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

+ CM(M) No.1124/2015 & CM No.26913/2015 (for stay).

USHA RANI

..... Petitioner

Through: Mr. D. K. Malhotra and Mr. Rajesh
Malhotra, Advs.

Versus

ASHA RANI

..... Respondent

Through: Mr. G.K. Kaushik and Mr. C.S.
Sharma, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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06.07.2017

1. This petition under Article 227 of the Constitution of India impugns the order dated 14th August, 2015 of the learned Additional District Judge in an appeal under Order XLIII Rule 1 (r) of the Code of Civil Procedure, 1908 (CPC) against the order of the Civil Judge in a suit filed by the respondent Asha Rani against the petitioner, of dismissal of the application of the respondent / plaintiff under Order XXXIX Rules 1&2 of the CPC.
2. The petition was entertained and notice thereof issued.
3. The counsels have been heard and the record perused.
4. The counsel for the petitioner / defendant has argued that though the learned Additional District Judge, in the impugned order, has confirmed the findings of the Civil Judge that the respondent / plaintiff has no *prima facie* case and balance of convenience but has nevertheless directed that in case of creation of third party interest in the property in question, the information and approval of the Trial Court shall be necessitated and that no third party interest be created till the disposal of the suit without information and

approval of the Trial Court. He has contended that the said direction in the face of the finding, of the respondent / plaintiff not having a *prima facie* case and the balance of convenience, is perverse and contradictory.

5. I am of the view that the discretion exercised by the learned Additional District Judge is not interfereable under Article 227 of the Constitution of India. It is not as if the learned Additional District Judge has absolutely restrained the petitioner / defendant from dealing with the property. All that has been done is that the petitioner / defendant has been required to obtain approval of the Suit Court before creating third party rights in the property.

6. The counsel for the petitioner / defendant on enquiry states that the petitioner / defendant has no desire to sell, alienate or part with possession of the property; however it is stated the property is a commercial property from where the petitioner / defendant is carrying on her business; that the petitioner / defendant in the course of her business may be required to enter into agency or franchise agreement and clarification is sought that the direction of the learned Additional District Judge will not come in the way of the petitioner / defendant so entering into a agency or franchise agreement.

7. I have enquired from the counsel for the petitioner / defendant whether the petitioner / defendant under such agency / franchise agreement would be losing control of the property and physical possession of the property to an agent or franchisee.

8. The counsel for the petitioner / defendant replies in the negative.

9. The counsel for the respondent / plaintiff states that the petitioner /

defendant in violation of the earlier *ad interim* orders developed the property from single storied as existing earlier to a two or three storied building.

10. The counsel for the petitioner / defendant on enquiry states that the petitioner / defendant is in possession of the entire property i.e. all the floors thereof.

11. I am of the view that subject to condition that the petitioner / defendant by doing so will not lose control or physical possession of the property, the petitioner / defendant be permitted to enter into purely business agreements in the nature of agency or franchise with any other person relating to the business in the property and for the said purpose would not be required to obtain approval of the learned Additional District Judge; else the order of the learned Additional District Judge shall stand. It is clarified accordingly.

12. It is further clarified that this order shall not prejudice either party in the contempt proceedings in Order XXXIX Rule 2A of the CPC proceedings stated to be pending.

The petition is disposed of.

No costs.

RAJIV SAHAI ENDLAW, J.

JULY 06, 2017

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