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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 1228/2018**

VEDA CHANDRA Petitioner
Through: Mr. Annirudh Sharma, Advocate

versus

ARCHANA CHANDRA & ANR. Respondents
Through:

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER
% **08.10.2018**
CM No. 42030/2018

Exemption allowed, subject to just exceptions.

CM(M) 1228/2018

Vide the present petition, the petitioner assails the impugned order dated 5.10.2018 of the learned Court of the Additional District Judge-04 (South- West) in Civil Suit No. 8264/16 whereby the matter is now fixed for arguments on an application under Order 39 Rule 1 & 2 CPC on 9.10.2018, i.e., tomorrow.

It is submitted on behalf of the petitioner that the petitioner is aggrieved by the factum that there is no notice of the application and of the suit issued and that the prayer Clause 'a' and 'b' in the application under Order 39 Rule 1 & 2 CPC read with Section 151 read with Section 12 of the Contempt of Courts Act having been adjudicated upon. It has also been submitted on behalf of the petitioner that the documents that have been placed before the learned

Trial Court would substantiate the submissions sought to be made through the suit and through the averments made in the application under Order 39 Rule 1 & 2 CPC and that the documents that the learned Trial Court vide the impugned order dated 5.10.2018 has directed the petitioner to place on record are already placed on record. The impugned order of the learned Trial Court dated 5.10.2018 reads to the effect:

“ file taken up today on the application filed on behalf of the plaintiff under Order 39 Rule 1 & 2 CPC.

PRESENT: Sh. Annirudh Sharma, counsel for the applicant/plaintiff.

Carefully considered the arguments. Record perused.

Ld. Counsel for the plaintiff has only filed printouts of the photographs in support of submissions made in the application. The photographs on record do not substantiate the averment made in application and are merely showing some renovation work is being carried out in some property and no way reflect that the respondent is carrying out construction in suit property in such a manner so as to cause disturbance to plaintiff in breach of undertaking given in court on 24.1.2014. Let the Coloured and clear photographs be filed clearly showing the particular are of the suit property where the renovation of suit property is being carried out and its proximity to the place where the plaintiff is residing.

Put up for arguments on the application under Order 39 Rule 1 & 2 CPC on 09.10.2018.”

After some submissions made on behalf of the petitioner and on a consideration of the submissions, learned counsel for the petitioner

confines the prayer made in the present petition to seeking direction to the learned Trial Court for disposal of the prayer clause 'a' and 'b' of the application under Order 39 Rule 1 & 2 read with Section 12 of the contempt of Courts Act, i.e., the application pending in the suit on 9.10.2018.

To this limited extent, the petition is allowed and the learned Trial Court, i.e., the Additional District Judge-04 (South-West) seized of suit No. 8264 is directed to dispose of the prayers 'a' and 'b':

“a. Pass an order of ex-parte ad-interim injunction restraining the Defendant No.1 from carrying out the construction and renovation work and;

b. Pass an ex-parte injunction restraining the Defendant No.1 from carrying out the construction and renovation work”

on the date 9.10.2018.

Copy of the order be given Dasti under the signatures of the Court Master, as prayed.

ANU MALHOTRA, J

OCTOBER 08, 2018/sv