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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ C.R.P. No.160/2017, CM No.25712/2017 (for stay) and CM
No.29250/2017 (of the petitioner under Section 151 CPC).
DR ROOPA VOHRA Petitioner

Through: Mr. Rajesh Manchanda and Mr. Rajat
Manchanda, Advs.

versus

MEENA JAIN & ANR Respondents
Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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17.08.2017

1. In pursuance to the earlier order dated 24th July, 2017, the counsel for the petitioner / plaintiff has filed CM No.29250/2017 under Section 151 of the Code of Civil Procedure, 1908 (CPC) stating that the petitioner / plaintiff withdraws from the suit all other reliefs except the relief under Section 6 of the Specific Relief Act, 1963.
2. The counsel for the petitioner / plaintiff has been heard further.
3. What emerges is (i) that the petitioner / plaintiff was dispossessed from the premises of which he claimed to have been in possession, on 2nd December, 2011, during the pendency of a suit filed by the petitioner / plaintiff for permanent injunction restraining his dispossession; (ii) that the petitioner on 3rd December, 2011 filed an application in that pending suit to bring on record the factum of his dispossession and seeking restoration of possession; the contention of the counsel for the petitioner/plaintiff is that without disposing of the said application, the suit itself was dismissed on 24th March, 2012; (iii) the petitioner/plaintiff claims to have filed an appeal in

April, 2012 against the decree of dismissal of suit and further claims to have on 1st June, 2012 filed an application in the said appeal under Order VI Rule 17 of the CPC for amendment of the plaint in the suit from which the appeal had arisen and which application was dismissed on 19th October, 2013; (iv) the petitioner / plaintiff then claims to have preferred CM(M) No.1382/2013 in this Court against the said order of dismissal of the application under Order VI Rule 17 of the CPC and which CM(M) was disposed of on 12th November, 2014 for the reason of the appeal, in which the application was filed, itself having been dismissed; (v) thereafter that a second appeal being RSA No.70/2015 is stated to have been filed and which was withdrawn on 24th March, 2015 to take recourse to other means; and, (vi) thereafter the suit from which this petition arises, along with an application under Section 14 of the Limitation Act, 1963, was filed.

4. I have enquired from the counsel for the petitioner / plaintiff the reason the petitioner / plaintiff is insisting on suing for possession under Section 6 of the Specific Relief Act.

5. The counsel for the petitioner / plaintiff states that he has no other remedy to gain possession. On enquiry as to why the petitioner / plaintiff cannot institute a suit for recovery of possession, the counsel states that since the petitioner / plaintiff does not have title, he cannot institute such a suit.

6. Attention of the counsel has been invited to Article 64 of the Schedule to the Limitation Act providing limitation of 12 years from the date of dispossession for a suit for possession of immovable property based on previous possession and not on title.

7. The counsel for the petitioner / plaintiff withdraws this petition with liberty to file a suit for possession as aforesaid.
8. Dismissed as withdrawn with liberty aforesaid.
9. It is however made clear that the said suit for possession shall be considered as per its own merits and in accordance with law and without being influenced by any observations in the earlier proceedings, unless constitutes a defence in law thereto.
10. Liberty is given to the petitioner / plaintiff to apply to the Suit Court for refund of the court fees paid on the suit.

No costs.

RAJIV SAHAI ENDLAW, J

AUGUST 17, 2017

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