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

+ RC.REV. 393/2014

M/S MURLIDHAR AND SONS Petitioner
Through Mr.Achin Mittal, Advocate

versus

RAJENDER PRASAD GUPTA AND ANR. Respondents
Through Mr.Shiv Charan Garg & Mr.Imran
Khan, Advocates for R-1
Mr.Joydeep Sarma, Advocate for R-2

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

% **ORDER**
07.02.2017

The learned counsel for the petitioner submits that CM No.2171/2017 which is shown to have been disposed of on 18.01.2017 as exemption application, has been wrongly treated as exemption application. He submits that actually this is an application under Section 151 CPC to recall the order dated 06.04.2015. Accordingly, the order dated 18.01.2017 regarding the CM No.2171/2017 is recalled. The application being CM No.2171/2017 is restored to its original number.

CM No.2171/2017

This is an application filed by the petitioner under Section 151 CPC for recalling of the order dated 06.04.2015 passed by this court.

On 06.04.2015 this court had noted the submissions of the learned counsel for the petitioner, on instructions from Sh.Vinod Kumar Mittal,

partner of the petitioner who was present in court, that they would like to vacate the premises if the time is extended. With the consent of the parties, time to vacate the premises was extended till 31.12.2016 subject to all the partners of the petitioner filing an undertaking in this regard within two weeks and continuing to pay user charges @ 25,000/- per month besides statutory charges to the respondent.

Thereafter, the petitioner instead of vacating the property by 31.12.2016 moved an application being CM No.47704/2016 which came up for hearing on 23.12.2016 seeking extension of time to vacate the tenanted property stating that on account of demonetization, the petitioner has suffered huge loss and hence six months additional time for vacation of the tenanted premises is required and that the petitioner is willing to pay user charges @ Rs.35,000/- per month.

Not satisfied with having moved the said application for extension of time, the petitioner has now moved two applications. First application being CM No.2182/2017, under Section 340 read with Section 195 (1)(B) Cr.P.C. to take action against respondent Nos.1 and 2 per law. This application was dismissed on 18.01.2017. Second application moved is CM No.2171/2017 for recalling of the order dated 06.04.2015 passed by this court.

I have heard the learned counsel for the parties.

The learned counsel for the petitioner made two submissions on the basis of which he seeks recalling of the order dated 06.04.2015 passed by this court. He submits that as per the petitioner, there were two other premises available to the respondents as alternative suitable accommodation. However, as per the respondents, these are the tenanted premises. He submits that in the suit filed by respondent No.2 against respondent No.1

and other family members, it is admitted by respondent No.2 that the said two properties were sold out during the pendency of the eviction petition, namely on 23.04.2014. He submits that this factor was never brought to the notice of the ARC. He secondly submits that in the said suit filed by respondent No.2 this court had directed to maintain *status quo* in respect of the title and possession of the suit property. Hence, it is submitted that even if the petitioner is to vacate the tenanted premises, the concerned respondent would not be able to occupy the tenanted premises.

In my opinion, these submissions are entirely misplaced. So far as the two tenanted premises are concerned, these are the two shops which have already been sold. It is admitted fact that these shops were occupied by two other tenants. The said shops have been sold to the said two tenants. As to how the said fact in any manner effect the merits of the case of the petitioner is not known. This is not a material fact that ought to have been noticed by the learned Additional Rent Controller for adjudication of the present case.

As far as the *status quo* order is concerned, that is for the respondents to sort out the issue after the petitioner vacates the premises. The petitioner/tenant cannot take advantage of any dispute between co-owners.

I may also note that an undertaking has been given by the petitioner to vacate the tenanted premises by 31.12.2016. The present application is entirely misplaced and the same is dismissed.

CM No. 47704/2016

This is an application filed by the petitioner under Section 151 CPC seeking extension of one year time to vacate the tenanted premises.

The learned counsel appearing for respondent No.1 pointed out that the case of the petitioner is that he has entered into an agreement to sell and

has not yet get possession of the new shops which he bought. Hence, he seeks extension of time to vacate the tenanted property. He also points out that in the agreement to sell dated 26.09.2016 the shop is supposed to be delivered on 26.12.2016. He also points out that out total sale consideration of Rs.68,00,000/- the only Rs.2,00,000/- has been paid. He submits that the said agreement does not inspire confidence and also the time to take delivery of the shop has expired.

A perusal of the agreement shows that out of total sale consideration of Rs.68,00,000/- only Rs.2,00,000/- has been paid in advance as cash as bayana amount and no other payments have been made including any amount by cheque/banker cheque. The agreement to sell does not inspire confidence. Even otherwise the petitioner is bound by the undertaking given in court and cannot wriggle out.

The petitioner has given undertaking by way of affidavit to vacate the tenanted premises by 31.12.2016. There are no merits in the present application and there are no reasons to extend the time to vacate the tenanted premises. The application is accordingly dismissed.

JAYANT NATH, J.

FEBRUARY 07, 2017/v