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

+ CM(M) 1263/2017

NATIONAL YOUTH HOSTELS TRUST & ORS Petitioners
Through: Mr. Sumit Thakur and Ms. Divy
Pratap, Advs.

Versus

NISHI RAWAT & ANR Respondents
Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **08.11.2017**

CM No.40214/2017 (for exemption)

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

CM(M) 1263/2017 & CM No.40213/2017 (for stay)

3. This petition under Article 227 of the Constitution of India impugns the order [dated 4th May, 2017 in CS No.56295/2016 of the Court of Civil Judge-1, New Delhi District, Patiala House Courts, New Delhi] allowing the application under Sections 151 & 152 of the Code of Civil Procedure, 1908 (CPC) of the respondent No.1/plaintiff and correcting/rectifying the “typographical errors” in the order dated 26th August, 2016 allowing the application of the respondent No.1/plaintiff under Order XXXIX Rules 1&2 of CPC.

4. It is borne out from the record that the petitioners/defendants, prior to the impugned order, have preferred an appeal under Order XLIII Rule 1(r)

of CPC against the order dated 26th August, 2016 which has thereafter been corrected/rectified and which appeal is still pending consideration.

5. I have thus enquired from the counsel for the petitioners/defendants, as to how this petition can be entertained and whether not entertaining this petition would amount to this court as well as Appellate Court considering the legality of the same order. The appeal aforesaid already pending consideration will take into consideration the said aspect as well, though of a date post the filing of the appeal.

6. The counsel for the petitioners/defendants seeks liberty of this Court to urge so in the appeal.

7. I have enquired from the counsel for the petitioners/defendants, whether there is any bar to the petitioners/defendants urging so in the appeal aforesaid.

8. Neither has the counsel for the petitioners/defendants been able to point out any bar nor am I able to fathom any. The question for consideration is the correctness of the order dated 26th August, 2016 and which has been made appealable under the CPC and the Appellate Court, while deciding the said appeal, in my opinion, is fully competent to also keep into consideration the subsequent order dated 4th May, 2017 impugned in this petition.

9. With the aforesaid observations, the petition is disposed of.

10. Needless to state that the petitioners/defendants, if remains aggrieved from the final order in the appeal, would have remedy available in law.

RAJIV SAHAI ENDLAW, J.

NOVEMBER 08, 2017/bs..