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

+ C.R.P. 131/2016

ANIL KUMAR JAIN Petitioner
Through Mr. Sudeep Dey, Advocate.

versus

ARUN JAIN Respondent
Through None.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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23.08.2016

CM No. 30628/2016(exemption)

Exemption is allowed subject to all just exceptions.

C.R.P. 131/2016 and CM No. 30627/2016 (stay)

1. By the present petition, the petitioner seeks to impugn the order dated 30.05.2016 by which the application of the petitioner under Order 12 Rule 6 CPC was dismissed.
2. The petitioner has filed the present suit seeking a decree of possession in respect of the suit property, namely, front side portion of the ground floor of property No. C-1/119, Sajay Enclave, Uttam Nagar, New Delhi. The defendant/respondent is the brother of the petitioner. The respondent in his written statement has urged that at the time of the purchase of the property, the respondent and the father of the parties had advanced money to the

petitioner on the condition that the property would be purchased in the name of the petitioner but the consideration of the said property would be given by the defendant and the father.

3. The petitioner has thereafter filed the present application under Order 12 Rule 6 CPC after completing his evidence for a decree of possession.

4. The trial court has dismissed the application noting that the respondent has denied having been inducted as a licensee in the suit property and that he is residing along with his mentally retarded brother and mother as co-owners thereof. The trial court concluded that in the absence of any admission, no order under Order 12 Rule 6 CPC could be passed. The trial court also noted that the evidence of the petitioner is already complete. Defendant has already filed his evidence by way of affidavit and the matter is fixed for cross-examination.

5. Learned counsel appearing for the petitioner stated that though the present application was filed in 2014, the trial court has chosen, now at this belated stage, to dispose of the application stating that the matter is at an advanced stage of the evidence. He further relies upon the judgment of this court in the case of *Promila Gulati vs. Anil Gulati, 2015 (141) DRL 195* to contend that a similar plea was held to be barred by this court under the Benami Transactions (Prohibition) Act. He submits that in view of the said clear law laid down by this court and the provision of Benami Transactions (Prohibition) Act, the defence of the respondent to the application under Order 12 Rule 6 CPC nothing but moonshine.

6. Without going into the contention of the petitioner raised in the judgment of this court, I may note that even in the application filed by the petitioner, he has not raised the plea that the defence of the respondent is

barred by the Benami Transactions (Prohibition) Act. In fact issues have been framed on 07.12.2011. Here also, there is no issue framed regarding the Benami Transactions (Prohibition) Act. A perusal of the impugned order also shows that no such plea that the defence of the respondent is barred on this ground has been raised before the trial court. Having not argued the matter, the trial court obviously could not deal with the same.

7. However, in the facts of this case, it would be appropriate that the parties complete their evidence and the matter is finally adjudicated upon. No doubt, the plea of the petitioner being an issue of law, could be raised at any point of time.

8. The present petition is disposed off with a direction that the respondent would complete evidence within three months from the first date fixed before the trial court hereinafter. The trial court is also requested to dispose of the suit within a period of six months.

9. The petition stands disposed off.

JAYANT NATH, J

AUGUST 23, 2016

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