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

+ **CM(M) 1319/2017**

PAWAN KUMAR & ORS Petitioners
Through Mr. Vipin K.Saini, Advocate

versus

SHANTI DEVI & ORS Respondents
Through None

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **21.11.2017**

CM No. 42190/2017 & 42191/2017 (both for exemption)

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

CM (M) No. 1319/2017 & CM No. 42189/2017 (stay)

3. This petition under Article 227 of the Constitution of India impugns the order [dated 1st September, 2017 in RCA No. 31/16 (New CS No. 61097/16) of the Court of Additional District Judge-3, (Central), Tis Hazari Courts, Delhi] of the dismissal of the application of the petitioners/appellants under Order XLI Rule 27 of the CPC.
4. Though the appeal on 1st September, 2017 was listed before the learned Additional District Judge also for hearing final arguments and learned Additional District Judge in impugned order has noted that the appeal was pending for the last 13 years but strangely enough the

CM (M) No. 1319/2017

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learned Additional District Judge, instead of hearing final arguments in the appeal on 1st September, 2017, heard only on the application under Order XLI Rule 27 and after dismissing the same, posted the appeal for hearing on 6th October, 2017.

5. The counsel for the petitioners on enquiry states that part final arguments in the appeal were heard on 6th October, 2017 and the appeal is posted next for remaining final arguments on 30th November, 2017.

6. It is unfortunate that in spite of well settled position in law that the arguments on an application under Order XLI Rule 27 of the CPC have to be heard alongwith the appeal, the courts continue to dispose of the application under Order XLI Rule 27 of the CPC before hearing arguments in the appeal. Reference in this regard can be made to ***Union of India vs. Ibrahim Uddin (2012) 8 SCC 148.***

7. Rather than issuing notice of this petition which would delay the hearing of final arguments in the appeal from which this petition arises which is already part heard, it is deemed appropriate to allow this petition by setting aside the impugned order dated 1st September, 2017 and by directing the learned Additional District Judge to, during the course of hearing final arguments, re-hear the counsels on the application under Order XLI Rule 27 of the CPC and to decide the said application afresh along with the decision in the appeal.

8. The petition is disposed of.

9. Since this order has been made without hearing the counsel for the respondents and for the reasons aforesaid, it is deemed

appropriate to grant liberty to the respondents, if so desire to apply for alteration/modification/recall of this order.

10. Counsel for the petitioner to supply a copy of this order to the counsel for the respondent on or before 24th November, 2017.

Dasti under the signatures of Court Master.

RAJIV SAHAI ENDLAW, J

NOVEMBER 21, 2017

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