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

+ **CM(M) 1280/2017**

DELHI DEVELOPMENT AUTHORITY

..... Petitioner

Through: Mr. Sanjeev Sagar & Ms. Neetu
Singh, Advs.

Versus

ANAND SAWROOP TYAGI & ANR

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **14.11.2017**

CM No.40972/2017 (for exemption)

1. Allowed, subject to just exceptions.

2. The application is disposed of.

CM(M) 1280/2017 & CM No.40973/2017 (for stay)

3. This petition under Article 227 of the Constitution of India impugns the order [dated 31st July, 2017 in CS No.82/2014 of the Court of Senior Civil Judge (North), Rohini Courts, Delhi] restraining the petitioner / defendant no.2 from proceeding further with the works of construction / wiring of flats under construction stated to be part of Jahangir Puri Residential Scheme.

4. The order aforesaid is an interim order on the application of the respondent no.1 / plaintiff under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908.

5. Such orders are made appealable by Order XLIII Rule 1(r) of the CPC and the remedy of the petitioner / defendant no.2 against the said order was by way of an appeal and which considering that the suit is pending before the Senior Civil Judge, would lie to the District Judge.

6. The counsel for the petitioner / defendant no.2 however confines the relief in this petition only to grant of a direction for expeditious final disposal of the application under Order XXXIX Rules 1&2 of the CPC.

7. Though it is found that it is invariably the counsel for the petitioner / defendant no.2 Delhi Development Authority (DDA) who is delaying the disposal and this petition itself has been preferred after four months of the restraint order which must be affecting the prospective allottees of the said flats but on the assurance of the counsel for the petitioner / defendant no.2 that the petitioner / defendant no.2 will not take any dates before the Suit Court and the counsel for the petitioner / defendant no.2 will go fully prepared and co-operate in the hearing and on the representation of the counsel for the petitioner / defendant no.2 that the application under Order XXXIX Rules 1&2 of the CPC on which the order aforesaid has been made has not been finally disposed of as yet and is listed next on 23rd January, 2018 and considering the fact that order interfering with construction of flats, structure of which is already stated to be complete, is not in public interest, this petition is disposed of with a request to the Suit Court to finally decide the application under Order XXXIX Rules 1&2 of the CPC on or before 10th February, 2018.

8. Liberty is also granted to the petitioner / defendant no.2 DDA to apply to the Suit Court for pre-ponement of the date.

No costs.

RAJIV SAHAI ENDLAW, J

NOVEMBER 14, 2017

‘gsr’..

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