

\$~32

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

+ **FAO(OS) 235/2019**

RITESH PROPERTIES & INDUSTRIES LTD Appellant

Through: Mr.Jayant Mehta with Mr.Sujoy Datta
and Mr.Suresh K.Baxy, Advocates.

versus

YOUTUBE LLC & ORS Respondents

Through: None.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

% **22.11.2019**

CM APPL.50433/2019 (exemption)

1. Allowed, subject to all just exceptions.

FAO(OS) 235/2019, CM APPLs.50431/2019 (Addl. documents) and 50432/2019 (permission to place on record)

2. The present appeal is directed against an order dated 9th October 2019 passed by the learned Single Judge dismissing CS (OS) 518 of 2019 as withdrawn with liberty to the Plaintiff Appellant to file a fresh suit.

3. The grievance is that while passing the above order the learned Single Judge has made numerous observations that touch on the merits of the suit and the averments made in the plaint and has held the conduct of the Plaintiff to be an abusive process of law.

4. Since the impugned order itself was passed *ex parte*, the Court does not consider it necessary to issue any notice on the present appeal particularly since all that has been prayed for is the expunction of many of the observations in the impugned order which were not required to be made if the Court was permitting the Plaintiff to withdraw the suit granting with liberty to file a fresh suit.

5. The Court finds that these observations commence from para 5 of the impugned order and proceed till para 12. Further in para 14 and 15 certain directions have been issued to the Plaintiff that it has to prominently mention the order 'in the body of the plaint' when files a fresh suit and has also to address the issue of title claimed by the Plaintiff as well as on the aspect of territorial jurisdiction'. These directions and observations were not warranted considering that the suit was being dismissed as withdrawn with liberty to file a fresh suit.

6. The Court accordingly directs that while reserving the liberty granted to the Appellant to file a fresh suit, and the refund of court fee as ordered, the Appellant/Plaintiff is relieved from having to comply with the directions issued in paras 14 to 16 of the impugned order. This Court further directs that none of the observations made in paras 5 to 12 of the impugned order shall be taken into account by a Court which will deal with the fresh suit to be filed by the Appellant.

7. The appeal is disposed of in the above terms.

8. The pending applications also stand disposed of.

S. MURALIDHAR, J.

TALWANT SINGH, J.

NOVEMBER 22, 2019

tr