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

+ CM(M) 1114/2016 and CM No. 41158/2016

KRISHAN KUMAR Petitioner
Through Mr. Sahil Pahuja and Ms.Sharda,
Advocates.

versus

RAJEEV KUMAR & ANR Respondents
Through

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **08.12.2016**

1. By the present petition filed under Article 227 of the Constitution of India, the petitioner seeks to impugn the order dated 14.09.2016 by which order the application filed by the petitioner/defendant No.1 for summoning of witnesses was dismissed by the trial court on the ground that the witnesses mentioned in the application are not required to be summoned as the record proposed to be summoned is not relevant to decide the present controversy.
2. The respondents/plaintiffs have filed the suit for rendition of accounts, permanent and mandatory injunction. It is the stand in the plaint that the parties are real brothers and have purchased the property in Okhla Industrial Area, Phase II, New Delhi and after that the property had been let out to various tenants and the rent of the property was being distributed amongst

the parties in equal shares. The plaintiffs and defendants No. 2 to 4 are said to be residing in Punjab and the petitioner/defendant No. 1 was collecting the rent from the tenants to distribute the same. Hence, the suit was filed.

3. In the written statement, the petitioner/defendant No.1 has taken the plea that the property belongs to the company M/s. Kiran Valves Pvt. Ltd. and that the plaintiffs have nothing to do with the Company. The property was bought by the Company by way of a Conveyance Deed dated 25.06.1987 and a request in this regard was made to DDA which acceded to the request on 13.05.1998. It is further stated that no tenants ever since been inducted in the property.

4. The petitioner moved an application for summoning of witnesses containing a list of 14 witnesses. All and sundry are proposed to be summoned. In view the above, the trial court has rejected the said application.

5. After some arguments, learned counsel for the petitioner submits that he would confine his request to summon only the concerned clerk from Municipal Corporation, the Registrar of Companies, PNB and DDA.

6. It was put to the learned counsel for the petitioner as to the purpose of summoning the clerk from PNB. He submitted that the property had been mortgaged to PNB and hence, the said witness has to be summoned.

7. A perusal of the written statement shows that no such averment has been made in the written statement by the petitioner. Hence, the said witness is obviously not relevant at all.

8. An advance copy of the petition has been sent to the respondents by speed post but none is present on their behalf.

9. Keeping in view the defence of the petitioner, namely, the property

belongs to the Company- M/s. Kiran Valves Pvt. Ltd., he would have to prove documents regarding the title of the Company. Accordingly, the petitioner is permitted to move an application for review/recall of the impugned order for seeking permission to summon one record clerk from the Municipal Corporation, from the Registrar of Companies and from DDA. In case any such application is filed within 15 days from today, the trial court may deal with the same in accordance with law keeping in view the above observations

10. The present petition stands disposed of. All pending applications also stand disposed of.

11. Dasti.

JAYANT NATH, J

DECEMBER 08, 2016

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