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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CM(M) 3216/2024

SHRI VIJAY NATH MISRA

.....Petitioner
Through: Mr. Sanjiv Bahl with Mr. Sumit
Ahuja, Advocates.

versus

SHRI DHARMENDER KUMAR AND ANR

.....Respondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE MANOJ JAIN

ORDER

% 23.08.2024

CM APPL. 48448/2024 (exemption)

Exemption allowed, subject to all just exceptions.

CM(M) 3216/2024 & CM APPL. 48447/2024

1. Petitioner is defendant No.1 before the learned Trial Court and moved an application under Order VII Rule 11 of CPC.
2. Various orders passed by the learned Trial Court, from time to time, would indicate that the learned Trial Court was hearing arguments on said application and, eventually, when the matter was fixed for order on said application, the learned Trial Court, instead of passing any order on such application, thought it appropriate to dispose of one application moved by the plaintiff under Order XXVI Rule 9 of CPC and, resultantly, appointed a Local Commissioner.

CM(M) 3216/2024

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3. The grievance of defendant No. 1 is limited to the effect that the case was fixed for orders on the application moved under Order VII Rule 11 of CPC and he was never heard with respect to the above said application moved under Order XXVI Rule 9 CPC. It has been contended that though his appearance was recorded but he was never heard with respect to the above said application, and it was only later on that he learnt that the Local Commissioner had been appointed. It has also been contended that the manner in which the directions have been given to the learned Local Commissioner, go on to indicate that the endeavor of the plaintiff is simply to collect the evidence which, even otherwise, is not permissible under law.
4. It has also been stated at the Bar that the Commission as such has yet not been executed.
5. Issue notice through all permissible modes, as also through counsel, returnable on 17.12.2024.
6. In the meanwhile, the impugned order to the extent it appoints the Local Commissioner shall remain in abeyance.
7. However, the learned Trial Court would be at liberty to proceed further with the matter.

MANOJ JAIN, J

AUGUST 23, 2024/sw