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

+ C.R.P. 114/2016

JAGMOHAN KHERA Petitioner
Through Ms.Surabhi Sanchita and Mr.Mohit
Kumar Gupta, Advocates.

versus

GOPAL KRISHAN KHERA Respondent
Through None.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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05.08.2016

CM No. 28037/2016 & 28039/2016 (exemption)

Exemption is allowed subject to all just exceptions.

C.R.P. 114/2016 and CM Nos. 28036/2016 (stay) & 28038/2016 (delay)

1. By the present petition, the petitioner seeks to impugn the summoning order dated 29.04.2016 and other consequential proceedings. The grievance of the petitioner is that the petitioner and respondent are real brothers residing in E-207-221, Lajpat Nagar-I, New Delhi- in separate portions. The respondent filed a suit for possession against the petitioner claiming exclusive ownership on the basis of a sale executed by the father of the parties. The suit was decreed in favour of the respondent by order dated 02.02.2013. First appeal filed by the petitioner before the ADJ was dismissed on 15.12.2014. RSA that was filed before this court was also

dismissed vide order dated 29.06.2015. Subsequently, a Review Petition was also filed which was also dismissed on 22.09.2015. Against the dated order dated 29.06.2015 passed in the RSA and the order dated 22.09.2015 passed in the Review Petition, the petitioner has filed a special leave petition before the Supreme Court which is pending adjudication. The Supreme Court on 28.01.2016 issued notice and has directed that the parties shall maintain status quo with regard to the possession as on that date.

2. It is now the grievance of the petitioner that the respondent has again filed another suit claiming relief of permanent injunction in his favour to restrain the petitioner from making any additions/alterations/structural changes in the portion under his possession.

3. Learned counsel appearing for the petitioner also points out that in view of the earlier case history between the parties, present suit would not be maintainable. She also points out that an application under Order VII Rule 11 CPC has been filed to that effect but no judgment has been passed by the trial court to the said effect and instead, the trial court has passed an order of injunction in favour of the respondent on 10.06.2016 directing the petitioner to file a written statement.

4. It was pointed out to the learned counsel for the petitioner that the present petition seeks only to impugn the order dated 29.04.2016 by which only the summons have been issued to the petitioner.

5. At this stage, learned counsel for the petitioner submits that she would like to withdraw the present petition with liberty to agitate all the issues before the trial court regarding the maintainability of the suit.

6. The petition is accordingly dismissed as withdrawn granting the liberty as sought for. The trial court is requested to expeditiously first

dispose of the application under Order VII Rule 11 CPC filed by the petitioner.

All pending applications also stands dismissed.

Copy of the order be given dasti under the signatures of the Court Master.

JAYANT NATH, J

AUGUST 05, 2016
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