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

% ***Date of decision: 01st October, 2024***

+ **FAO 315/2024 & CM APPL. 57757-57759/2024**

PREETI CHAUHAN

.....Appellant

Through: Mr. S.C. Sagar, Mr. Naeem Ahmed
and Mr. Shishu Pal Sharma,
Advocates

versus

ICICI LOMBARD GENERAL INSURANCE CO LTD & ORS.

.....Respondent

Through: Mr. Varun Bedi, Advocate for R-3

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

CM APPL. 57758/2024 (exemption)

Exemption allowed, subject to all just exceptions.

FAO 315/2024 & CM APPL. 57757/2024 & CM APPL. 57759/2024

1. Appellant has filed a suit for recovery which is, primarily, based on one insurance policy.
2. Admittedly, such policy was with respect to grant of home-loan.
3. However, during the pendency of the above-said suit, defendant no. 3 moved an application before the learned Trial Court seeking return of the suit under Order VII Rule 10 CPC on the premise that suit was relating to a commercial dispute.
4. Learned Trial Court, after hearing arguments from both the sides and keeping in mind the definition of 'commercial dispute' as given under



Commercial Courts Act, 2015, came to the conclusion that the dispute was commercial in nature and directed that suit be returned supplementing that it be accordingly filed before the appropriate Court.

5. After hearing arguments for some time, Mr. S.C. Sagar, learned counsel for appellant states that he would, in terms of the aforesaid impugned order dated 30.08.2024, would take requisite steps and would ensure that suit is filed before a Commercial Court.

6. However, at the same time, learned counsel for appellant states that when the above-said recovery suit was earlier pending, learned Trial Court had taken up one application filed under Order XXXIX Rules 1 & 2 CPC and while considering the aforesaid application, vide order dated 19.12.2022, defendant no. 3 was restrained from taking coercive steps against the plaintiff with respect to property in question situated in West Sagar Pur, New Delhi-46.

7. It is informed that such order continues to be in operation and Mr. Sagar, learned counsel for appellant merely seeks breather for the interregnum.

8. Learned counsel for respondent no. 3 (defendant no. 3 before the learned Trial Court) appears on advance notice and states that though he does not dispute that such *ex parte* injunction order had been granted but according to him, there was no occasion for the learned Trial Court to have passed any such order. He also states that after the return of suit, they have already initiated further action.

9. Keeping in mind the overall facts and circumstances of the case and the fact that appellant is a widow and has now agreed to take requisite steps for the purpose of filing suit before a Commercial Court in terms of the directions



contained in impugned order, said restraint order would remain in operation for a period of five weeks from today. It is, however, clarified that no special equity would flow in her favour and it will be entirely upto the concerned Commercial Court where the suit is eventually re-filed after return to take appropriate call in this regard.

10. Needless to say, such Court would not get influenced by any observation contained herein.

11. Appeal stands disposed of in the aforesaid terms.

(MANOJ JAIN)
JUDGE

OCTOBER 01, 2024/dr