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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 776/2018**

RAHUL JAINA Petitioner
Through: Mr.Jagjit Singh, Advocate

versus

RAJAINDERR JAINA Respondent
Through:

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER
% **16.07.2018**
CM No. 27627/2018 (Exemption)

This is an application filed on behalf of the petitioner for exemption from filing certified copies of the annexures.

Exemption allowed, subject to just exceptions.

CM(M) 776/2018 and CM No.27626/2018

1. Vide the present petition, the petitioner assails the impugned order dated 28.3.2018 of the learned Court of the Civil Judge, South East District, Saket Courts, New Delhi in CS No.1324/17 whereby an application filed by the applicant/defendant, i.e., the present petitioner under Order VII Rule 11 of the CPC and under Order XXXIX Rule 1 & 2 CPC seeking rejection of the suit submitting to the effect that it was barred in terms of Order II Rule 2 CPC was declined with the relief having been granted under Order XXXIX Rule 1 & 2 CPC partly to the effect that the defendant, i.e., the present petitioner and his agents were

restrained from creating any third party interest in the suit property till final disposal of the suit. *Inter alia*, it has been submitted during the course of submissions made on behalf of the petitioner that in terms of order XX Rule 18 CPC, the right of the parties would be protected in relation to the suit for partition which would also cover the prayer in relation to the mesne profits sought to be made in the present suit which is pending before the learned Civil Judge.

2. Without any observations on the merits or demerits of the proceedings pending before the learned Trial Court, on a perusal of the copies of the two prayers in the suit presently pending before the learned Trial Court, i.e., one for mandatory injunction and recovery of mesne profit, it is *inter alia* indicated that the prayer clauses of the same are to the effect :

“ a. Pass a decree in favour of the plaintiff and against the defendant for sum of Rs.1.5 Lakhs along with future and pendentelite interest at such rate which May, 2018. Be found reasonable by Court .

b. A decree of mandatory injunction be passed thereby directing the defendant to vacate the suit property and to remove all the articles, belonging therefrom; and restraining the defendant to use any of its portion for an commercial activity.

c. that the defendant be made liable to pay damages @ Rs.1.5 Lakh per month for pendenlite and future period along with interest till defendant hands over the physical and vacant possession to the plaintiff.

d. Any other order which the court deems fit and

proper in the circumstances mentioned above may also be passed. ”

3. The reliefs that have been sought in the suit instituted previously by the plaintiff thereof, in the suit for permanent injunction and mandatory injunction in relation to the same premises B-54A, Third Floor, Greater Kailash-1, New Delhi-110049, read to the effect:

“1. That the defendants Nos.1 and 2 along with their relations, associates, helpers, agents etc. May, 2018. Be restrained by means of passing a decree of permanent injunction from preventing the plaintiff and his blood relations from using the portions of the suit property, i.e., property No.B-54A, Third Floor, Greater Kailash-1, new Delhi 110049 (as clearly shown in RED colour in the site plant filed herewith)

2. That the defendants may be restrained from defaming the plaintiff in the eyes of public in general & close relatives/friends in particular.

3. That the defendants Nos.1 and 2 may be directed by means of passing a decree of mandatory injunction to raise/construct a partition wall etc. thereby earmarking the suit property No.B-54A, Third Floor, Greater Kailash-1, New Delhi-110049 in two portions to be used separately and exclusively by the respective parties.

4. Any other order or relief which this Honourable Court deems just and proper may also be passed in the interest of justice, equity and good conscience. ”

4. It is submitted on behalf of the applicant/defendant, i.e., the

present petitioner herein that in view of the averments that have been made in paragraph 15 of the plaint which had been earlier instituted:

“ that although the plaintiff has the full legal right to enjoy and use the suit property, in toto being the lawful owner of self-acquired property, yet in all fairness, the plaintiff is ready and willing to transfer 50% of the suit property to the defendants. A partition by wall or of like nature may serve the purpose for independent individual living of the parties. The proposed wall/erection is shown in the site plan as “X” to “Y” dividing the suit property in two portions ”

wherein the respondent arrayed to the present petition, i.e., the plaintiff of the said suit for permanent injunction and mandatory injunction is still in occupation of B-54A, Third Floor, Greater Kailash-1, New Delhi-110049 and that a submission to the effect that he in all fairness was ready and willing to transfer 50% of the suit property to the defendants, the same would preclude the institution of the suit now pending before the Civil Judge.

5. A perusal of the plaints in the two suits, and reliefs sought with specifically the relief whereby vide Clause ‘b’ vide which the plaintiff of the suit pending before the learned Trial Court in CS No.1324/17 before the Civil Judge, South East District, Saket Courts, seeks the grant of a mandatory injunction against the defendant therein, i.e., the present petitioner, seeking eviction from the suit property in *toto* and removal of all articles belonging therefrom and the defendant i.e., the present petitioner for use of

any portion of the commercial activity despite a submission made on behalf of the petitioner that the prayer for partition of the suit property would cover the claims of mesne profits as made by the respondent herein. It is apparent that the relief sought through the present suit pending before the Civil Court is not precluded in terms of Order II Rule 2 CPC, the petition CM(M) 776/18 and the accompanying applications CM Nos.27626/18 are declined.

A copy of this order be sent to the learned Trial Court.

Nothing stated herein shall however amount to an expression on the merits or demerits of the case.

ANU MALHOTRA, J

JULY 16, 2018/SV