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

% Judgment delivered on: 02.02.2023

+ CM(M) 146/2023 & CM APPL. No.4397-99/2023

JAI PRAKASH DWIVEDI

..... Petitioner

versus

HIRISE FACILITY MANAGEMENT PVT LTD & ANR

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Ms. Mansi Bajaj and Ms. Nidhi Tyagi,
Advocates.

For the Respondent :

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

1. The petitioner is aggrieved by the order dated 17.11.2022 in CS (COMM) 637/2022 titled "Jai Prakash Dwivedi vs. Hirise Facility Management Ltd. & Ors.," whereby the learned Trial Court had directed the return of the plaint under Order VII Rule 10 CPC to be presented before the Court of competent jurisdiction on the ground that there was no territorial jurisdiction available with it.

2. Ms. Mansi Bajaj, learned counsel for the petitioner submits that though the petitioner is not challenging the return of the plaint, however, is aggrieved by the cost of Rs.50,000/- that was imposed by the learned Trial Court, simultaneously while returning the plaint to be presented

before the Court of competent jurisdiction.

3. Ms. Bajaj submits that the suit was withdrawn voluntarily by the petitioner to be presented before the Court of competent jurisdiction and imposing of such cost is not only harsh but also onerous on the petitioner.

4. Ms. Bajaj also submits that imposition of such cost may be not appropriate in the fact and circumstances of the case inasmuch as the petitioner/plaintiff had been diligently following his case on the assumption that the Court had territorial jurisdiction to adjudicate upon the *lis*.

5. After having heard the learned counsel and perusing the impugned order, this Court is of the considered opinion that the imposition of such cost upon the petitioner appears to be in the nature of a penalty which is unsustainable in law for the reason that any party may make a genuine mistake in pursuing its remedies in a particular Court of law on the assumption that the learned Court has the proper territorial jurisdiction to adjudicate upon the *lis*.

6. In that view of the matter, the cost of Rs.50,000/- as directed to be paid to each of the respondents-defendants vide the impugned order dated 17.11.2022 is quashed and set aside to that extent alone.

7. The impugned order, insofar as other aspects are concerned, remains untouched.

8. Accordingly, the petition alongwith pending applications stands disposed of with no order as to cost.

TUSHAR RAO GEDELA, J .

FEBRUARY 2, 2023/१३