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

Date of decision: 20th March, 2019

+ RFA 241/2019 & CM APPLs. 13219-21/2019

RAVI TIWARI & ORS Appellants
Through: Mr. Vishal Kalra, Adv. and Mr.
Vinay Kumar Bajaj, Advs.

versus

RAJIV KUMAR Respondent
Through:

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

% **J U D G M E N T (O R A L)**

1. This appeal impugns the judgment and decree, dated 22nd November, 2018, passed by the learned Additional District Judge (hereinafter referred to as “the learned ADJ”), in a suit filed by the plaintiff/respondent (hereinafter referred to as “the plaintiff”) under Order XXXVII of the Code of Civil Procedure, 1908.

2. In the aforesaid suit, the plaintiff sought a decree from the defendants/appellants (hereinafter referred to as “the defendants”), for a sum of ₹ 22 lakh.

3. Consequent to issuance of summons for judgment in the suit, an application for leave to defend was filed by the defendants, which was adjudicated by the learned ADJ *vide* order dated 8th November, 2017, granting leave to defend to the defendants, conditional to deposit, by

the defendant, of a bank guarantee for ₹ 22 lakhs favouring the learned District & Sessions Judge (South West), Dwarka Court, Delhi within three months.

4. Admittedly, the defendants impugned the decision before this Court by way of CM(M) No. 451/2018. Though notice was issued in the said petition on 18th April, 2018, admittedly, no order interjecting the proceedings before the learned ADJ was passed by this Court.

5. CM(M) No. 451/2018 came to be adjourned, by this court, on several occasions, before the impugned judgment dated 22nd November, 2018 was passed by the learned ADJ, noting the fact that , despite having been granted opportunities to comply with the directions for deposit of bank guarantee, as contained in the order dated 8th November, 2017, on 15th February, 2018, 15th March, 2018, 19th April, 2018, 20th September, 2018 and 25th October, 2018, there had been no compliance, with the such direction, by the defendant. The learned ADJ, therefore, proceeded to decree the suit.

6. While doing so, the averments in the plaint have also been taken into account.

7. Significantly, the impugned judgment also notes the fact, that during the course of proceedings before the learned ADJ, Defendant No.1 categorically stated that he did not intend to comply with the orders passed by the learned ADJ.

8. It may also be noted that, consequent to passing of the impugned judgment dated 22nd November, 2018, by the learned ADJ,

CM(M) No. 451/2018 stands withdrawn by the defendants.

9. In the circumstances, the learned ADJ could not but have passed the impugned judgment, in the manner it has been passed.

10. I do not see how, in exercise of my appellate jurisdiction, I can interfere with the impugned judgment, which cannot be said to suffer from any error, either on facts or in law.

11. Consequently, no case is made out for issuance of notice in this appeal.

12. The appeal is accordingly dismissed *in limine*, with no order as to costs.

C. HARI SHANKAR, J

MARCH 20, 2019

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