned Senior Counsel that the appellant has thereby been deprived of the opportunity to contest the submissions made on behalf of the respondents/defendants.

4. A perusal of the impugned order would show that in the later part of the order, the respondents have, on that date, entered appearance in the Suit as well as its accompanying application and has been granted time as sought to file written statement and replies. The respondents appear to be relying on the Court proceedings of the prior litigation between the parties.

It is, however, apparent that there were no pleadings on behalf of the respondents/defendants before the Court on 8th September, 2017.

5. *Prima facie*, therefore, there also appears to be substance in the grievance of the appellant that he has not been given an

opportunity to contest the contentions of the respondents noted in the impugned order.

6. Be that as it may, interest of justice would be met if all the parties, who are present before us, are given a fair chance of placing their pleadings on record.

7. Mr. Prashant Mehta, learned counsel for the respondents/defendants is present.

8. We would not like to consider this appeal on the merits of the case, inasmuch as it would tantamount to the Division Bench taking a view before the learned Single Judge has given a hearing and has decided the case on merits.

9. We are not inclined to grant an *ex parte* injunction which is being pressed by the appellant herein. However, it is clarified that the observations made in Para Nos.6 and 8 of the impugned order dated 8th September, 2017 passed by the learned Single Judge shall be treated as *prima facie* observations and not the final view in the matter.

10. On a joint request of the parties, it is agreed that the written submissions and replies shall be filed by the respondents herein/defendants in CS(OS) No.386/2017 within one week from today.

11. The appellant herein/plaintiff is given liberty to file replication/rejoinder before the next date of hearing.

12. The learned Single Judge shall, upon pleadings being completed by the parties, consider the same and take a considered

view on the subject matter of para Nos.6 & 8 of the impugned order dated 8th September, 2017.

13. List CS(OS) No.386/2017 on 20th September, 2017 before the learned Single Judge for fixing and expediting the date of hearing on the interim applications and for further proceedings.

This appeal is accordingly disposed of.

It is made clear that we have not expressed any opinion on the merit of the case.

CM No.34105/2017 (*for stay*)

In view of the above order, passed in FAO (OS) No.254/2017, this application does not survive for adjudication.

This application stands disposed of.

ACTING CHIEF JUSTICE

C.HARI SHANKAR, J

SEPTEMBER 18, 2017/pmc