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

% Judgment delivered on: 09.01.2023

+ CM(M) 343/2020 & CM APPL. 9943/2020

ARUN KHANNA

..... Petitioner

versus

ARUN BATRA

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Through SPA Holder Smt. Vaneeta Khanna.

For the Respondent : None.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

1. Vide the present petition, the petitioner challenges the order dated 18.02.2020, whereby while dismissing two applications of the petitioner, the learned Trial Court imposed a fine of Rs. 5,000/- as costs.

2. Ms. Khanna, Special Power of Attorney (SPA) for the petitioner submits that all that the petitioner had sought besides the other documents, was the original title deeds which were handed over to the respondent by the petitioner.

3. Ms. Khanna submits that in the compliance affidavit filed in pursuance of the application under Order XII Rule 8 CPC, 1908, initially, the respondent had taken a stand that the original title documents are not in his possession. However, subsequently, he had produced the original title documents which was noted by the learned Trial Court *vide* its order dated 26.02.2020.

4. The cost which was imposed upon the petitioner, were for the

reasons that the petitioner was insisting that the respondent was in possession of the original title deeds and the respondent had refused. This stood vindicated *vide* the noting made in order dated 26.02.2020, whereby the respondent who was defendant No.1 had produced the original title documents, as mentioned in para 3 of her application under Order XII Rule 8 CPC, 1908.

5. Ms.Khanna submits that title documents had been given as security by the petitioner and relies upon para 3 of the Memorandum of Understanding dated 25.12.2016 which is at page 100 of the present paper book.

6. Ms. Khanna further submits that having noted the anomaly, the learned Trial Court ought to have waived the condition of payment of Rs. 5,000/- as cost, which it did not do so.

7. In view of the above submissions and keeping in view the noting in the order dated 26.02.2020 that the respondent/ defendant No.1 had in fact produced the original titled documents which are stated to be now placed on record, the learned Trial Court ought not to have imposed the cost which it did or it ought to have waived the same even at a later stage.

8. In view of the above, this Court deems it fit and finds it in the interest of justice to quash the cost as imposed by learned Trial Court *vide* Order dated 18.02.2020.

9. Nothing survives further in the petition. The petition along with the pending application is disposed of in above terms.

TUSHAR RAO GEDELA, J .

JANUARY 9, 2023/nd