

the suit from illegally and forcibly digging the earth from the land detailed and described in the heat note of the plaint.

On being put to notice, the respondents, who were defendants in the suit, put in appearance before the Trial Court and contested the petitioner's suit. A reply to the application filed by the petitioner under Order 39 Rules 1 and 2 CPC was also filed. Through its order dated 27.07.2017, the Trial Court allowed the petitioner's application under Order 39 Rules 1 and 2 CPC and temporarily restrained the defendants from illegally and forcibly digging the earth from the suit land. Respondent no. 1 filed an appeal against the aforesaid order dated 27.07.2017 passed by the Trial Court, which was accepted by the Appellate Court. After setting aside the order dated 27.07.2017, the Appellate Court remanded the matter to the Trial Court for a fresh decision. The order of the Appellate Court was challenged by the petitioner in the present proceedings. Notice in the present petition was issued to the respondents but since proceedings before the Trial Court were not stayed, in terms of the order of the Appellate Court dated 10.11.2017, the Trial Court, through order dated 11.05.2018, dismissed the petitioner's application filed by him under Order 39 Rules 1 and 2 CPC.

In the light of the above facts, the petitioner has a remedy to challenge the afore-referred order dated 11.05.2018 passed by the Trial Court dismissing the application filed by him under Order 39 Rules 1 and 2 CPC. That being so, the present petition is disposed of leaving it open to the petitioner to avail of his remedy of appeal, if he so choses.

If any appeal is filed by the petitioner against the aforesaid order dated 11.05.2018, the same shall be considered by the Appellate Court in accordance with law and since the Trial Court has decided the matter afresh, the Appellate Court shall not be influenced by the observations made by the Appellate Court in the order dated 10.11.2017, which is under challenge in the present proceedings.

(DEEPAK SIBAL)
JUDGE

May 10, 2019
monika

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.