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

+ C.R.P. 84/2017 and CM No. 12836-39/2017

NEW DELHI MUNICIPAL COUNCIL Petitioner
Through Ms.Kanika Agnihotri and Mr. Rudesh
Jagdale, Adv.

versus

M/S PEAREY LAL AND SONS PVT LTD Respondent
Through

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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30.03.2017

1. The present petition is filed under Section 115 CPC seeking to impugn the order dated 21.05.2015 passed by the executing court.
2. The executing court was executing the decree of the trial court dated 23.09.2000 read with order dated 16.07.2001 whereby the trial court had held that if the respondent/plaintiff proves that the building is a multi-tenancy/multi-ownership and falls within the ambit of Building Bye-Laws L-3.31 (1) then the sub-station shall be shifted and 50% cost only shall be borne by the respondent and rest will be borne by the petitioner/defendant. It is stated that against the said decree, an appeal is pending before the Senior Civil Judge. In the meantime, the executing court by the impugned order dated 21.05.2015 after leading of evidence, has come to a conclusion that the building in question is a multi-occupancy/multi-tenancy/multi-ownership

and is not a single tenancy building. Accordingly, it held that the parties are liable to share the costs of the shifting of the sub-station in terms of the decree.

3. Learned counsel appearing for the petitioner submits that by the judgment which has been rendered by the executing court, the appeal of the petitioner may get infructuous. It was pointed out to the learned counsel for the petitioner that the remedy of the petitioner lies in approaching the appellate court for appropriate orders and reliefs as essentially the petitioner seeks stay of the original decree.

4. Learned counsel for the petitioner seeks to withdraw the present petition with liberty to file a fresh petition challenging the order dated 21.05.2015 in case such a necessity so arises.

5. Granting leave and liberty to the petitioner, the present petition is dismissed as withdrawn. However, the Executing court will not take further steps for two weeks from today to enable the petitioner to approach the appellate court.

6. In view of the above the petition stands disposed of.

7. All pending applications also stand disposed of.

8. A copy of this order be given dasti under signatures of the Court Master to learned counsel for the petitioner.

JAYANT NATH, J

MARCH 30, 2017
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