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

+ RFA No.235/2015

B K BHAGAT

..... Appellant

Through: Mr. Rajat Wadhwa, Adv.

versus

NEW DELHI MUNICIPAL COUNCIL (NDMC) Respondent

Through: Mr. Vipul Ganda, Mr. Mohit
Oommen, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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30.05.2016

CM No.14855/2016 (of the appellant for restoration of the appeal dismissed in default on 28th March, 2016).

1. The counsel for the appellant states that he is ready to argue the appeal also for admission.
2. In this view of the matter the application is allowed and disposed of and the appeal is restored to its original position.

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3. The appeal impugns a judgment and decree of dismissal as not maintainable of a suit for specific performance of an Agreement of Renewal of Licence.
4. Agreement of which renewal is sought provides as under:-

“9. The Tourist Lodge Building will be licensed for 30 years from the date of commencement of licence fee and will be renewable for a period of another 30 days on mutually agreed terms.”

5. Upon it being asked from the counsel for the appellant as to how the Agreement aforesaid can be treated as a specifically enforceable Agreement when the terms were to be mutually agreed between the parties and the parties were not *ad-idem*, the counsel for the appellant states that the appellant is willing to withdraw this appeal with liberty to pursue the appeal preferred under Section 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (PP Act) against the order of the Estate Officer of eviction of the appellant from the said premises but with the clarification that nothing contained in the impugned order will come in the way of the learned District Judge considering the appeal on its own merits. It is argued that the appellant in the said appeal desires to rely upon the admission of the respondent/defendant in the written statement in the suit.

6. The counsel for the respondent/defendant opposes.

7. It has been suggested to the counsel for the appellant/plaintiff to withdraw the suit but he states that that option is not available to him since that would deprive him of relying upon the admissions in the written statement also.

8. Order reserved.

9. At this stage, the counsel for the appellant again states that he be allowed to withdraw the appeal as aforesaid.

10. The appeal is dismissed as withdrawn with liberty to the appellant to pursue the appeal aforesaid under Section 9 of the PP Act and with the clarifications aforesaid but with the further clarification that since the

respondent/defendant has not had the opportunity to appeal against the observations if any in the impugned order and since the appellant/plaintiff has not answered the query aforesaid, the same will not constitute *res judicata* and/or bind the respondent.

No costs.

RAJIV SAHAI ENDLAW, J

MAY 30, 2016

‘pp’..