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

+ **CM (M) 180/2020**

RAKESH KUMAR

..... Petitioner

Through: Mr. Narender Sharma, Advocate.
(M:9811480411)

versus

DHARMENDER KUMAR SHARMA

..... Respondent

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **12.02.2020**

CM APPL. 5656/2020 (exemption)

1. Allowed, subject to all just exceptions. Application is disposed of.

CM (M) 180/2020 & CM APPL. 5655/2020

2. In the present petition the order under challenge is dated 23rd January, 2020 by which the Id. Additional District Judge has observed as under:

“It is observed that an application under Order XII Rule 6 r/w Sec. 151 CPC, was filed on behalf of the plaintiff, on 17.05.2018 and the arguments on the said application were heard on 08.04.2019. But, thereafter, a petition was preferred by the plaintiff, challenging the order dated 13.11.2018, on the application of the plaintiff under Order VI Rule 17 CPC and in the said petition bearing CM (M) No.34/2019, it was directed by the Hon'ble High Court of Delhi that the trial court shall not pass the final order in the suit, till the disposal of the said petition. Now, vide orders, dated 13.01.2020 the said petition has been dismissed by the Hon'ble High Court.

In these circumstances, adjourned for arguments on the application of the plaintiff under Order XII Rule 6

r/w Sec. 151 CPC, filed on 17.05.2018, on 09.04.2020.”

3. Ld. counsel for the Petitioner submits that order dated 13th January, 2020 passed by this Court in CM (M) 34/2019 is quite clear i.e. that the question of possession is to be decided upon adjudication of the issue as to whether the Plaintiff is entitled to a decree of declaration of ownership. A perusal of the order dated 13th January, 2020 further makes it clear that the application under Order VI Rule 17 CPC is not being allowed, inasmuch as the consequential orders of possession would be liable to be passed by the Trial Court if the Plaintiff is held to be having ownership rights in the property. The observations of this Court in order dated 13th January 2020, are as under:

“6. While there is no doubt that this is the third application seeking amendment, and the proviso to Order VI Rule 17 CPC clearly bars the filing of an amendment application after trial has commenced, the suit itself is for declaration and if the suit is to proceed for adjudication either under Order XII Rule 6 CPC or finally after evidence, the main issue would be as to whether the Plaintiff is the owner of the property. If the Court comes to the conclusion that the Plaintiff has ownership rights in the property, the Court cannot be prevented from passing the consequential orders for possession, since the relief of injunction has to be suitably moulded owing to the subsequent events that have taken place. Accordingly, it is clarified that if the trial Court comes to the conclusion, finally upon adjudication that the Plaintiff is entitled to a decree of declaration of ownership in respect of the suit property, the Trial Court would be empowered to pass appropriate orders for possession and mould the relief, as in such a situation, the finding of landlord-tenant would no longer be applicable.

7. The Trial Court shall proceed with the suit without any amendment in the plaint being required, however, the Trial Court would take into consideration the developments in the eviction proceedings, as also the consequential relief if the decree of declaration is being granted.

8. With these observations, the petition and all pending applications are disposed of.

9. No further applications for amendment, etc. shall be entertained by the Trial Court and no unnecessary adjournments shall be granted. The suit shall proceed expeditiously.

10. The trial court shall adjudicate the issues on merits without being affected by the observations of this Court. However, the consequential relief for possession shall be considered if the decree of declaration is being granted in favour of the Plaintiff. Dasti.”

4. The above order is quite clear that if the decree of declaration is granted in favour of the Plaintiff, the question of ownership i.e. possession would be considered by the Trial Court. The Petition has not been dismissed but has been disposed in terms of the order dated 13th January 2020. The observation in the impugned order that the petition has been dismissed is not borne out from the record and the same is accordingly, set aside. Accordingly, the matter shall now proceed before the Trial Court.

5. The petition is disposed of with the above observations.

PRATHIBA M. SINGH, J.

FEBRUARY 12, 2020/dk