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

+ **CM(M) 1876/2024**

SHASHI SINGH & ANR.

..... Petitioners

Through: Mr. S.S. Sastry, Mr. Amkur Gosain
and Mr. Sunil Kumar, Advs.

versus

NUPUR PAL

..... Respondent

Through: Mr. Osama Suhail and Ms. Puja
Kesarwani, Advs.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

ORDER

% **15.02.2024**

CM APPL. 9162/2024 (exemption)

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

CM(M) 1876/2024, CM APPL. 9161/2024—stay

3. The present petition has been filed under Article 227 of the Constitution of India impugning the order dated 03.02.2024 in CS DJ No. 907/2022 passed by the learned ADJ -02, South East, Saket Court, New Delhi (in short the 'learned Trial Court'). The petitioners herein are the defendants before the learned Trial Court. It is submitted that vide impugned order, the learned Trial Court has allowed the application moved under Order XXXVIII Rule 5 CPC by the respondent herein and attached the suit property bearing Flat No. B-26, Pocket B & C, Category-III, 1st Floor, Alaknanda B, New Delhi where the petitioners are residing without granting an opportunity to the petitioners herein of being heard.
4. Issue notice.



5. Mr. Osama Suhail, learned counsel appearing on advance notice, accepts notice on behalf of the respondent.
6. The submissions are refuted on behalf of the respondent by placing various orders passed by the learned Trial Court on record. It is further submitted that even after signing a Memorandum of Settlement dated 13.07.2023 which was placed on record before the learned Trial Court on 13.07.2023 itself and joint statement of parties was recorded, the petitioners are still not adhering to the settlement terms as mentioned in the Memorandum of Settlement and has also sought various adjournments to make part payments as per the memorandum.
7. Learned counsel further submitted that as per the circumstances stated above the petitioners herein failed to comply with the terms of the Memorandum of Settlement and hence, the respondent was constrained to move an application under Order XXXVIII Rule 5 CPC. However, on 08.12.2023, the petitioners herein had agreed before the learned Trial Court to clear the entire outstanding amount as per the Memorandum of Settlement within a period of 40 days and undertook to pay Rs. 1 lakh for each 10 days delay till the entire amount is paid and that in case the terms of the Memorandum of Settlement dated 13.07.2023 as well as the statement made by petitioner no. 2 before the learned Trial Court is not complied with by the next date of hearing, the said property may be attached and the amount may be released therefrom.
8. It is submitted that in these circumstances as the petitioners herein failed to make the payment and subsequently, the application moved on behalf of the respondent was taken up for hearing and was disposed of on 03.02.2024. Moreso, the petitioner had sufficient knowledge of the



application as the advance copy of the same was supplied to him.

9. Learned counsel for the petitioner rebutted the arguments and submitted that though an advance copy of the application was furnished, however, no opportunity was granted to file a reply or to address arguments on the application.

10. After hearing the arguments and perusing the records as well as impugned order, it is not disputed that the impugned order has been passed in the absence of the petitioners, it clearly indicates that the petitioners did not have the opportunity of being heard on the said application.

11. In view of the foregoing, the impugned order dated 03.02.2024 is set aside. The learned Trial Court is directed to hear the application under Order XXXVIII Rule 5 CPC on the next date fixed before it i.e., 19.02.2024 on which date no further opportunity shall be granted to either of parties on any ground for addressing arguments.

12. The petitioners are at liberty to file reply to the same within two days with advance copy to the respondent. The learned Trial Court shall dispose of the application under Order XXXVIII Rule 5 CPC within a week.

13. In view of the above directions, the petitions stands disposed of.

SHALINDER KAUR, J.

FEBRUARY 15, 2024
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