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

+ CM(M) 499/2017

MOHD ASIF & ORS

..... Petitioners

Through: Mr. A.K. Tripathi, Adv.

Versus

MOHD ASLAM

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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14.07.2017

CM No.24425/2017 & CM No.16942/2017 (both for exemption)

1. Allowed, subject to just exceptions.
2. The applications are disposed of.

CM(M) 499/2017, CM No.24424/2017 & CM No.16941/2017 (both for stay)

3. This petition under Article 227 of the Constitution of India impugns the order (dated 19th April, 2017 of the Court of Additional Senior Civil Judge (ASCJ), Central District, Tis Hazari Courts, Delhi in MCA No.1335/2016) of dismissal of an appeal preferred by the petitioners / defendants against the order (dated 29th November, 2016 of the Court of Civil Judge, Central District, Tis Hazari Courts, Delhi in Suit No.2763/2016 filed by the respondent / plaintiff) on an application of the respondent / plaintiff under Order XXXIX Rules 1 and 2 of the CPC and restraining the petitioners / defendants from creating any hindrance in ingress and egress of the respondent / plaintiff and his family members in property No.T-240/4, 2nd Floor, Gali Haji Amir Baksh, Quresh Nagar, Sadar Bazar, Delhi-110006.

4. The petitioners / defendants opposed the application for interim injunction contending that the respondent / plaintiff was not in possession of the property. However the Courts, against whose orders this petition has been preferred, have *inter alia* referred to the admission of the petitioners / defendants in an earlier suit of the respondent / plaintiff being in possession.

5. I have thus enquired from the counsel for the petitioners / defendants as to what is wrong with the impugned orders in the face of the said admission of the petitioners / defendants in the earlier proceedings and as to how in the face of such admission the petitioners / defendants can now contend that the respondent / plaintiff was / is not in possession.

6. The counsel for the petitioners / defendants states that the respondent / plaintiff had after the admission made in the year 2016 ceased to be in possession.

7. I have asked the counsel for the petitioners / defendants to show a plea to the said effect in the written statement of the petitioners / defendants.

8. The counsel for the petitioners / defendants instead of showing the same draws attention to para no.5 of the order dated 29th November, 2016 where the plea of the respondent / plaintiff that the petitioners / defendants on 12th September, 2016 in his absence picked up a quarrel with the wife of the respondent / plaintiff leading to the police being called and *Kalandara* under Sections 107 and 151 of the Cr.P.C. having been prepared is discussed.

9. Though the counsel for the petitioners / defendants states that the respondent / plaintiff before the Sub-Divisional Magistrate (SDM) in the said proceedings stated that he will not enter into the property but is unable

to show the proceedings of the SDM to the said effect or the same having been discussed in either of the orders impugned in this petition.

10. The respondent / plaintiff cannot be deprived of use of his residence by the petitioners / defendants indulging in taking the law unto their own hands.

11. The petitioners / defendants cannot in the garb of a proceeding under Sections 107 and 151 of the Cr.P.C. oust the petitioner / plaintiff and his family members from his residence and thereafter oppose the application for interim relief in the civil suit.

12. The counsel for the petitioners / defendants then states that this is a family matter and the same be referred to mediation.

13. The said relief can be sought from the civil court.

14. There is no merit in the petition.

Dismissed

15. The petitioners / defendants shall however have liberty to approach the suit court for referring the parties to mediation.

16. The date earlier given of 18th August, 2017 is cancelled.

No costs.

RAJIV SAHAI ENDLAW, J

JULY 14, 2017

‘gsr’..