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

+ C.R.P. No.139/2017 & CM No.21976/2017 (for stay).

ANIL KUMAR & ANR

..... Petitioners

Through: Mr. Alok Dev and Ms. Richa Singh,
Advs.

versus

VIJAY KUMAR

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **21.08.2017**

CM No.21977/2017 (for exemption).

1. Allowed, subject to just exceptions.
2. The application stands disposed of.

C.R.P. No.139/2017 & CM No.21976/2017 (for stay).

3. This Revision Petition under Section 115 of the Code of Civil Procedure, 1908 (CPC) impugns the order (dated 15th March, 2017 in CS No.177/2017 of the Court of Additional Senior Civil Judge (North), Rohini Courts, Delhi) of dismissal of an application filed by the petitioners / defendants under Order VII Rule 11 of the CPC.
4. The petitioners / defendants are the son and daughter-in-law respectively of the respondent / plaintiff.
5. The respondent / plaintiff has instituted the suit, for rejection of the plaint wherein the application was filed, (i) for permanent injunction to restrain the petitioners / defendants from creating any third party interest in house no.A-245, Deep Vihar, Prahladpur, Bangar Village, Delhi – 110 041; (ii) for mandatory injunction directing the petitioners / defendants to

handover vacant and peaceful possession of the portion of the house in possession of the petitioners / defendants and to vacate the same; and, (iii) for recovery of *mesne* profits / damages for use and occupation.

6. The counsel for the petitioners / defendants has argued that though the respondent / plaintiff instituted the suit claiming to be the owner of the house aforesaid but did not file any document in proof of ownership and hence the plaint was liable to be rejected.

7. Though the aforesaid argument does not constitute a ground for rejection of the plaint but I have nevertheless enquired from the counsel for the petitioners / defendants that if the respondent / plaintiff, who is the father of the petitioner / defendant no.1 and the father-in-law of the petitioner / defendant no.2 is not the owner, then who else is the owner.

8. The counsel for the petitioners / defendants, after thinking for a few moments, states that it is for the respondent / plaintiff to prove the same.

9. It is the case of the respondent / plaintiff that the petitioners / defendants have been harassing the respondent / plaintiff in his old age and have been creating nuisance in the house.

10. The aforesaid conduct of the petitioners / defendants through counsel substantially proves the *mala fide* nature in which the suit is being defended also evidently to delay the disposal thereof.

11. On the counsel for the petitioners / defendants being asked, whether he has anything else to argue, he wants to, from his petition, rely upon a judgment, but without even having the copy of the judgment with him.

12. The counsel for the petitioners / defendants at this stage has argued that the respondent / plaintiff has in para (b) of the prayer paragraph in plaint

claimed Rs.6,000/- per month by calling the same as rent.

13. It is nowhere the case of the respondent / plaintiff in the plaint that the petitioners / defendants are tenants. The use of the word 'rent' by the counsel for the respondent / plaintiff is a case of mofussil pleadings as dealt in *Kedar Lall Seal Vs. Hari Lall Seal* AIR 1952 SC 4, *Narain Prasad Aggarwal Vs. State of MP* (2007) 11 SCC 736 and *Des Raj Vs. Bhagat Ram* (2008) 9 SCC 641.

14. I may in this regard also mention that whatever petitioners / defendants are arguing today is alien to the grounds on which rejection of the plaint was sought before the Trial Court, as borne out from the copy of the application filed with the paper book.

15. The petition is dismissed with costs of Rs.10,000/- payable by the petitioners / defendants to the respondent / plaintiff before the Trial Court on the next date of hearing as a condition for further defending the suit.

RAJIV SAHAI ENDLAW, J

AUGUST 21, 2017

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