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

% Judgment delivered on: 22.05.2023

+ CM(M) 863/2023

SH PRAKASH CHAND

..... Petitioner

versus

PAWAN KUMAR & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. K.C.Mittal, Advocate with Mr. Yugansh Mital and Mr. Vaibhav Yadav, Advocates.

For the Respondents : 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. 27238/2023 (for exemption)

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

CM(M) 863/2023 & CM APPL. 27237/2023 (for stay)

3. After hearing Mr. Mittal, learned counsel appearing for the petitioner and perusing the orders of the learned Trial Court from the order dated 24.01.2023 upto 04.05.2023 it is apparent that the learned

Trial Court has, even on early hearing applications, simply issued notice and adjourned the matter for the next date of hearing without considering the urgency as urged in the application under Order XXXIX Rules 1 and 2 of CPC, 1908.

4. Mr. Mittal, learned counsel also submits that the property which was sought to be protected stands demolished as on date by respondent Nos. 2 and 3, which is against the case of the petitioner.

5. Mr. Mittal also submits that substantive amendment to the plaint was also sought by way of an application under Order VI Rule 17 of the CPC, 1908, whereby the challenge to the Will dated 18.05.1982, of the testator propounded by the respondent and which was intriguingly and surprisingly, got formally registered on 02.11.2022, purported to be the Will of the late grandfather.

6. Mr. Mittal submits that the late grandfather had unfortunately expired in the year 1984, so the registry itself is *post facto*, the death of the testator.

7. In view of the aforesaid submissions as also perusing the daily orders passed by the learned Trial Court, it appears that the learned Trial Court has not taken up the application under Order XXXIX Rules 1 and 2 of CPC, 1908. The urgency as expressed by Mr. Mittal seems to be genuine.

8. Though, the respondent have been served through counsel on advance notice, yet no one appears.

9. In view of the above, this Court is of the opinion that the interest of justice would be sub-served, in case learned Trial Court is directed to take up the application under Order XXXIX Rules 1 and 2 on the next

date of hearing i.e., 29.05.2023 and dispose it of in accordance with law.

10. The learned Trial Court shall ensure that no further adjournments are sought on 29.05.2023 and the hearing, as directed above shall take place.

11. With the aforesaid direction, the petition along with pending application stands disposed of.

TUSHAR RAO GEDELA, J.

MAY 22, 2023/nd

