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

% Judgment delivered on: 15.03.2023

+ CM(M) 410/2023

SONA DEBNATH

..... Petitioner

versus

RAM RATTAN SINGH NAMDHARI & ORS. Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Anunaya Mehta, Advocate.

For the Respondents : Mr. Arun Birbal, Advocate for R2

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

CM APPL. 12218/2023 (for exemption)

1. Exemption is allowed, subject to all just exceptions.
2. The application stands disposed of.

CM(M) 409/2023 & CM APPL. 12217/2023 (for stay)

3. The petitioner challenges the order dated 13.01.2023 in CS No. 612642 of 2016 titled *“Ram Rattan Singh Namdhari Vs. DDA”*

whereby, on an application under Section 151 of CPC, 1908 filed by the respondent no.1/plaintiff, the learned Trial Court permitted the said respondent no.1/plaintiff to raise a boundary wall at the suit property.

4. Mr. Mehta, learned counsel appearing on behalf of petitioner who sought himself to be impleaded in the aforesaid suit, submits that the aforesaid impugned order permits the respondent no.1/plaintiff to put up a boundary wall on the plot of land not belonging to the respondent no.1/plaintiff and the said permission affects easementary rights (i.e. the ingress and egress) of the petitioner herein curtailing his access to the national highway via the open plot on the Southern side of the plot belonging to the petitioner.

5. Mr. Mehta, learned counsel also submits that there was a previous litigation between the petitioner and the respondent no.1 whereby the plot in question was held to be not belonging to the respondent no.1/plaintiff both at the Trial Court stage as well as the first appellate court stage.

6. Mr. Mehta submits that the regular second appeal arising there from is pending in this court and only notice was issued without any orders on the stay application.

7. On that basis, Mr. Mehta submits that as on today, the respondent no.1/plaintiff has no claim over the suit land much less any claim to seek raising a boundary wall on the eastern side abutting the service lane to the national highway.

8. Learned counsel submits that despite having filed the application under Order I rule 10 of CPC, 1908 seeking impleadment and to bring to

the notice of the learned Trial Court all the previous litigation and the orders passed therein, the learned Trial Court has not adjudicated the said application and has proceeded to permit the respondent no.1 to raise the said boundary wall.

9. Issue notice. Mr. Birbal, learned counsel appearing on behalf of respondent no.2/DDA accepts notice and submits that the impugned order is extraordinary for the reasons that on the basis of the self-serving statement of the respondent no.1/plaintiff, the learned Trial Court has permitted respondent no.1 to raise a boundary wall.

10. In view of the aforesaid statement made by Mr. Birbal and also the submissions of Mr. Mehta, this court is of the considered opinion that no purpose would be served by calling for reply from the respondent herein and the present petition can be disposed of with suitable directions to the learned Trial Court.

11. In view of the aforesaid, this court is of the considered opinion that the learned Trial Court takes up the application under Order I Rule 10 r/w Section 151 of CPC, 1908 filed by the petitioner and dispose it of expeditiously, in accordance with law.

12. Keeping in view the urgent nature of the reliefs sought by the petitioner as also the statement of Mr. Birbal aforesaid, this court deems it fit, for the time being, to stay the operation of the impugned order dated 13.01.2023, till 29.03.2023 when the matter is listed before the learned Trial Court.

13. Learned Trial Court shall make all endeavours to take up the application under Order I Rule 10 r/w Section 151 CPC, 1908 and

dispose of the same in accordance with law by 29.03.2023 or soon thereafter, after giving adequate opportunity to the other side.

14. The aforesaid stay order shall continue only till the disposal of the application under Order I Rule 10 CPC r/w Section 151 CPC, 1908.

15. The petition is disposed of with no orders as to costs.

16. A copy of this order be given *dasti* under the signatures of Court Master.

MARCH 15, 2023/AT

TUSHAR RAO GEDELA, J.

