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

+ **FAO(OS) 50/2018**

**RAJIV SARIN ( DECEASED) THR LRS** ..... Appellant

Through: **Mr. Santhosh Krishnan and  
Ms. Sonam Anand, Advs.**

**Versus**

**RITA WADHWA & ANR** ..... Respondents

Through: **Mr. S.K. Gandhi and Mr. Aditya  
Kapoor, Advs. for R1.  
Mr. Nimit Mathur, Adv. for R2.**

**CORAM:**

**HON'BLE THE CHIEF JUSTICE**

**HON'BLE MR. JUSTICE V. KAMESWAR RAO**

**ORDER**

**% 27.08.2018**

1. The present appeal has been filed by the appellant challenging the order of the learned Single Judge dated 18<sup>th</sup> January, 2018 in IA No. 13506/2017, which was an application filed by the appellant under Order XXXIX Rule 10 read with Section 151 CPC seeking a direction that the respondent no.1 (defendant no.1) Rita Wadhwa should pay pendente lite charges for use and occupation of the suit property, on similar lines as was granted by the Division Bench of this Court on August 07, 2013 in an appeal being FAO(OS) 94/2013 filed by the plaintiff in the suit. Suffice to state, the learned Single Judge has dismissed the application vide the impugned order by relying upon the Judgement of this court in *Harish Ramchandani v. Manu Ramchandani and Ors. (2001) 91 DLT 480*. He also noted the fact that the appellant herein had earlier filed an application being IA No.

16647/2011 seeking more or less the same relief under Order XXXIX Rule 10 CPC. The said application was dismissed vide order dated 26<sup>th</sup> November, 2012 by the learned Single Judge and the said order remained unchallenged. The conclusion of the learned Single Judge in the impugned order is also that the application is *ex facie* hit by the doctrine of *res-judicata* / finality that a litigant cannot file an application for the same relief when similar application filed earlier was dismissed.

2. Learned counsel for the appellant would rely upon the judgment of the Division Bench in an appeal filed by the plaintiff against the order dated 26<sup>th</sup> November, 2012 in IA. No. 1008/2008 under Order XXXIX Rule 10 CPC to contend that when the Division Bench of this Court had recorded an undertaking that the respondent no.1 (defendant no.1 in the suit) namely Rita Wadhwa shall furnish a bank guarantee for a sum of Rs.40,00,000/-, there is no reason as to why similar order could not have been passed in the application filed by the appellant herein. He also stated that the order of the Division Bench was passed in the background that the evidence was directed to be concluded on or before 31<sup>st</sup> January, 2014. According to him as on date only the plaintiff has concluded his evidence and the matter is listed for the evidence of defendant no.1. It is not known how long the suit would take for a decision.

3. We are not impressed with the two submissions made by the counsel for the appellant for the reason that the appellant had earlier filed an application being IA No. 16647/2011 under Order XXXIX Rule 10 CPC which was dismissed by the learned Single Judge on 26<sup>th</sup> November, 2012. The said order remained unchallenged by the appellant. So it follows the

issue of seeking benefit of pendentlite charges has attained finality. Even the reliance placed by the learned counsel for the appellant on the order of the Division Bench dated 7<sup>th</sup> August, 2013 is on a misreading of the same inasmuch as the said order for furnishing a bank guarantee for a sum of Rs.40,00,000/- was on the basis of the submission made by the counsel for the respondent no.1 (defendant no.1). No such submission has been made by the counsel for the respondent no.1 (defendant no.1) before the learned Single Judge nor before us. The learned Single Judge, in the impugned order, with regard to the principles to be followed for disposal of an application filed under Order XXXIX Rule 10 CPC, has relied upon the judgment of the learned Single Judge of this court in the case of ***Harish Ramchandani (supra)***, wherein it has been held that for adjudicating an application under Order XXXIX Rule 10 CPC, it would be necessary that principles contained in Order XII Rule 6 CPC are also satisfied. The learned counsel for the appellant has not brought to our notice any judgment contrary to the said dicta. So looking from any angle we do not see any merit in the appeal. The same is dismissed.

4. During the course of hearing, learned counsel for the appellant has stated that that the learned Single Judge in the impugned order has imposed a cost of Rs.20,000/- which needs to be waived as the application filed by the appellant was bonafide. Learned counsel for the respondent no.1 has opposed the prayer and has stated that the cost may not be paid to respondent no.1 (defendant no.1) to the suit, but be given to the Chief Minister's Distress Relief Fund, Kerala. We accordingly direct that the appellant shall prepare a draft of Rs.20,000/- in the name of Principal Secretary (Finance) CMDRF, Kerala and send the same to the concerned

authority within one week from today and file a compliance report before the learned Single Judge where the suit is pending adjudication.

Insofar as the plea of the learned counsel for the appellant for expediting the suit is concerned, the appellant is not precluded from making such a prayer before the learned Single Judge.

**CM. No. 11198/2018 (for stay)**

Dismissed as infructuous.

**CHIEF JUSTICE**

**V. KAMESWAR RAO, J**

**AUGUST 27, 2018/jg**