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

+ CM(M) 1037/2016

SH KANWARJEET SINGH Petitioner
Through Mr. Gurinder Pal Singh, Mr. Sidharth
Bora and Mr.Nitin Mangla, Advocates.

versus

SH TRIPAT SINGH Respondent
Through None.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **17.10.2016**

CM No.38061/2016 (*exemption*)

Allowed subject to all just exceptions.

CM(M) No.1037/2016 & CM No.38060/2016 (stay)

1. By the present petition, the petitioner seeks to impugn the order dated 31.08.2016 by which the right of the petitioner/defendant to lead evidence was closed.
2. Learned counsel appearing for the petitioner submits that the plaintiff's evidence was closed on 08.06.2016 when the matter was adjourned to 31.08.2016 for defendant's evidence. On that date, the petitioner had pointed out that the defendant would not examine himself as DW and only official witness is to be summoned being the Sub-Registrar from the concerned office and he also wanted to file a list of witnesses

which had name of only one witness, namely, the concerned Sub-Registrar. He submits that on first opportunity itself, the evidence of the petitioner has been erroneously closed by the trial court.

3. The plaintiff has filed the present suit for possession, recovery of damages and permanent injunction. On 26.11.2014, the trial court recorded that the petitioner/defendant has already given possession of the suit property to the respondent. The trial court framed the following issues:-

“1) Whether any valid agreement to sell was entered into between the parties with respect to subject portion of the subject property bearing no. 52/37, Ramjas Road, Karol Bagh, New Delhi? OPD

2) Whether the plaintiff is entitled for a decree of Rs.One Lakh for damages/unauthorised use and occupation in respect of the subject portion of the subject property i.e. @ Rs.50,000/- per month in his favour and against the defendant and further Rs.50,000/- per month pendente lite interest till its realization? OPP

3) Relief, if any.”

4. In view of the statement made by the petitioner on 31.08.2016 that he does not wish to examine himself as defendant's witness or any other witness other than the Sub-Registrar, it is implicit that issue no. 1 is not being pressed by the petitioner. This is confirmed by the learned counsel appearing for the petitioner. Hence, what really survives is the issue of payment of damages/compensation for unauthorised use which as per the respondent the petitioner is liable to pay. What is relevant in this limited issue is the market rate of rent for which the concerned Sub-Registrar would be a material witness.

5. An advance copy of the petition has been sent to the respondent but

none is present.

6. It is also noteworthy that the petitioner has only taken one adjournment i.e. 31.08.2016 for leading evidence and on that date evidence of the defendant/petitioner was closed.

7. In view of the above, the impugned order dated 31.08.2016 is quashed as the same causes grave prejudice to the petitioner and suffers from material irregularity. The petitioner is granted only one opportunity to summon the concerned witness i.e. Sub-Registrar III, Padam Singh Road, Karol Bagh, New Delhi for the date to be fixed by the Trial Court.

8. With the above observation, the present petition stands disposed of.

9. Copy of the order be given Dasti under signatures of the Court Master.

JAYANT NATH, J

OCTOBER 17, 2016
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