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

+ CM(M) 228/2017 and CM No. 7535-36/2017

PREETI GOYAL ..... Petitioner  
Through Mr.Balaji Subramanian, Advocate.

versus

KAUSHIK RAI VYAS & ORS ..... Respondents  
Through

**CORAM:**  
**HON'BLE MR. JUSTICE JAYANT NATH**

**ORDER**  
**27.02.2017**

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1. By the present petition filed under Article 227 of the Constitution of India, the petitioner seeks to challenge the order dated 23.12.2016 by which an application under Order 18 Rule 17 CPC filed by the petitioner was dismissed.
2. The petitioner/plaintiff has filed the present suit for possession of third floor of premises bearing municipal No. 2956 to 2969, Ward No. IV situated at Katra Khushal Rai, Kinari Bazar, Delhi-10006
3. Issues were framed on 03.10.2012 as follows:-
  - “1. Whether the plaintiff is entitled to the possession of the suit property? OPP
  2. Whether the defendant has become the owner by way of adverse possession? OPD
  3. Whether the suit is not within limitation? OPD
  4. Whether plaintiff has no locus standi to file the instant suit? OPD

5. Relief.”

4. The petitioner moved the present application under Order 18 Rule 17 CPC to recall PW-1 to prove mutation letter dated 26.07.2012, photocopy of the receipt of the property tax and electricity bill which, it is stated, the petitioner could not get exhibited during the course of deposition of the other witness PW-2.

5. The trial court by the impugned order concluded that the testimony of PW-1 was completed on 03.04.2014. It also noted that the defendants/respondents and six witnesses have been examined in defendants’ evidence. Now at the fag end the petitioner has moved the present application and dismissed the same.

6. An advance copy of the petition has been duly received by the learned counsel for the respondents who have chosen on their own not to appear despite receipt of the advance copy today.

7. Learned counsel for the petitioner has submitted that these documents which are sought to be exhibited today through PW-1 have already been on record much earlier. He relies upon the evidence of PW-2 where he submits that when these documents were sought to be exhibited through PW-2, Sh. Hari Om Goyal, the trial court declined to permit exhibition of the same on the ground that these documents have neither been issued in the name of the witness nor the witness was scribe of the documents. He admits that though there is a delay but, he submits, the documents are crucial to the case of the petitioner as one of the defence taken by the respondents is that they have got the title to the property by adverse possession.

8. A perusal of the issues framed would show that the issue of adverse

possession has been framed by the court and onus of the same is on the respondents. As the documents are sought to be exhibited are a response to the said claim of the respondents of adverse possession, the petitioner would well be within his rights to lead rebuttal evidence. On the date when the impugned order was passed, the evidence of the respondents was not complete and the trial court could have permitted the petitioner to prove these documents through rebuttal evidence.

9. It is also a matter of fact that these documents are already on record since the petitioner's evidence was going on. At best, it is a case of inadvertence.

10. Keeping in view the above facts and also the fact that despite service the respondents have chosen not to appear, liberty is granted to the petitioner to move an appropriate application for review/recall of the impugned order. In case such an application is filed before the trial court, the trial court may deal with the same as per law. In case of any objection regarding the limitation is raised, the period spent in prosecuting the present petition would be a factor to be taken into account to condone the delay in filing of the application by the petitioner.

11. With the above observations, the present petitions stand disposed of. All pending applications also stand disposed of.

**JAYANT NATH, J**

**FEBRUARY 27, 2017**  
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