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

+ CM(M) 157/2017 & CMs No.5288/2017 & 11245/2017 (both for stay), 11246/2107 (for early hearing), 31029/2017 (for stay) & 31030/2017 (for early hearing)

I.C. SHARMA

..... Petitioner

Through: Petitioner-in-person.

Versus

MANOHAR SINGH

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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28.08.2017

1. This petition under Article 227 of the Constitution of India impugns the order [dated 10th November, 2016 in Suit No.7345/2016 (CNR No.DLST01-000160-2009) of the Court of Additional District Judge (ADJ), South District, Saket Courts, New Delhi] of dismissal of the application filed by the petitioner under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC).

2. The petition was entertained and notice thereof ordered to be issued, though no interim order of stay of proceedings in the suit from which this petition arises granted. However, the Trial Court record was requisitioned.

3. Though on 29th May, 2017, the prayer for stay of proceedings in the Trial Court was expressly declined but now CMs No.31030/2017 & 31029/2017 for early hearing of this petition and again for stay of proceedings before the Trial Court respectively have been filed and which have come up today for the first time.

4. The petitioner, after the stay had been declined, cannot merely because of change of roster, again seek stay.

5. In the circumstances, the petitioner, who has throughout been appearing in person has been heard on the merits of the CM (M) No.157/2017.

6. The suit, from which this petition arises, originally filed in this Court, had come up before the undersigned on 29th May, 2009 when it was enquired from the counsel for the respondent/plaintiff, whether not the suit land was governed by the provisions of the Delhi Land Reforms Act, 1954, the jurisdiction of the Civil Court, for the relief of claiming possession thereof, would be barred by Section 185 of the said Act. However, on the statement of the counsel for the respondent/plaintiff that the subject land had been exempted from the provisions of the Act vide Notification dated 6th December, 2007, the suit was registered and summons thereof issued.

7. On enhancement of the minimum pecuniary jurisdiction of this Court, the suit was transferred to the District Court and which has dismissed the application of the petitioner/defendant for rejection of the plaint on the same ground.

8. The petitioner appearing in person has cited my order aforesaid at the time of admission of the suit and has contended that no copy of the Notification dated 6th December, 2007 has been produced till now and that he has checked up the said Notification and the same is not what it was on 29th May, 2009 stated to be.

9. The learned ADJ has dismissed the application relying on ***Nilima Gupta Vs. Yogesh Saroha*** 156 (2009) DLT 129 holding that the said CM(M)

judgment dealt with the same colony of Freedom Fighters Enclave where the subject property is located and that it is the case of the petitioner himself that he had purchased a constructed house and that this Court in ***Nilima Gupta*** supra has held that the Delhi Land Reforms Act deals with land occupied for the purpose of agriculture, horticulture, animal husbandry etc. or a building thereon incidental to such use; however once the land has been colonised and has been constructed upon, the same cannot continue to be governed by the Delhi Land Reforms Act.

10. In the light of the aforesaid judgment of this Court which adjudicates the issue on merits, the reference to my order dated 29th May, 2009 which does not determine any issue, is of no avail.

11. The petitioner has then contended that he had got a plot of land and had constructed thereon himself. Attention is also drawn to page 139 being a copy of a judgment dated 23rd March, 2004 of the Supreme Court in Appeal (Civil) No.3105/1997 titled ***Gaon Sabha Vs. Nathi*** (2004) 12 SCC 555 but which is not found to be laying down any proposition to the contrary.

12. No error can thus be found with the order impugned.

13. Dismissed.

14. The petitioner has at this stage stated that the respondent was not the owner at the time of institution of the suit.

15. The said question cannot form the basis of an application under Order VII Rule 11 of CPC and the question of ownership has to be decided after trial.

16. The date of 24th November, 2017 is cancelled.

RAJIV SAHAI ENDLAW, J.

AUGUST 28, 2017/bs..
CM(M) 157/2017

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