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

+ CM(M) 1956/2024

PRADEEP SHARMA

..... Petitioner

Through: Mr. A. K. Singla, Sr. Adv with Mr.
Akshit Sachdeva, Adv.

versus

RAJIV GARG

..... Respondent

Through: Ms. Supriya Juneja and Mr. Raghav
Anthwal, Advs.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

ORDER

% **23.02.2024**

CM APPL. 11144/2024(exemption)

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

CM(M) 1956/2024, CM APPL. 11143/2024—I.relief

3. The present petition has been filed under Article 227 of the Constitution of India seeking directions for the learned Additional District Judge-07(West) Tis Hazari Courts, Delhi (hereinafter referred to as 'Trial Court'), to consider, hear and decide the petitioner's application under Order XXXIX Rule 1 & 2 of the Code of Civil Procedure, 1908 (CPC) pending on the board of the Court in CS DJ 13143/2016 titled as '*Pradeep Sharma Vs. Rajiv Garg*' on the next date of hearing which is 24.02.2024 before the learned Trial Court.

4. The petitioner instituted a suit being CS DJ 13143/2016 earlier filed with registry of this Court as CS(OS) 697/2015 seeking decree for declaration and injunction based on title of the suit property bearing no. 201, J-1/162, Rajouri Garden, Delhi - 110027 on strength of registered sale deed



and by taking aid of provision under Section 6(4) of Specific Relief Act, 1963.

5. It is submitted on behalf of the petitioner that the application under Order XXXIX Rule 1 & 2 of the CPC is pending disposal since the year 2015. On the first date of the hearing this Court vide order dated 24.03.2015 granted ex-parte ad-interim stay for maintaining status quo of title and possession of suit property. However, the said ad-interim stay was vacated by the learned Trial Court vide order dated 05.07.2023 as the respondent moved an application under Order XXXIX Rule 4 CPC and subsequently appeal of the said order bearing FAO No. 190/2023 got dismissed on 23.01.2024. Hence, the order dated 05.07.2023 of the learned Trial Court vacating the ad-interim stay has been upheld.

6. Learned senior counsel for the petitioner further submits that the application under Order XXXIX Rule 1 and 2 of the CPC is still pending and has not been disposed of on merits by the learned Trial Court. Moreso, vide order dated 06.02.2024, petitioner's application seeking early hearing of the application under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908 prior to other application was declined.

7. Learned senior counsel submits that the matter is now listed before the learned Trial Court on 24.02.2024 when the application moved on behalf of the respondent under Order VII Rule 11 of CPC will be taken up for hearing, whereas, the application moved on behalf of the petitioner under Order XXXIX Rule 1 & 2 of the CPC has been ignored.

8. The aforesaid submissions have been controverted vehemently on behalf of the respondent submitting that the petitioner herein had never ever made any submission before the learned Trial Court for disposal of his



application under Order XXXIX Rule 1 and 2 of the CPC prior to the date 06.02.2024 and the submissions made at this stage are only with an intention to delay the proceedings before the learned Trial Court. In the background of the facts and circumstance of the parties, it is submitted that there is no urgency for disposal of the application under Order XXXIX Rule 1 and 2 of the CPC on 24.02.2024 by the learned Trial Court.

9. Apart from hearing the arguments, the orders of the learned Trial Court's proceedings which have been placed before this Court on record and impugned order are perused.

10. The application under Order XXXIX Rule 1 and 2 of the CPC has been moved by the petitioner herein on 12.03.2015. The first appeal bearing no. FAO 190/2023, upholding vacation of the ad-interim ex-parte stay under Order XXXIX Rule 4 of the CPC dated 24.03.2015, has been disposed of vide order dated 23.01.2024 by the learned Coordinate Bench of this Court. Therefore, in these circumstances, no further directions are required for immediate hearing and disposal of the application under Order XXXIX Rule 1 and 2 of the CPC on 24.02.2024.

11. The learned Trial Court, however, shall make an endeavour to dispose of the application under Order XXXIX Rule 1 and 2 of the CPC, moved by the petitioner herein before it, expeditiously.

12. The petition stands disposed of.

13. *Dasti* be given under signatures of the Court Master.

SHALINDER KAUR, J.

FEBRUARY 23, 2024 / aks