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

Date of decision: 21.12.2023

+ CM(M) 2130/2023, CM APPL. 66608/2023 & CM APPL. 66609/2023

PUSHKAR RAJ THAKUR

..... Petitioner

Through: Ms. Rhea Luthra, Advocate
versus

AMAN JOSHI & ANR.

..... Respondent

Through: Ms. Mamta Jha and Mr. Rohan Ahuja, Advocates for R-2

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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. 66609/2023 (for exemption)

Allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

CM(M) 2130/2023, CM APPL. 66608/2023

1. This petition filed under Article 227 of Constitution of India impugns the order dated 12.12.2023 passed by the ADJ-04, North District, Karkardooma Courts, Delhi ('Trial Court') in civil suit bearing CS DJ No. 399/2023, titled as 'Pushkar Raj Thakur v. Aman Joshi', whereby the Trial Court dismissed the Petitioner's application seeking earlier hearing of an application filed under Order XXXIX Rule 1 and 2, Code of Civil Procedure, 1908 ('CPC').



2. The Petitioner is the plaintiff and Respondent Nos. 1 and 2 are defendant nos. 1 and 2 respectively. The civil suit has been filed seeking permanent and mandatory injunction as well as compensatory damages against the defendants.

3. Learned counsel for the Petitioner states that the suit was instituted on 17.05.2023 along with an application under Order XXXIX Rule 1 and 2, CPC.

3.1. She states that the suit was listed before the Trial Court on six (6) dates i.e., on 30.05.2023, 03.08.2023, 22.09.2023, 07.10.2023, 25.10.2023 and 12.12.2023, however, the hearing in the Order XXXIX Rule 1 and 2 CPC application has not commenced.

3.2. She states that urgent interim reliefs have been prayed for and due to the non-adjudication of the said reliefs, the Petitioner is also precluded from exercising his statutory right of appeal under Order XLIII Rule 1 CPC.

4. Learned counsel for Respondent No.2 has entered appearance on advance service.

4.1. He states that there is a formal objection as regards the absence of the verification clause in the plaint and this was pointed out to the Petitioner and therefore, the application filed by the Petitioner under Order VI Rule 17 CPC is still pending before the Trial Court.

5. This Court has considered the submissions of the counsel for the parties and perused the record.

6. This Court finds merit in the submissions of the Petitioner to the extent that the Petitioner cannot be denied the right of hearing and adjudication of his application under Order XXXIX Rule 1 and 2 CPC seeking urgent interim reliefs. It is trite that Court is obliged to decide an



application for interim relief expeditiously so that it is not rendered infructuous. The said application has remained pending on the board of the Trial Court since May, 2023. However, the defendants have not yet completed their pleadings in the said application and this defeats the intent of Order XXXIX Rule 1 and 2 CPC.

7. Learned Trial Court is therefore, requested to take up this matter on or before 15.01.2024 and issue directions to defendants for completion of pleadings in the application under Order XXXIX Rule 1 and 2 CPC; and ensure that appropriate orders in the said application are passed within a period of eight (8) weeks from 15.01.2024.

8. The Petitioner will file an appropriate application before the Trial Court to place this order on record, so that the matter can be taken up on 15.01.2024.

8.1. Respondent Nos. 1 and 2 are directed to remain present before the Trial Court upon receipt of the advance service of the said application.

9. With the aforesaid directions, the present petition is disposed of. Pending applications stand disposed of.

MANMEET PRITAM SINGH ARORA, J

DECEMBER 21, 2023/msh/aa

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