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

Date of decision: 24.08.2023

+ **CM(M) 1375/2023 & CM APPL. 43638/2023**

MUNICIPAL CORPORATION OF DELHI

..... Petitioner

Through: Mr. Sanjeev Sagar, Standing Counsel
for MCD with Ms. Nazia Parveen,
Advocate.

versus

SAMEER GARG

..... Respondent

Through: None.

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

CM APPL. 43639/2023 (For Exemption)

Allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

CM(M) 1375/2023

1. This petition has been filed under 227 pf the Constitution of India seeking a direction to the Additional District Judge – 04 (Central), Tis Hazari Courts, Delhi ('Appellate Court') to expeditiously decide the Regular Civil Appeal (RCA) bearing no. 44/2023 alongwith the pending interim application therein.

2. Learned counsel for the Petitioner states that in this petition, the



Petitioner is seeking a limited relief for the disposal of the appeal or atleast the application filed under Order XLI Rule 5 of the Civil Procedure Code, 1908 ('CPC') seeking stay of the order dated 02.03.2023 passed by the Additional Senior Civil Judge, Central District, Tis Hazari Courts, Delhi ('Trial Court') in CS No. 251/2023.

2.1. He states that the Respondent has filed a contempt petition bearing Misc DJ No. 155/2023 under Order XXXIX Rule 2A of the CPC before the Trial Court and the Petitioner despite having approached the Appellate Court has not been heard either on the application seeking interim relief or the final appeal.

3. This Court has perused the Petition and heard the counsel for the Petitioner.

4. This Court has been apprised that the application under Order XXXIX Rule 2A of the CPC is listed before the Trial Court on 21.11.2023, whereas, the appeal is listed before the Appellate Court on 17.11.2023.

5. In view of the fact that the Petitioner has availed its appellate remedy it cannot be left remediless due to the non-decision on the application for stay filed in the appeal.

6. Accordingly, the Appellate Court is requested to take up and decide the application under Order XLI Rule 5 of the CPC on 17.11.2023, in view of the fact that the Petitioner herein has to appear before the Trial Court on 21.11.2023 in the application filed by the Respondent under Order XXXIX Rule 2A of the CPC.

7. The Appellate Court is also at liberty to decide the appeal itself on 17.11.2023, if it so deems appropriate.

8. With the aforesaid directions, the present petition is disposed of.



9. Pending Applications, if any, stand disposed of.

MANMEET PRITAM SINGH ARORA, J
AUGUST 24, 2023/rhc/ms

[Click here to check corrigendum, if any](#)

