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

+ **FAO(OS) 24/2018 & CM APPLs. 4864/2018 & 4866/2018**

SAURAV AGGARWAL AND ORS

..... Appellants

Through: Mr. Anil Sapra, Sr. Adv. with
Mr. Rajesh Baweja & Mr. Sarthak
Katyal, Advs.

versus

**MATA KRISHNAWATI MEMORIAL EDUCATIONAL SOCIETY
(REGD) AND ORS**

..... Respondents

Through: Mrs. Avnish Ahlawat with
Mr. Gurmeet Singh, Advs.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

07.03.2019

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CM APPL. 4866/2018 (*delay*)

In view of the reasons stated in the application, delay in filing the appeal is condoned.

The application stands disposed of.

FAO(OS) 24/2018 & CM APPL. 4864/2018 (*stay*)

1. Challenging an order dated 08.11.2017 passed by the learned Single Judge in CS(OS) 42/2017 directing the appellant herein who is plaintiff in the aforesaid suit to file an affidavit placing on record the number of cases and investigations which are pending against them or their family members as well as the companies in which the plaintiffs are shareholders, within a

period of eight weeks, this appeal has been filed under Section 10 of the Delhi High Court Act, 1966 read with Order XLIII Rule 1 CPC, 1908 and Rule 18 of the Delhi High Court Rules, 1967.

2. It is the case of the appellant that at this stage when the plaint is only presented, the Court cannot refuse to issue summons or notice to the respondent and insist upon filing the affidavit, that also when filing of such an affidavit may not be a ground even for dismissal of the suit under Order 7 Rule 11 CPC.

3. Learned counsel for the respondent refuted the aforesaid and argued that in view of the conduct of the petitioner the Court has directed to do so and there is no error in the same.

4. Having heard learned counsel for the parties, we are of the considered view that the Court could have at best directed the plaintiff to file an affidavit placing on record the cases and investigations pending against the plaintiff and their family members vis-a-vis the defendant/respondent Institute and not in all other cases which has got nothing to do with the respondent Institute. Such a direction at this stage when the plaint has only been presented, in our considered view, was not called for.

5. Accordingly, we allow this appeal in part, modify the order to the extent that the plaintiff should file affidavit placing on record the number of cases and investigations which are pending against them or their family members as well as the companies in which they are shareholders between such parties and the respondent Society. The Court shall proceed with the matter thereafter in accordance with law and liberty shall be available to the respondent to raise such objections as may be permissible under law.

6. With the aforesaid, the appeal stands disposed of. The pending application also stands disposed of accordingly.

CHIEF JUSTICE

V. KAMESWAR RAO, J

MARCH 07, 2019
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