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

+ **W.P.(C) 136/2018 & CM No. 9948/2018**

SH. N.R. SHARMA

..... Petitioner

Through: Counsel for the petitioner (appearance
not given).

versus

GOVT. OF NCT DELHI AND ORS.

..... Respondents

Through: Mr Sachin Nahar, Advocate for
GNCTD.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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17.01.2019

CM No.9948/2018

1. This is an application filed on behalf of respondent no.3 for recall of the order dated 08.01.2018. By the said order, this Court had directed respondent no.1 to examine the request of the petitioner and pass appropriate orders for periodic pruning of the tree in question while ensuring that no harm is caused to the tree.
2. The aforesaid order was passed as the learned counsel appearing for the petitioner had referred to the photograph annexed at page 17 of the petition, and pointed out that the branches of the trees were blocking the windows of the flat on the first floor. He, in fact, had submitted that the branches of the tree were pressing against the window and, therefore, have completely blocked the light from those windows.
3. This Court had accepted the aforesaid statement and, therefore, passed

an order dated 18.01.2018.

4. It now transpires that the petitioner's flat is located on the ground floor and the window referred to during the course of the proceedings is not the window of the flat occupied by the petitioner.

5. The photographs now annexed with the present application clearly indicate that the flat occupied by the petitioner is on the ground floor, which is separated from the flat occupied by respondent no.3 by a staircase. The photographs now annexed at page 63 clearly indicate that the branches of the tree growing in front of respondent no. 3's flat are not extending to the flat occupied by the petitioner. The order dated 08.01.2018 is, therefore, recalled.

6. It is pointed out that in the meantime the said order has been implemented and the tree growing in front of respondent no.3's house has been substantially pruned.

7. This Court is also of the view that punitive costs ought to be imposed on the petitioner for securing an order on the basis of incorrect assertion. However, the learned counsel appearing for the petitioner states that the petitioner is of an advanced age of 93 years and, therefore, he was unable to obtain proper instructions. Given the advanced age of the petitioner, this Court is persuaded not to impose any cost.

8. The petition is unmerited and is accordingly, dismissed.

9. The pending application is also disposed of.

VIBHU BAKHRU, J

JANUARY 17, 2019/MK