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

+ **CM(M) 240/2017, CAV.191/2017 & CM No.7898/2017**

MAHESH KUMAR AND ORS. Petitioners

Through Mr.R.L.Kohli, Advocate

versus

SMT.MANORAMA DEVI AND ORS. Respondents

Through Mr.Lalit Gupta & Mr.Sddharth Arora,
Advocates

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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27.02.2017

CAV. No.191/2017

Since the learned counsel for the respondents has entered appearance, the caveat stands discharged.

CM No. 7898/2017 (exemption)

Allowed subject to all just exceptions.

CM(M) 240/2017

1. By the present petition filed under Article 227 of the Constitution of India, the petitioners seek to impugn the order dated 28.01.2017 by which an application filed under Order 41 Rule 27 read with Order 26 Rule 9 CPC seeking appointment of a local commissioner was dismissed.
2. The plaintiff/petitioner has filed a suit in respect of the property being No.348, Ward No.8, Main Bazar, Mehrauli, New Delhi. The suit is filed for possession and permanent injunction.
3. The case of the petitioners is that they are occupying the premises

being No.247 and not 348 as claimed by the respondents. They seek appointment of a local commissioner to determine the municipal number of the area, which they are occupying.

4. The appellate court noted that the issues have been framed and the petitioners were given opportunity to prove that the shop in question, which they are occupying is forming part of premises being No.253. It also noted that in the application filed by the petitioners there is nothing to suggest why the evidence could not be produced before the trial court. It also noted that the stand of the petitioners that the property number in their possession is 247 is contrary to the written statement where they had taken a plea that the disputed shop was assigned Municipal No.253. It has dismissed application.

5. In the present petition no reasons have been assigned as to why the application has been filed. In fact, copy of the application or plaint or the decree of the appellate court has not been placed on record.

6. The learned counsel for the caveators who enters appearance, however points out that the suit has been filed in the year 1979. He also submits that the suit was initially decreed on 22.07.2005. Against that decree, an appeal was filed where the matter was remanded back to the trial court. Thereafter, now the fresh decree has been passed on 11.02.2016. He submits that ample opportunities were available with the petitioners to lead their evidence. He states that the present case is only a case of dilatory tactics.

7. In my opinion, the petitioners have failed to make out a case as to why a local commissioner should be appointed to determine the Municipal number of the area. They should have led their evidence time when the matter was pending in the trial court. Enough opportunities have been given

to them.

8. There is no merit in the present and the same is dismissed.

FEBRUARY 27, 2017/v

JAYANT NATH, J.