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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 66/2019, CAV 42/2019 & CM APPL. 1846-1847/2019
MOHD SALEEM Petitioner
Through Mr. A. Maitri, Adv. with Ms.
Radhika Chandrashekhar, Adv.

versus

HARISH KUMAR MANGAL Respondent
Through Mr. Rajesh Tyagi, Adv. for caveator.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA
ORDER
% **16.01.2019**

CAV 42/2019

The caveator is represented by counsel.

The Caveat stands disposed of.

CM APPL. 1847/2019

Exemption allowed subject to all just exceptions.

The application is disposed of.

CM(M) 66/2019, & CM APPL. 1846/2019

The petitioner assails the impugned order dated 07.01.2019 of the PO, MACT, North, Rohini in Execution No. 1090/18 whereby it has been directed to the effect : -

“Counsel for decree holder requests that fresh warrants of possession be issued against the JD with respect to SLP. Accordingly, fresh warrants of possession be issued with respect to shop no.C-629, measuring 120 sq. feet at Azadpur Subzi Mandi, Delhi including basement as shown in the site

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plan in continuation of order dated 29.11.2018. In the meanwhile the judgment debtor is restrained from transferring the property i.e. shop no.C-629, measuring 120 sq. feet at Azadpur Subzi Mandi, Delhi or any partition in any way including all persons from taking any benefit from such transfer or charge. DH shall appear before the Ld. ACJ on 16.01.2019 and compliance report be filed on 30.01.2019.”

Vide the present petition though the petitioner seeks the modification of the order dated 07.01.2019, through the submissions that have been made on behalf of the petitioner through the petition, *inter alia* reference is made to the provisions of the Order 41 Rule 35 CPC and the Order 41 Rule 37 CPC submitting *inter alia* to the effect that the decree of the Appellate Court has not been drawn up in terms of the order dated 10.09.2018 in RFA No. 269/18 and RFA No. 270/18 and it has further been submitted on behalf of the petitioner that the petitioner has already filed an application in relation to the said proceedings dated 07.01.2019 qua such submissions in relation to the applicability of the Order 41 Rule 35 CPC and the Order 41 Rule 37 CPC before the learned Trial Court of which notice has been ordered vide order dated 11.01.2019 for the next date on taking of steps, though the copy of the order dated 11.01.2019 that has been submitted on behalf of the petitioner herein, does not specify the next date qua which it has been stated at bar by the learned counsel for the petitioner Mr. A. Maitri, Advocate that the said notice has been ordered for the date 30.01.2019.

On behalf of the caveator, learned counsel for the caveator / respondent has vehemently opposed the prayer placing reliance on the

provisions of the Order 41 Rule 32 CPC submitting to the effect that no such decree was required to be passed in view of the consent order that had been made in the RFA No. 269/18 and RFA No. 270/18. The said application is apparently pending consideration before the learned Trial Court for the date 30.01.2019. The execution of the warrants of possession are stayed as directed vide order dated 07.01.2019.

The petition is disposed of.

However, nothing stated hereinabove shall have any expression on the merits or demerits of the submissions that may be made in relation to the determination of the aspect of the drawing up of the decree or otherwise by the learned Appellate Court.

Copy of the order be given *Dasti* under the signatures of the Court Master.

ANU MALHOTRA, J

JANUARY 16, 2019/MK