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

+ **RFA 690/2017**

SUDARSHAN JOLLY

..... Appellant

Through: Mr. Parag Chawla and Mr. K.K.
Sharma, Advocates.

versus

M/S MODI LIGHTING LTD

..... Respondent

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

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04.08.2017

C.M. Appl. No. 27659/2017 (for exemption)

Exemption is allowed subject to all just exceptions.

C.M. stands disposed of.

RFA 690/2017 and C.M. Appl. No. 27660/2017

1. This Regular First Appeal impugns the order of the trial court dated 31.1.2017 by which the trial court after dismissing the application under Order 6 Rule 17 CPC filed by the appellant/plaintiff to amend the plaint to seek recovery of arrears of rent also dismissed the suit as the suit was only for possession and possession was already received by the appellant/plaintiff from the respondent/defendant/tenant on 25.2.2012.

2. I have gone through the application under Order 6 Rule 17 CPC which was filed by the appellant/plaintiff in September, 2014. Unfortunately, this application only talks of seeking arrears of rent and does not seek to add a prayer for payment of *pendente lite* rent from the date of filing of the suit till possession was received by the appellant/plaintiff on 25.2.2012 i.e. even if an application for amendment of the plaint to seek arrears of rent can be dismissed as claim of rent is time barred, however, *pendente lite* rent cannot be said to be time barred, more so, in the facts of the present case where learned counsel for the appellant/plaintiff states that an order was passed by the trial court under Order 15A CPC with respect to payment of *pendente lite* rent.

3. In the peculiar facts of this case while allowing the appellant/plaintiff to withdraw the appeal as prayed, appellant/plaintiff is allowed to file an application for recall and/or review along with a fresh application under Order 6 Rule 17 CPC for claiming the *pendente lite* rent and till 25.2.2012 when possession was received by the appellant/plaintiff. On such an application being

filed the trial court will hear and dispose of the review petition as also the application under Order 6 Rule 17 CPC in terms of the observations made in the present order and in accordance with law.

4. The appeal is disposed of accordingly.

5. Since the appeal is disposed of as not pressed and withdrawn, accordingly, as prayed appellant is held entitled to 50% refund of court fees and the Registry will issue the necessary certificate to the appellant.

VALMIKI J. MEHTA, J

AUGUST 04, 2017

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