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

% Judgment delivered on: 01.05.2023

+ CM(M) 698/2023

NITIN ARORA

..... Petitioner

versus

SUNITA YADAV

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Meena Singh, Mr. Manish Malik,
Mr. Aun Prakash Rai, Mr. Vikas Saini,
Mr. Jai Subhash Thakur and Mr.
Dinesh Kumar Madesiya, Advocates.

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]

CM APPL. 21760/2023 (for exemption)

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

CM(M) 698/2023 & CM APPL. 21761/2023 (for stay)

3. Petitioner/defendant challenges the order dated 11.04.2023 in TP (CIVIL) 11/2023 titled as "*Nitin Arora vs. Sunita Yadav*", whereby the Principal District & Sessions Judge, North-West District, Rohini Courts, Delhi has dismissed the application under Section 24 CPC, 1908 seeking

transfer of the pending suit from the Court of learned ADJ-04 (North-West), Rohini Court, Delhi on the ground of bias.

4. Mr. Meena Singh, learned counsel appearing for the petitioner/defendant submits that the bias is apparent from the fact that the learned Trial Court not only framed the issues in the absence of the respondent/plaintiff but, further proceeded to place the burden of initial proof on the petitioner/ defendant.

5. Learned counsel also submits that subsequently on the basis of the written submissions handed over by the petitioner/ defendant, learned Trial Court has directed issuance of Show Cause Notice under Section 340 of the Cr.P.C., 1973.

6. Learned counsel submits that the aforesaid acts of the learned Trial Court make it clear that the learned judicial officer is biased against the petitioner/ defendant.

7. This Court has considered the submissions made by learned counsel for the petitioner/defendant as also perused the impugned order dated 11.04.2023 passed by the Principal District & Sessions Judge, North-West District, Rohini Courts, Delhi.

8. So far as the allegation on the question of bias, in respect of framing of issues in the absence of plaintiff is concerned, the plaintiff, who is the respondent herein has not challenged the same till date though the issues were framed on 01.06.2022. If at all anybody could be aggrieved by such order, it could have been the respondent/ plaintiff alone.

9. So far as the issue of the burden of proof being placed initially on the petitioner/ defendant is concerned, the learned Principal District &

Sessions Judge has categorically and in a detailed manner examined the entire submissions as well as the stand taken by both the parties before the learned Trial Court and has concluded that the petitioner/ defendant had taken contrary stands insofar as the written statement is concerned, in that, the petitioner had taken a stand that the entire payment was already made to the respondent/plaintiff and subsequently, in the written submissions filed on record, had taken a stand, that certain payments were made subsequent to the filing of the suit. It was on this basis that the learned Trial Court was of the considered opinion that it would be in the interest of justice to call out to the petitioner/ defendant to discharge the burden of proof, initially.

10. That so far as the fact of the learned Trial Court issuing a Show Cause Notice under Section 340 Cr.P.C., 1973 is concerned, there is nothing before this Court to show that the same would constitute bias or not.

11. In view of the above, this Court has not been able to ascertain upon the submissions made, as also the orders placed before this Court, that there is any bias of the learned Trial Court against the petitioner/ defendant at all.

12. In that view of the matter, the present petition is without any merit and is dismissed and the impugned order is upheld.

13. The aforesaid observations are without prejudice to the rights of the petitioner/ defendant to challenge the framing of issues or the direction to discharge the burden of proof placed upon the petitioner/ defendant, if so advised in accordance with law.

14. The petition along with pending application is dismissed with no order as to costs.

TUSHAR RAO GEDELA, J.

MAY 1, 2023/nd

