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

% Judgment delivered on: 22.05.2023

+ CM(M) 730/2023

JATIN DHAWAN

..... Petitioner

versus

PRAVESH DHAWAN AND OTHERS

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Ms. Padma Priya, Advocate along with
Petitioner-in-person.

For the Respondents : None.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

CM APPL. 23043/2023 (for exemption)

1. Exemption is allowed, subject to all just exceptions.
2. The application stands disposed of.

CM APPL. 23434/2023 (for delay in refiling)

3. This is an application seeking condonation of delay in refiling the petition.
4. For the reasons stated in the application, the application is allowed. The delay of 8 days in refiling the present petition is condoned.

5. The application stands disposed of.

CM APPL. 23044/2023 (for summoning Trial Court Record)

6. This is an application seeks summoning of Trial Court Record.

7. As and when the situation necessitates, the Trial Court Record may be summoned. As of now, there is no requirement.

8. Accordingly, the application stands disposed of.

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9. Petitioner challenges the order dated 21.12.2022 in CS DJ No. 10822/2016 titled as "*Rajinder Nath Dhawan & Anr. vs. Pravesh Dhawan & Ors.*", whereby the learned Trial Court dismissed the application under Section 94 r/w Section 151 of the Code of Civil Procedure, 1908, seeking restrain against defendant No.4 from handing over the possession of the suit property i.e. the first, second and third floor of property No. K-38A, Lajpat Nagar-2, New Delhi-24 to the defendant Nos. 1, 2 and 3, who are the respondent Nos. 1, 2 and 3 herein.

10. Ms. Padma Priya, learned counsel appearing for the petitioner submits that it is an admitted case of the parties that by virtue of the Registered Lease Deed of the year dated 2007, executed by the petitioner/ plaintiff herein along with respondent No.1, in favour of respondent No.4/ tenant, the respondent No. 4 was under a contractual obligation to hand over the possession of the subject suit property to the plaintiff.

11. Ms. Priya submits that the same was not done. In fact according to her, the respondent No.4/ tenant had handed over the possession to respondent Nos.1 to 3 on 31.01.2014.

12. Despite the fact that an application under Section 94 of the CPC, 1908, was pending before the learned Trial Court for all these years, the said application was neither considered nor disposed of by the learned Trial Court.

13. Ms. Priya submits that the application was dismissed cursorily without looking into the facts which obtained from the consideration of the learned Trial Court's record.

14. This Court has heard Ms. Priya, learned counsel appearing for the petitioner and perused the impugned order as well as the other documents on record.

15. The fact of the matter is that, though, the application was filed on 28.05.2013 and despite notice having been issued, the respondent No.4 had already vacated the suit property on 31.01.2014 and handed over the same to respondent Nos.1 to 3 rendering the application itself, infructuous. Thus, as observed by the learned Trial Court, the relief as sought in the said application had become otiose.

16. According to Ms. Priya, at the time of filing of the suit, the respondent Nos. 2 and 3 were not having possession of the subject suit property.

17. Be that as it may, this Court is of the considered opinion that the issue as to whether the respondent Nos. 1, 2 and 3 were rightly or wrongly handed over the possession of the subject suit property by the respondent No.4/ tenant is yet to be decided and shall remain open for the learned Trial Court to consider during trial as also at the time of final arguments and cannot be said to have achieved finality, by passing of the impugned order.

18. With these aforesaid observations, the petition is disposed of without interfering with the impugned order as such.

19. The petition is disposed of with no order as to costs.

TUSHAR RAO GEDELA, J.

MAY 22, 2023/nd

