

\$~61

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 1147/2018

ANOOP SHARMA

..... Petitioner

Through: Mr. Sandeep Aggarwal, Sr. Adv. with
Mr. Joby P. Varghese, Adv.

versus

PROBAL GHOSHAL & ORS

..... Respondent

Through: Mr. Atul Sahi, Adv. for R-1 to 5.
Mr. Aaditya Vijay Kumar, Adv. for
R-7.
None for R-6.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

%

22.02.2019

The respondent no.6 has been served as per record through his wife, a family member and is thus held to have been served.

Vide the present petition, the petitioner had prayed to the effect:

“Set aside the order dated 09.07.2018 passed by the Court of Shri Sanatan Prasad, Additional District Judge (East), Karkardooma in Civil Suit No.324/2018 to the extent whereby the Ld. Trial Court below rejected the prayer of the Petitioner seeking impleadment as party defendant in the matter and without any consideration of the merits of the matter while dismissing the Suit as withdrawn, made the following observations:

“....I am of the considered opinion that a suspension, which does not mention that till further order the suspension is to continue, instead mentioning till a particular date only, then the suspension stands over with on expiry of such date.”

thus submitting through the said prayer made through the petition that the order of the learned trial Court of the ADJ-01, East in Suit No.324/2018 in which suit as per memo of parties placed as Annexure-P-6 to the present petition, the petitioner herein was not arrayed as a party and the respondent nos.1 to 5 arrayed herein were arrayed as the plaintiff of the suit and the respondent nos.6 & 7 arrayed to the present petition were arrayed as defendant nos.1 & 2 to the said suit and that the prayer made by the present petitioner herein in the proceedings in the said suit seeking to be impleaded as a party to the said suit, had been rejected and that without any consideration of the merits of the matter whilst the suit was dismissed as withdrawn, the observations were made to the effect:

“....I am of the considered opinion that a suspension, which does not mention that till further order the suspension is to continue, instead mentioning till a particular date only, then the suspension stands over with on expiry of such date.”

which observations are hereinafter referred as ‘X’ and it was sought that the said impugned order dated 09.07.2018 be set aside.

During the course of the proceedings of the present petition on 24.09.2018 after initial submissions were made on behalf of the petitioner, notice of the petition to the limited extent that it sought that the observations in the impugned order dated 09.07.2018 as adverted to hereinabove as ‘X’ would have no bearing on the merits or demerits of the relief sought by the present petitioner as plaintiff thereof in CS 28/2018 pending in the Court of the District & Sessions

Judge, East, KKD Courts, was directed to be issued.

It has been submitted during the course of the submissions today that have been made on behalf of the respondent nos.1 to 5 and the respondent no.7 as learned counsel for the respondent no.7 adopts the submissions made on behalf of the respondent nos.1 to 5 that the present petitioner herein is not even a party to the said suit bearing No.324/2018. The grievance of the petitioner is to the effect that vide the impugned order dated 09.07.2018, the said suit had been dismissed as withdrawn, but nevertheless, the observations made therein by the learned trial Court as reflected hereinabove as 'X' continue to operate in other proceedings that is also in suit no.28/2018 in which the respondent nos.1 to 5 to the present *lis* submit that they are not even arrayed as parties to the said suit though the respondent no.7 to the present petition is stated to be a defendant. It has been submitted on behalf of the petitioner that pursuant to an order dated 20.07.2018 in FAO No.334/2018 of this Court, the respondent nos. 1 to 5 (except respondent no.2) to the present petition had also been arrayed as defendants to suit bearing no.28/2018.

It is essential to observe that the suit bearing no.324/2018 was dismissed as withdrawn vide the order dated 09.07.2018 of the learned trial Court. The contention of the petitioner now seeks to submit that observations made in the impugned order dated 09.07.2018 as reflected repeatedly hereinabove as 'X' ought not to operate in any other proceedings. Apparently, the said contention can always be raised by the petitioner in any proceedings before the

Courts in as much as the same is a legal submission which can always be raised. Apparently, the petitioner not even being a party to *lis* in the suit bearing no.324/2018 cannot now seek to challenge the observations in the impugned order dated 09.07.2018 vide the present petition and the prayer made by the petitioner thus cannot be granted.

The petition is disposed off with the observations that the petitioner would be entitled to make all legal submissions in relation to the contentions sought to be raised that the observations in the impugned order reflected hereinabove as 'X' may not be read in any other proceedings in view of the factum that Suit bearing no.324/2018 was dismissed as withdrawn.

Copy of the order be given Dasti, as prayed.

ANU MALHOTRA, J

FEBRUARY 22, 2019

vm