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

+ CM(M) 458/2022 & CM No. 23243/2022, CM No.23244/2022

VIJAY SWAROOP LAV Petitioner

Through: Ms. Samvartika Pathak, Adv.

versus

MS NISHA RATHI & ORS. Respondents

Through: Mr. Jai Kumar Sinha, Advocate
for Respondent

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

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04.07.2022

1. This petition under Article 227 of the Constitution of India assails an order dated 24th March, 2022 passed by the learned Additional District Judge (“the learned ADJ”) in CS 650/2017 (*Nisha Rathi v. Yashpal Panwanda*) to the extent the order dismisses an application filed by Defendant 3 under Order XII Rule 6 read with Order VII Rule 11 read with Order I Rule 10 and Section 151 of the Code of Civil Procedure, 1908 (CPC).

2. Though the impugned order states that the application appears to have been filed by all the defendants in the suit, a reading of the application reveals that it was essentially filed only by Defendant 3, who is the petitioner before the present proceedings as well.

3. The reasoning of the learned ADJ as contained in the impugned order dated 24th March, 2022, for dismissing the application is as



under:

“As far as the later application is concerned, this is apparently a very vague clandestine and wrongly drafted application on its very face. Even title of this application gives an impression that it has been filed on behalf of all the three defendants whereas as a matter of fact, there is no appearance at all of the defendant no. 2 either in person or through any Counsel or otherwise. Accordingly, this application is being disposed of as dismissed as, not maintainable being vague and unclear in averments.”

4. To my mind, it was not permissible for the learned ADJ to dismiss the petitioner's application in such a fashion. It does not appear, from a reading of the application of the petitioner, that it was so vague or unclear that the Court was not in a position to pass any orders thereon. Even if the Court were to feel that the application did not contain requisite averments, as would enable it to be decided on merits, the learned ADJ ought, at the very least, to have made this point explicit while rejecting the application.

5. The impugned order is also inherently contradictory in terms, as it dismisses the application as not maintainable being vague and unclear in averments. Maintainability and clarity of averments in the application are entirely two different concepts. An application which may be unclear or wanting in requisite details, does not suffer from maintainability on that ground alone.

6. It appears, therefore, that there has been no proper application of mind by the learned ADJ while rejecting the application of Defendant 3, i.e. the present petitioner.



7. Mr. Sinha, learned Counsel for Respondent 1, who is plaintiff in the suit, submits on instructions that he has no objection if the impugned order is set aside and the application of the petitioner is remanded to the learned ADJ for reconsideration.

8. Accordingly, the impugned order is set aside. The learned ADJ is directed to reconsider the application filed by the petitioner/Defendant 3, which finds place at page 98 of the paper book before this Court and to pass appropriate order thereon, keeping in view the observations made hereinabove.

9. This Court refrains from entering any observations either on the maintainability or the merits of the application. All issues would remain open to be decided by the learned ADJ in accordance with law and in due compliance with the principles of natural justice.

10. The petition is allowed to the aforesaid extent, with no orders as to costs. Miscellaneous application also stand disposed of.

C.HARI SHANKAR, J

JULY 4, 2022

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