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

+ CM(M) 578/2018

SATISH KUMAR

..... Petitioner

Through: Mr.N.Raja Singh, Advocate.

versus

ATUL GANDHI & ORS

..... Respondents

Through: Ms.Shalini Kapoor, Advocate with
Mr.Dikshant Khanna, Ms.Rhea Gandhi and
Ms.Bindita Chaturvedi, Advocates for R-1 to R-3
Mr.G.D. Mishra, Standing Counsel for R-
5/EDMC.

CORAM:

HON'BLE MR. JUSTICE VINOD GOEL

ORDER

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22.10.2018

CM No.20089/2018 & CM 29204/2018 (for exemptions)

1. Allowed, subject to all just exceptions.

CM(M) 578/2018 & CM No.20087/2018 (for stay)

2. The petitioner has assailed the impugned order dated 24.08.2017 passed by the learned Additional District Judge-01, East, Delhi (ADJ) in Civil Suit No. 2488/16/13 (previous No. 880/2013).

3. In fact, the Civil Suit No.880/2013 was instituted in this Court in Original Jurisdiction. The matter was listed on 02.12.2013 before the Ld. Joint Registrar (JR) for the purpose of admission/denial of the documents. However, on the date fixed, neither the plaintiff nor his counsel was present.

One proxy counsel Mr.Sandeep was, however, present in the court on behalf of the petitioner. Ld. JR passed an order on 02.12.2013 to the effect that the documents filed by the respondent no.1 to 3 are deemed to have been admitted since no one was present on behalf of the petitioner. The petitioner/plaintiff preferred a Chamber Appeal vide O.A. No.148/2015, which was still pending. In the meanwhile, the civil suit was transferred to the District Courts due to enhancement in pecuniary jurisdiction and assigned to Ld. ADJ.

4. An additional application under Section 151 CPC read with Order IX Rule VII CPC for setting aside the order dated 02.12.2013 was preferred by the petitioner before the Ld. ADJ. By impugned order dated 24.08.2017, the Ld. ADJ dismissed the application with costs of Rs.10,000/- for the reasons that since the chamber appeal was pending, the application is a misuse of the process of law.

5. The petitioner has disclosed the pendency of the Chamber Appeal in Para 2(J) of application under Section 151 CPC read with Order IX Rule VII CPC. Admittedly, only civil suit was transferred to District Courts and not CA 148/2015. In his natural anxiety, the petitioner filed application under Section IX Rule VII read with Section 151 CPC before Ld. ADJ. There was no *mala fide* on his part. There was no occasion for the Trial Court to dismiss the application of the plaintiff by the impugned order and it should have called the file of OA No.148/2015 from the Registry of this Court. Now, it is pointed out that OA No.148/2015 has also been received by the Trial Court by transfer and is listed on 05.12.2018.

6. In these circumstances, the order dated 24.08.2017 is hereby set-aside with the direction to the trial court to dispose of the Chamber Appeal No.148/2015 and application under Section 151 read with Order IX Rule VII CPC, on merits in accordance with law.

7. The petition along with CM No.20087/2018 is disposed of.

VINOD GOEL, J.

OCTOBER 22, 2018

"shailendra"