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

+ C.R.P. 75/2017 & CM No.11681/2017 (for stay)

VIRENDER KUMAR

..... Petitioner

Through: Mr. Rajesh Yadav and Ms. Chandrani
Prasad, Advs.

Versus

CHANDER MOHAN DHINGRA

..... Respondent

Through: Mr. Ashish Kumar and Mr. Sandeep
Puri, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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21.07.2017

1. This Revision Petition under Section 115 of the Code of Civil Procedure, 1908 (CPC) impugns the order (dated 21st February, 2017 in CS No.45/2016 of the Court of Additional Civil Judge (ACJ) (South-West), Dwarka Courts, New Delhi) of dismissal of the application filed by the petitioner/plaintiff under Order XII Rule 6 of CPC.
2. Notice of the petition was issued and the counsel for the respondent appears.
3. The counsel for the respondent seeks time to file reply.
4. There is no need for a reply in a Revision Petition.
5. The counsel for the respondent then seeks adjournment stating that he is not ready since he is not the counsel for the respondent before the Trial Court.

6. This also is no ground. Once the counsel has appeared, he should have been ready.
7. The petitioner has instituted the suit from which this petition arises averring (i) that the respondent is a tenant in an immovable property under the petitioner on a rent of Rs.3,000/- per month; (ii) that the petitioner had earlier filed a petition for eviction of the respondent under the Delhi Rent Control Act, 1958 in which it was held that the said Act is not applicable to the said immovable property; (iii) that the petitioner thereafter determined the tenancy of the respondent and has instituted the suit from which this petition arises for ejectment of the respondent from the said immovable property and for recovery of arrears of rent/*mesne* profits.
8. The counsel for the petitioner has further contended that the respondent in his written statement to the suit took a stand of being in possession of the immovable property by virtue of an oral sale by the plaintiff.
9. The application under Order XII Rule 6 of CPC, against dismissal whereof this petition has been preferred, was filed averring that the defence of the respondent is no defence in law and rather amounts to admission by the respondent/defendant of the title of the petitioner/plaintiff.
10. It was thus contended that the petitioner/plaintiff is entitled to the decree for ejectment forthwith.
11. The learned ACJ in the impugned order has observed that the suit was on the basis of landlord tenant relationship and there was no admission by the respondent/defendant of such relationship and the petitioner/plaintiff was thus not entitled to a decree for ejectment.

12. The reasoning given by the ACJ is sound in law. A distinction is to be carved out between, i) a suit for recovery of possession of an immovable property on the basis of title; ii) a suit for recovery of possession of immovable property on the basis of prior possession; and, iii) a suit for recovery of possession of immovable property on the basis of landlord tenant relationship. Only if the petitioner/plaintiff had instituted the suit on the basis of title to the property, would the petitioner/plaintiff have been correct in contending that the defence of the respondent/defendant is no defence in law and the petitioner/plaintiff is entitled to decree forthwith. However the petitioner/plaintiff has not instituted the suit on the basis of title but has instituted the same based on the relationship of landlord and tenant. The petitioner/plaintiff, if fails to establish the said relationship, would not be entitled to a decree for possession/ejectment even if the defence of the respondent/defendant does not constitute a defence in law to a suit for possession on the basis of title.

13. There is no merit in the petition.

14. Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

JULY 21, 2017

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