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

% ***Date of decision: 08th July, 2024***

+ **CM(M) 2859/2024**

PREM ARORA

.....Petitioner

Through: **Mr. Tushar Mahajan with Mr. Aseem
Kumar Sahay, Advocate.**

versus

**KARTAR CHAND (SINCE DECEASED) THROUGH LR RAJIV
ARORA & ORS.**

.....Respondents

Through: **None.**

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

CM APPL.37338/2024 (exemption)

Exemption allowed subject to all just exceptions.

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1. It happens to be a petition under Section 227 of the Constitution of India.
2. Petitioner is plaintiff before the learned Trial Court and had filed a suit way back in the year 2014 seeking, *inter alia*, possession of the suit property.
3. According to the petitioner, there was no real dispute qua the factum of relationship of landlord and tenant between the parties as well as regarding the rate of rent which was above Rs.3,500/- per month. It has been contended that the plaintiff (petitioner herein) had moved an application under Order XII Rule 6 CPC before the learned



Trial Court on 03.01.2015.

4. The attention of the Court has been drawn towards the impugned order dated 31.05.2024. Such order indicates that the learned Trial Court did hear the arguments with respect to the aforesaid application as well as qua one consequent application under Order XXXIX Rule 10 CPC but declined to decide the same. Para 5, 6, 7 and 8 of said order are extracted herein below:-

" 5. At this stage, Ld. Counsel for the Plaintiff has advanced arguments on the application under Order 12 Rule 6 CPC and has also pressed for seeking consequential relieves under Order 39 Rule 10 CPC including use and occupational charges and mesne profit.

6. Heard. Perused.

7. As per the submissions made by the parties, in the considered opinion of this court, parties are pressing for relieves based on mixed questions of law and fact together. These are the matters-in-issue which cannot be decided in limine. Also, these are questions which are dependent upon the core contentions advanced by the parties and eventually will have a direct impact on the merits of the suit.

8. Therefore, judicial prudence demands that parties lead evidence in order to support their contentions individually. As per the submissions above. affidavit of admission/denial of documents are already on record respectively. "

5. Learned counsel for the petitioner submits that the learned Trial Court was well within its rights to have even dismissed the application but there was no justification and logic in keeping the application pending. It is contended that even if the learned Trial Court was of the view or the opinion that there was no admission of any kind whatsoever made by the opposite side and that such application was



meritless, it should have decided the same instead of postponing those indefinitely.

6. The impugned order also indicates that the suit in question happens to be one of the oldest cases pending before the learned Trial Court.

7. Needless to say, keeping in mind the nature of application and the fact that the application was moved way back in the year 2015, the Court should have given due preference and priority to said application, instead of postponing the same. Such application has to be given due regard as it can result in quick disposal of the lis. Postponement of such kind of application is neither justifiable nor permissible.

8. Nobody appears from the opposite side despite service of advance notice.

9. Fact remains that, even if this petition is allowed and the learned Trial Court is directed to dispose of the application moved under Order XII Rule 6 CPC and also the other application moved under Order XXXIX Rule 10, it is not going to prejudice the respondent in any manner whatsoever. Viewed thus, there is no real purpose in keeping this matter pending any more, also considering the fact that this is one of the oldest case pending before the learned Trial Court.

10. Consequently, the present petition is disposed of by directing the learned Trial Court to take up both the aforesaid applications and to pass appropriate orders before proceeding further with the trial.

11. Before parting, I need to lay emphasis and clarify that this



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Court has not expressed any opinion whatsoever about the merits of the aforesaid applications and it would be upto the learned Trial Court to decide the same in accordance with law after giving due opportunity to both the sides.

12. Copy of the order be given *Dasti* under the signatures of the Court Master.

(MANOJ JAIN)
JUDGE

JULY 08, 2024
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