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

+ **CM(M) 879/2017**

SANTOSH KUMAR SINGH

..... Petitioner

Through: Mr. Rao Ranjeet Singh & Mr. Manoj
Kumar, Advs.

Versus

DEEPAK GUPTA & ANR

..... Respondents

Through: Mr. Rakesh Kumar, Adv. for R-2 ASI.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **18.08.2017**

CM No.29367/2017 (for exemption)

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

CM(M) 879/2017 & CM No.29366/2017 (for stay)

3. This petition under Article 227 of the Constitution of India impugns the orders i) dated 29th August, 2016 of dismissal of the application of the petitioner / defendant under Order VII Rule 11 of the CPC; and, ii) the order dated 5th April, 2017 of dismissal of the application of the petitioner / defendant under Order I Rule 10 of the CPC for impleadment of respondent no.2 herein Archaeological Survey of India (ASI) as a party to the Civil Suit No.137/2015 of the Court of Civil Judge-03, Central District, Tis Hazari Courts, Delhi.
4. The counsel for the respondent no.2 ASI appears on advance notice.
5. The respondent no.1 has instituted the suit from which this petition arises, for recovery of arrears of rent from the petitioner, claiming the

petitioner to be a tenant under the respondent no.1 / plaintiff.

6. The applications aforesaid, against the dismissal whereof this petition has been preferred, were premised on respondent no.2 ASI being the owner of the property and the respondent no.1 / plaintiff having no right thereto.

7. Attention in this regard is invited to the status report dated 23rd July, 2013 of the respondent no.2 ASI to the effect that neither the petitioner / defendant nor the respondent no.1 / plaintiff have any right to the property of which the rent is claimed in the suit and that the respondent no.1 / plaintiff has encroached upon the property of respondent no.2 ASI and inducted tenants on monthly rent basis therein.

8. The action of the petitioner / defendant, of impleading of ASI as respondent no.2 to this petition when it is not a party to the suit, is misconceived.

9. Against an order of dismissal of an application under Order VII Rule 11 of the CPC, Revision Petition under Section 115 of the CPC lies and the petition under Article 227 would not be maintainable.

10. Be that as it may, I have enquired from the counsel for the petitioner, whether the petitioner / defendant is willing to surrender possession to the respondent/plaintiff, for it to be enquired from the respondent no.1 / plaintiff by issuance of notice of this petition as to whether he is disputing the claim of the respondent no.2 ASI.

11. Though the counsel for the petitioner / defendant earlier stated that the petitioner/defendant will so deliver possession, but subsequently changed his mind and states that the petitioner/defendant is not willing to deliver possession and petition for eviction filed by the respondent no.1 / plaintiff

against the petitioner / defendant is already pending consideration.

12. The petitioner / defendant cannot sail in two boats. If it is the case of the petitioner / defendant that the property is of respondent no.2 ASI and on this ground the claim of the respondent no.1 / plaintiff is sought to be defeated, the petitioner / defendant should be ready to deliver possession.

13. Else, the petitioner / defendant cannot, after coming into possession of the property through the respondent no.1 / plaintiff, deprive the respondent no.1/plaintiff of the rent which the petitioner/defendant had agreed to pay.

14. As far as the claim of respondent no.2 ASI is concerned, the respondent no.2 ASI is free to take action in accordance with law for recovery of its property if any and nothing contained herein would come in the way thereof.

15. The filing of applications aforesaid by the petitioner /defendant is found to be dilatory and in abuse of the process of the court.

16. There is no merit in the petition.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

AUGUST 18, 2017

‘gsr’..