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

Date of Order 29.05.2019

+ **FAO 124/2019**

ATUL GUPTA & ORS

..... Appellants

Through: Mr.Sameer Vashisht, Advocate with
Mr.Dhruv Rohatgi, Advocate.

versus

BANARSI DAS & ANR

..... Respondents

Through: Mr.Abhay Kumar, Advocate with
Mr.Vineet Kumar Singh, Advocate for
R1 and R2 along with both
respondents in person.

CORAM:

HON'BLE MR. JUSTICE VINOD GOEL

ORDER

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29.05.2019

VINOD GOEL, J. (ORAL)

CM No.13697/2019 (for exemption)

1. Allowed, subject to all just exceptions.

CM No.13696/2019 (for delay)

2. For the justifiable reasons explained in the application, the delay of 44 days' in filing the appeal is hereby condoned.

3. The application stands disposed of.

FAO 124/2019 & CM No.13695/2019 (for stay)

4. The order dated 23.10.2018 passed by the court of learned Additional District Judge-14, Central District, Tis Hazari Courts,

Delhi ('ADJ') in Civil Suit No.1363/2018, dismissing the application of the appellant/plaintiff under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 ('CPC'), is the subject matter of challenge in this appeal.

5. The application of the appellant/plaintiff under Order XXXIX Rules 1 and 2 CPC was dismissed by the learned ADJ for the reason that *'it has nowhere been stated that the defendants have tried to create 3rd party interest in the suit property. Therefore, I am of the view that ld. Counsel for the plaintiffs have failed to show that there is a prima-facie case in favour of the plaintiffs. I am also of the view that when there is no prima-facie case in favour of the plaintiff, question of irreparable loss and injury to the plaintiffs and balance of convenience, does not arise and as such the application under Order XXXIX Rules 1 & 2 of CPC of the plaintiffs is accordingly disposed-off.'*

6. Today, learned counsel for the appellant/plaintiff has drawn the attention of the court towards Para 16 of the plaint wherein the appellant/plaintiff *inter-alia* pleaded that *'.....The Defendants apparently are interfering in affairs of the suit property are attempting to create third right party interests in the suit property and are attempting to change the nature and character of the suit property by giving an impression to the General Public that the suit property as shown in red colour in the site plan dated 18.04.2018 is not owned or*

controlled by the Plaintiffs and that the Defendants have the rights to deal with the same in any manner.'

7. At this stage, learned counsel for the respondents, on instructions, states that both the respondents do not intend to create any third party interest or change the nature of the suit property till the disposal of the suit pending before the learned ADJ.

8. In these circumstances, the appeal is disposed of with the directions that the impugned order dated 23.10.2018 is hereby set-aside and the respondents shall not create any third party interest or change the nature of the suit property till the disposal of the suit.

8. It is expected from the learned ADJ that he shall try and dispose of the suit preferably within six months from today.

9. In view of the above, the application, being CM No.13695/2019, is disposed of.

VINOD GOEL, J.

MAY 29, 2019
"shailendra"