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

+ **W.P.(C) 5172/2016**

ANIL MITTAL

..... Petitioner

Through Mr AnilK. Aggarwal, Advocate

versus

SUB-DIVISIONAL MAGISTRATE & ORS Respondents

Through Mr Rishi Kumar, Advocate with

Mr Animesh Rastogi, Advocate for R1 and R3.

Mr Aman Mehta, Advocate for R2.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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10.07.2017

CM No. 48169/2016 (delay)

1. For the reasons stated in the application, the delay is condoned.
2. The application is disposed of.

W.P.(C) 5172/2016 & CM 21539/2016 (stay), 45454/2016 (direction)

3. The petitioner has filed the present petition, *inter alia*, challenging the order dated 07.05.2016 (impugned order) passed by the Sub Divisional Magistrate (SDM) under Section 133 Cr.p.c.
4. The grievance of the petitioner is that the said order has been passed in regard to the private disputes which falls outside the purview of Section 133 Cr.p.c. By the impugned order, the petitioner has been directed to

remove the water tank along with steel stand placed at the rear side of the building in question. The petitioner states that he has a right to use the said area. He submits that his disputes with respondent no.2 essentially relate to the question as to whether the said area is common to the other residents of the building or not and, therefore, a private dispute. The learned counsel for the petitioner has also drawn the attention of this court to submissions filed on behalf of the petitioner before the SDM, *inter alia*, raising the issue regarding the jurisdiction of the SDM to proceed under Section 133 Cr.p.c.

5. The learned counsel for the respondent no.2 has drawn the attention of this court to the notices dated 31.12.2014 and 10.07.2015 whereby the hearings were scheduled to consider the representation filed by the petitioner including his challenge to the competency of the SDM to continue the proceedings under Section 133 Cr.p.c. Admittedly, the petitioner has not attended those hearings as it is stated that the said notice were issued to Mr. Aseem Gupta; Aseem Gupta is the owner of the property and the petitioner describes himself as the care taker of the property in question.

6. Be that as it may, the undisputed position is that the challenge with regard to the jurisdiction of the SDM to proceed further had been raised by the petitioner and the same has yet not been considered. In the aforesaid circumstances, this court considers it apposite to direct the SDM to consider the said challenge and dispose of the same by passing a speaking order within a period of two months from today. The parties are directed to appear on 20.07.2017 at 2.30 p.m.

7. It is clarified that in the event the petitioner does not appear on the

said date, the SDM shall consider the written submissions already made and pass an appropriate order.

8. The petition is disposed of with the aforesaid observations.
9. Order *dasti* to both the parties.

VIBHU BAKHRU, J

JULY 10, 2017
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