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

Date of Decision: 26.09.2018

+ **FAO(OS) 144/2018**

RITU SHARMA

..... Appellant

Through: **Mr. R.K. Sharma with Ms. Dezy
Gaur, Advs.**

versus

RAJBIR SINGH

..... Respondent

Through:

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE V. KAMESWAR RAO

RAJENDRA MENON, CHIEF JUSTICE (ORAL)

CM APPL. 39790/2018 (*exemption*)

Allowed, subject to just exceptions.

The application stands disposed of.

FAO(OS) 144/2018

1. This appeal filed by the appellant/defendant No.1 under Section 10 of Delhi High Court Rules read with Order 43 Rule 1 CPC calls in question tenability of the order dated 23.08.2018 passed in CS(OS) 2888/2015, whereby an application for grant of injunction has been allowed. On going through the detailed order passed by the learned Court on 23.08.2018, we find that the appellant and her counsel were present before the Court on 23.08.2018 on the basis of advance notice served on them and without admitting the averments made in the application, they agreed to grant of

injunction in the terms indicated in the aforesaid order.

2. For the sake of brevity, we reproduce hereunder the entire order passed on 23.08.2018 impugned in this appeal:

“Present application has been filed by the plaintiff for grant of ex-parte ad interim injunction. Learned counsel for the defendant, who appears on advance notice, without admitting any of the averments in the application, states on instruction of the defendant who is personally present, that the defendant has neither restrained nor shall obstruct in any manner the ingress and egress facility of the plaintiff and/or his relatives or servants or friends or plumbers or electricians to the suit premises bearing no. 85, Shankar Vihar, Delhi – 110095. In view of the aforesaid statement, which is accepted by this Court, present application stands disposed of.”

(Emphasis supplied)

3. Now after having made the statement before the learned Court on 23.08.2018, the appellant takes a somersault and contends that before granting injunction the legal principles governing grant of injunction *prima facie* balance of convenience and irreparable loss have not been considered and the application has been allowed in an illegal manner.

4. We do not appreciate the manner in which the applicant has approached this Court. Having admitted before the Court that they have neither restrained nor shall obstruct the plaintiff in any manner the ingress and egress to the facilities available, their action in filing of this appeal cannot be appreciated or accepted by this Court. Taking note of the totality of the circumstances, we see no reason to make an indulgence into the matter.

5. Accordingly, the appeal stands dismissed even without issuing notice to the respondent.

CM APPL. 39789/2018 (Stay)

In view of the order passed in the appeal, no order is required to be passed in this application.

Accordingly, the application stands dismissed being infructuous.

CHIEF JUSTICE

V. KAMESWAR RAO, J

SEPTEMBER 26, 2018/ns

