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

+ CM(M) 724/2016 & CM No. 27006/2016(stay) & CM No.
27007/2016

BHAVNA

..... Petitioner

Through: Mr. Ram Kumar, Adv.

versus

M/S AIR LIQUIDS MEDICALS SYSTEMS PVT LTD & ORS

..... Respondents

Through: Mr. S.D. Dixit, Adv. for R1 & R2.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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07.12.2017

The civil suit (CS no. 389/2016) on the file on which the impugned order dated 28.03.2016 was passed by the Additional District Judge was instituted by the petitioner initially against the first and second respondents, they being shown as first and second defendants in the suit and described as tenants in possession from the date the property was sold by the predecessor-in-title of the petitioner i.e. the third respondent who was impleaded later by order dated 08.12.2015 as the third defendant. The suit, as presented originally, prayed for decree of possession, mandatory injunction and mesne profits claimed against the first and second respondents. The said

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respondents, in their contest, took the plea that they were never the tenants in the subject property. But, the plaintiff claims to be in possession of certain documents, including e-mails exchanged, indicating some admission about they being in possession for certain period. It may be added here that the third respondent, upon being added to the fray also came up with a plea that the property had been let out and had been in possession of one Shiva Kumar who had vacated on 30.04.2015 handing over the possession to the said party i.e. the third respondent.

Against the above background, on the application under Order I Rule 10 of the Civil Procedure Code, 1908 (CPC) filed, the names of first and second respondents have been struck off from the array of the civil suit by the Additional District Judge observing that the possession is with the third respondent.

Aggrieved by the above mentioned order, the present petition was filed submitting that the case against the first and second respondents cannot be short-shrifted in the manner done.

Having heard the learned counsel on both sides, this court finds merit in the grievance raised. The possession may now be with the third respondent. But then, such possession is claimed only with effect from 30.04.2015 onwards. It is the petitioner's case in the suit that the property has been in occupation of the first and second respondents. It cannot be ignored that amongst the reliefs claimed in the suit, the petitioner also seeks grant of *mesne* profits. If the petitioner can show that the first and second respondent had user

or occupation of the subject premises for any part of the relevant period, she would be within her rights to legitimately claim mesne profits against the said parties. It may be, however, added that the onus to prove all the facts would undoubtedly have to be discharged by the petitioner before such a decree can be granted.

For the foregoing reasons, the petition is allowed. The impugned order striking off the names of the first and second respondents from the array is set aside. The application under Order 1 Rule 10 CPC is dismissed. The suit shall proceed further accordingly.

The petition and the applications filed therewith are disposed of in above terms.

R.K.GAUBA, J

DECEMBER 07, 2017/umang