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

*Date of decision: 18.09.2023*

+ CM(M) 1520/2023

RAHUL SHARMA

..... Petitioner

Through: Mr. Anil Sharma and Mr. Arpit  
Sharma, Advocates

versus

PARVEEN KUMAR SHARMA & ANR..... Respondents

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. 48188/2023(for exemption)**

Exemption is allowed, subject to all just exceptions.

Accordingly, the present application is disposed of.

**CM(M) 1520/2023**

1. The present petition filed under Article 227 of the Constitution of India seeking a direction to the ADJ, Karkardooma Court, Delhi ('Trial Court') to dispose of the application filed by Respondent No. 1 under Order VII Rule 11 of Code of Civil Procedure, 1908 ('CPC') in a time bound manner.

1.1. The Petitioner is the plaintiff and the Respondents are the defendants in the civil suit filed for possession and declaration alongwith damages/mesne profit.

2. The learned counsel for the Petitioner states that the Respondent No. 1



filed his written statement on 08.10.2021 alongwith an application under Order VII Rule 11 CPC.

2.1. He states that the pleadings in the said application are complete and the matter has been adjourned before the Trial Court on several dates for addressing arguments on the said application filed by Respondent No. 1.

2.2. He states that due to the pendency of the said application, the Trial has not proceeded with the and the same is causing prejudice to the Petitioner herein.

2.3. He states that the matter is next listed before the Trial Court on 25.10.2023 and he therefore, prays for a direction to the Trial Court to hear and adjudicate the said application expeditiously.

3. None appears on behalf of the Respondents despite advance service on the counsel for the Respondents appearing before the Trial Court.

4. This Court has considered the submissions of the counsel for the Petitioner and perused the record.

5. In view of the limited directions sought by the Petitioner and in view of the law settled by the Supreme Court in the case of ***R.K. Roja v. U.S. Rayudu & Ors.*** (AIR 2016 SC 3282) that the Trial Court should decide an application filed under Order VII Rule 11 CPC before proceedings with trial, it would be in the interest of justice that the application of Respondent No. 1 is heard and decide expeditiously. The relevant extract of the judgement reads as under :

*"9. The procedure adopted by the court is not warranted under law. **Without disposing of an application under Order VII Rule 11 of the Code of Civil Procedure, the court cannot proceed with the trial.** In that view of the matter, the impugned order is only to be set aside. Ordered accordingly."*

(Emphasis Supplied)

6. It is indeed peculiar that the plaintiff has approached this Court seeking



a direction for adjudication of an application filed by the defendant. Ordinarily, it is the applicant who should be pursuing for an expeditious adjudication of the application. The lack of diligence by the defendant in pursuing his application is writ large.

7. The Trial Court is therefore requested to hear and decide the said application within preferably one (1) month from 25.10.2023, the date on which the application is listed before the said Court.

8. In case, the Trial Court is of the opinion that the Respondent No. 1 is seeking unnecessary adjournment; the Trial Court is requested to exercise its jurisdiction under Order 17 CPC or in case of default deal with the said application as it deems fit.

9. With the aforesaid directions, the present petition stands disposed of.

10. Pending applications, if any, stand disposed of.

**MANMEET PRITAM SINGH ARORA, J**  
**SEPTEMBER 18, 2023/rhc/asb**

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