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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% ***Date of decision: 06th September, 2024***

+ **FAO 266/2024 & CM APPL. 47442/2024 & CM APPL. 47443/2024**
DR MOHD ASHFAQ

.....Appellant
Through: Mr. S.S. Nizami and Mr. M.F. Nizami,
Advocates.

versus

CHETAN SHARMA AND ORS

.....Respondents
Through: None.

CORAM:
HON'BLE MR. JUSTICE MANOJ JAIN
J U D G M E N T (oral)

1. The plaintiff has been filed a suit seeking specific performance and permanent injunction.
2. The suit was filed way back in the year 2010 and the suit is now already at the stage of defense evidence. The application seeking interim relief was not pressed for initial 10 years.
3. However, in the year 2021, the petitioners/ plaintiff moved another application under Order XXXIX Rule 1 and 2 CPC and even said application was not pressed for another one year and 10 months and it was only pressed on 10th January, 2022.
4. The learned Trial court was of the view that interim injunction was being sought at a very belated stage. While observing that the case was already at the stage of defendant evidence and only one witness was left to be examined, such request was not entertained.
5. The relevant part of the aforesaid order reads as under:



“From the perusal of the record, it is revealed that the plaintiff has filed the present suit on 24.05.2010 accompanying the application under Order 39 Rule 1 & 2 CPC dated 18.05.2010 but surprisingly the said application has not been pressed by the plaintiff till 15.02.2021 and the plaintiff has filed a fresh application under Order 39 Rule 1 & 2 CPC for stay on 24.02.2021. The plaintiff also did not press the second application for about 1 year & 10 months and pressed the same only on 10.01.2023. Perusal of record further reveals that now the matter is at the stage of defendants’ evidence and defendant no.2 has already led his evidence and he has been cross examined at length by the plaintiff and only defendant no.1 is left to be examined and cross examined. The plaintiff kept silence for more than 11 years of filing the present suit. Therefore, this court is of the opinion that the relief of interim injunction at a belated stage is not proper one to be granted. Thus, no prima facie case is made out in favour of the plaintiff. Even balance of convenience also does not lie in favour of the plaintiff and no irreparable loss would be caused to the plaintiff. The application under Order 39 Rule 1 & 2 CPC is devoid of merit and same deserves dismissal out rightly. In view of the abovesaid reasons, the application of the plaintiff under Order 39 Rule 1 & 2 CPC is hereby dismissed.”

6. When asked as to what compelled the plaintiff to move the abovesaid application, it has been simply stated that there was some apprehension that the defendants would dispose of the property in question, without giving any specific and concrete details.
7. Be that as it may, it seems that the petitioner himself was not keen in seeking any interim relief when the suit was filed way back in the year 2010.
8. Undoubtedly, there is no bar or prohibition in moving any such application at a later stage of the suit but, still, in order to show a *prima facie* case, balance of convenience and irreparable loss, the plaintiff is required to come with certain compelling reasons. It is noticed that the copy of the application which he had moved before the learned Trial Court seeking interim relief has not even been placed before this Court.
9. Since the case is already at a very advanced stage, we do not find any reason to interfere with the impugned order. The present appeal is disposed



of, *albeit*, with direction to the learned Trial Court to expedite the disposal of the suit in question.

10. However, it is clarified that this Court has not expressed any opinion over the merits of the case and the learned Trial Court shall not, therefore, feel prejudiced by mere dismissal of the present appeal.

(MANOJ JAIN)
JUDGE

SEPTEMBER 6, 2024/ss