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

% Judgment delivered on: 21.03.2023

+ CM(M) 460/2023

VIJAY SINGH

..... Petitioner

versus

TAMANNA ANAND & ORS

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Ms. Rashi Jain, Mr. Mihir Garg, Ms. Shivya Sharma, Mr. Ramesh Pandey, Mr. Nikhil Kadha and Mr. Rajesh Kumar, Advocates

For the Respondent : Mr. Nitin Kumar, GNCTD Panel Counsel (Civil) for R-5.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

CM APP No. 13688/2023

1. This is an application seeking exemption from filing certified copies of the annexures.
2. Exemption is allowed, subject to all just exceptions.
3. Application stands disposed of.

CM APP No. 13687/2023

4. This application is dismissed as rendered infructuous.

CM(M) 460/2023 & CM APP No. 13689/2023 (Stay)

5. The petitioner challenges the order dated 20.01.2023 passed in CS DJ ADJ No. 1035/2022 titled '*Vijay Singh vs. Tamanna Anand & Ors.*', whereby the learned Trial Court had dismissed the application under Order V Rule 20 of Code of Civil Procedure, 1908 (in short "CPC") filed on behalf of the petitioner/plaintiff as also for not having disposed of the application under Order XXXIX Rules 1 and 2 of CPC seeking certain urgent directions.

6. Learned counsel appearing for the petitioner submits that so far as the challenge to the dismissal of application under Order V Rule 20 CPC is concerned, she submits under instructions, that the said challenge is withdrawn with liberty to take the appropriate steps in accordance with law before the learned Trial Court.

7. So far as the challenge to no orders being passed on application under Order XXXIX Rules 1 and 2 of CPC is concerned, learned counsel submits that the petitioner/plaintiff and respondent no.1/defendant no.1 are the only contesting parties claiming ownership rights over the subject suit property.

8. Learned counsel further submits that the respondent no.1/defendant no.1 is being represented by a counsel before the learned Trial Court and necessary replies to the said application have already been filed before the learned Trial Court.

9. Learned counsel submits that the petitioner is willing to restrict the claim for the time being against the respondent no.1/defendant no.1 alone and requests that that the learned Trial Court be directed to take up the application under Order XXXIX Rules 1 and 2 CPC in all earnest

and dispose it of in accordance with law.

10. Issue notice. Notice accepted by Mr. Nitin Kumar learned counsel appearing for respondent no.5.

11. Since the petitioner has attempted to serve the other respondents as also the only relief being sought by the petitioner is restricted to the expeditious disposal of application filed under Order XXXIX Rules 1 and 2 CPC, this Court is of the opinion that no purpose would be served in calling for the response from the other respondents and their presence can be dispensed with.

12. This Court proceeds to dispose of the instant petition in accordance with Delhi High Court Circular No. 69/Rules/DHC dated 05.12.2019, which reads as under:-

“5. Appearance on the first date of listing:-

(a) Where a Civil Miscellaneous (Main) Petition under Article 227 of the Constitution of India or Civil Revision Petition under Section 115 of the Code of Civil Procedure, 1908 is filed, any opposite party desiring to oppose any of the prayers made in such petition or in any interim application accompanying such petition shall appear personally or through counsel to make submissions as he / she may desire before the Court.

(b) In case any opposite party does not appear before the Court upon advance service of the petition, the Court may not issue any further notice to such opposite party and may pass any order(s) as it may deem fit and proper in the facts and circumstances of the case.”

13. In view of the aforesaid and without entering into the merits of the matter, this Court is of the considered view that the urgency with which the petitioner has filed her suit and is seeking urgent reliefs from

the learned Trial Court, and the fact that the said application has been heard on a number of occasions previously, it would be in the interest of justice that the learned Trial Court take up the matter and dispose it of in accordance with law.

14. However, the same be only in respect of the stand taken by defendant no.1 alone.

15. It is informed that the matter is listed before the learned Trial Court on 23.03.2023.

16. Learned Trial Court is requested to take up the application under Order XXXIX Rules 1 and 2, CPC on 23.03.2023 and conclude the arguments. The appropriate orders thereon be passed at the earliest.

17. With the aforesaid directions, the petition and the pending application stand disposed of with no order as to costs.

TUSHAR RAO GEDELA, J.

MARCH 21, 2023

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