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

+ CM(M) 1163/2016 & CM Nos.42447-42448/2016

ASHOK KUMAR MANCHANDA Petitioner

Through Mr.Anuj Jain, Advocate

versus

SONIA MANCHANDA Respondent

Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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02.12.2016

1. By the present petition under Article 227 of the Constitution of India the petitioner seeks to challenge the order dated 19.9.2016 by which an application under section 151 CPC filed by the petitioner/plaintiff seeking restoration of the possession of the petitioner of property No.D-17, Pushpanjali Enclave, Pitam Pura, Delhi was dismissed.

2. The petitioner has filed the suit for declaration, possession, mesne profit, permanent injunction and mandatory injunction regarding various properties including the property which is subject matter of the present application against the respondent. It may be mentioned that essentially the dispute is a matrimonial dispute as the respondent is the wife of the petitioner.

3. In the present proceedings the petitioner filed an application under section 151 CPC seeking restoration of possession of the property D-17, Pushpanjali Enclave, Pitam Pura, Delhi. An injunction was also sought to restrain the respondent from using the ground floor, basement and second floor of the said property and to permit the respondent to use the first floor

only for residential purpose.

4. The trial court by the impugned order noted that earlier the High Court had passed a status quo order in the present suit on 22.12.2014 in respect of title and possession of various properties including the property which is subject matter of the present application. It also noted that the petitioner has filed an application under Order 39 Rule 2 A CPC. The contents of the contempt application and the present application were found to be identical having almost similar averments. Based on the said conclusions the trial court held that there are no grounds in favour of the petitioner for the possession of the concerned property. The application was dismissed with costs of Rs.5,000/-.

5. I have heard learned counsel appearing for the petitioner. Essentially his contention is that the parties were jointly residing in the said property. He submits that in the written statement filed by the respondent she admits that the parties alongwith children have been residing in the said property. He also relies upon the order of the ADJ passed under the Protection of Woman from Domestic Violence Act where an order was passed restraining the petitioner from dispossessing the respondent from the first floor of the said property. Based on these averments he submits that in the meantime when the petitioner was wrongly sent to judicial custody in connection with a false case the respondent has illegally occupied the entire property. Hence he seeks restoration of possession. He submits that he is not relying on the status quo order but seeks restoration of possession as the respondent has illegally dispossessed the petitioner during pendency of the present suit.

6. In my opinion, it is not clear on what basis the petitioner seeks restoration of possession based merely on an interim application under

section 151 CPC. There is no admission on the part of the respondent that she has illegally occupied the entire property other than the first floor as is sought to be claimed. In fact in the reply to the present application filed by the petitioner the respondent has categorically denied that the petitioner had possession of all the four floors of the said property.

7. Clearly the issue which has arisen in the present application are serious disputed questions of fact. By merely moving an application under section 151 CPC, the petitioner cannot have the respondent dispossessed in this manner as is being sought. These are issues which can be adjudicated upon only at the conclusion of the trial.

8. There is no merit in the present petition. Same is dismissed. Any observations made herein would not prejudice the contentions of the petitioner in the pending matters including the contempt application.

JAYANT NATH, J

DECEMBER 02, 2016

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