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

+ CM(M) 1162/2017

VINOD KUMAR BAKSHI

..... Petitioner

Through: Proxy counsel for Mr. A.K. Bajpai,
Adv.

Versus

RAJAN KAPOOR & ANR

..... Respondents

Through: Mr. Vikas Dhawan, Ms. Sukriti
Gandhi and Ms. Vanya Khanna,
Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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25.10.2017

CM No.37847/2017 (for exemption)

1. Allowed, subject to just exceptions.
2. The application is disposed of.

CM(M) 1162/2017 & CM No.37846/2017 (for stay)

3. This petition under Article 227 of the Constitution of India impugns the order [dated 31st July, 2017 in CS No.59066/2016 of the Court of Additional District Judge, Patiala House Courts, New Delhi] allowing the application of the respondents/plaintiffs under Order XXXIX Rule 2A of the Code of Civil Procedure, 1908 (CPC) and listing the matter on 2nd August, 2017 for sentencing.
4. The counsel for the respondents/plaintiffs appearing on advance notice states that arguments on sentencing have been heard and orders thereon have been reserved for 1st December, 2017.

5. Mr. A.K. Bajpai, Advocate for the petitioner is in another court and on his behalf passover is sought.
6. I have brought it to the notice of the counsel for the petitioner that Order XLIII Rule 1(r) of CPC provides for an appeal against an order under Rule 1, Rule 2 or Rule 2A, Rule 4 or Rule 10 of Order XXXIX of CPC.
7. To be taken up at 1415 hours today.

RAJIV SAHAI ENDLAW, J.

OCTOBER 25, 2017

8. At this stage, Mr. A.K. Bajpai, Advocate for the petitioner appears and states that in view of what is pointed out hereinabove, he is not pressing the petition insofar as impugning the order dated 31st July, 2017.
9. He however states that he in this petition he has also sought the relief of a direction to the ADJ to dispose of the Review Application before 1st December, 2017 and to stay the proceedings on sentencing of the petitioner pursuant to the order dated 31st July, 2017 till the pendency of the Review Application. He contends that this petition under Article 227 of the Constitution of India would be maintainable qua the latter two reliefs.
10. I have enquired from the counsel for the petitioner whether he is willing to make a statement that the petitioner does not intend to prefer an appeal against the order dated 31st July, 2017.
11. The counsel for the petitioner states that he is not in a position to make such a statement.
12. If that be so, then it is not deemed appropriate to have the controversy before multiple fora. The latter two reliefs sought by the petitioner can also

be sought in the appeal desired to be preferred. Even otherwise, I am of the opinion that no such reliefs as aforesaid are called for in the present case. Sufficient time has passed since the order dated 31st July, 2017 and the petitioner till date has not invoked the correct remedy in law. The petitioner, after failing to convince this Court on the maintainability of the main relief claimed in the petition of impugning the order dated 31st July, 2017, cannot be permitted to claim other reliefs in the nature of ancillary reliefs.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

OCTOBER 25, 2017

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