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

+ CM(M) 576/2016 and CM No. 22077/2016

MOHD SAYEED @ MOHD SALEEM Petitioner
Through Mr. Raj Kumar Chandiwal and
Ms.Natasha Rani, Advocates.

versus

HASSINA BEGUM Respondent
Through

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER
15.02.2017

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1. By the present petition filed under Article 227 of the Constitution of India, the petitioner seeks to impugn the order dated 15.02.2016 by which order the application filed by the petitioner/plaintiff under Order 1 Rule 10 CPC was dismissed.
2. The petitioner has filed the suit for possession and mesne profits for property No .O-208, Mangol Puri, New Delhi. It is stated in the plaint that the respondent is a trespasser and an unauthorised occupant of the said property.
3. By the impugned order, the trial court noted that there is a difference between a necessary party and a necessary witness. It is also noted that at the time of his evidence, the petitioner had sought to examine one witness from DUSIB. He was summoned but no steps were taken by the petitioner for

examining the said witness and hence, the right to examine the said witness was closed. It also noted that the suit filed by the petitioner is on the basis that the petitioner is claiming himself as the owner of the suit premises whereas the respondent disputes the identity of the petitioner. Hence, the trial court concluded that DUSIB may be relevant for the purpose of evidence for which an opportunity was given to the petitioner but the petitioner has not availed. It held that DUSIB is neither a necessary nor a proper party and dismissed the application.

4. In my opinion, there are no reasons to differ with the view expressed by the trial court. The dispute purportedly appears to be a title dispute between the parties. DUSIB would only be an important witness to the proceedings but would not be a necessary or a proper party. Hence, there are no reasons to interfere with the impugned order. It is for the petitioner to take steps to lead appropriate evidence.

5. In view of the above, the present petition and the pending applications stand dismissed.

JAYANT NATH, J

FEBRUARY 15, 2017

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