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

% Judgment delivered on: 03.02.2023

+ CM(M) 174/2023 & CM APP No. 5234/2023

M/S GOEL METAL AND STRIPS COMPANY Petitioner
versus

M/S GOYAL AND GOEL STAINLESS STEELS AND ORS &
ORS Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Bharat Malhotra, Advocate

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. The petitioner challenges the order dated 25.01.2023 passed in CS (COMM) No. 68/2023 titled '*Goel Metal and Strips Company vs Goyal and Goel Stainless Steels and Ors*', whereby the request of the petitioner/plaintiff was rejected seeking appointment of the Local Commissioner to ascertain whether the machines/goods of the respondent in the factory premises are still lying or have been disposed of.

2. Learned counsel for the petitioner submits that the suit as laid before the learned Trial Court, was under the provisions of Order 37 of CPC, 1908. Learned counsel also submits that the said suit is a commercial suit under the provisions of Commercial Courts Act, 2015.

3. Learned counsel also submits that suit was filed under Order 37 of CPC and request made before the learned Trial Court was of a urgent nature inasmuch as there was an imminent threat and clear apprehension that the respondent/defendant would dispose of or alienate the machines and other goods and stocks lying in the premises to frustrate the suit of the petitioner/plaintiff.

4. Learned counsel submits that the learned Trial Court did not consider the urgency in the matter nor had it considered that the entire exercise of filing the suit under Order 37 of CPC, 1908 would become futile in case such urgent order of appointment of Local Commissioner for carrying out the inspection and making an inventory of the machines/goods lying in the premises were not to be passed.

5. Learned counsel also submits that an application under Order 38 Rule 5 of CPC, 1908 is pending adjudication before the learned Trial Court and the matter is now posted to 18.04.2023.

6. Learned counsel submits that in the meantime there is all possibility that the respondent/defendant may waste away goods and machines available in the premises of the respondent/defendant.

7. This Court has considered the arguments of learned counsel for the petitioner as well as perused the impugned order.

8. Upon a perusal of the application under Order 38 Rule 5 of CPC, 1908 placed at Page 60 of the present petition, this Court is of the opinion that without interfering in the impugned order in any way, learned Trial Court may take up the application under Order 38 Rules 5 & 6, 1908 read with Sections 94 and 151 of CPC, 1908 for hearing and dispose of the same in accordance with law, expeditiously.

9. In view of the above and keeping in mind the urgency and the stage at which the present suit is pending, it would be in the interest of justice as well as to ensure that the suit as laid by the petitioner is not frustrated, the learned Trial Court may take up the application under Order 38 Rule 5 & 6 of CPC, 1908 at the earliest but before 28.02.2023 and dispose of the same in accordance with law.

10. In view of the aforesaid, the petition is disposed of with no order as to cost.

TUSHAR RAO GEDELA, J .

February 03, 2023/AJ

