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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) No.766/2017 & CM No.25917/17 (for stay).
SHIVANDU SHARMA & ORS Petitioners
Through: Mr. Vinay Sabharwal, Adv.
versus
RAJ RANI Respondent
Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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02.08.2017

CM(M) No.766/2017 & CM No.25917/17 (for stay).

1. This petition under Article 227 of the Constitution of India impugns the order [dated 17th August, 2016 in Suit No.294/16 of the Court of Additional District Judge-04 (South-East), Saket Courts, New Delhi] allowing the application of the respondent under Order XXXIII Rule 1 of the Code of Civil Procedure, 1908 (CPC) to sue, as an indigent person, the petitioner for recovery of possession of immoveable property and for recovery of *mesne* profits / damages for use and occupation.
2. The learned Additional District Judge, on the aforesaid application, called for the report of the Sub-Divisional Magistrate (SDM) in respect of the assets of the respondent.
3. The SDM, on the basis of enquiry report of field staff, reported (i) that the respondent was residing in a rented accommodation and was getting Rs.5,423/- per month against LIC Policy; (ii) that the respondent was the owner of property no.795/1/1 – 1/2, Tuglaqabad, New Delhi (for recovery of possession of which suit was sought to be filed) and property no.2656, Sector-16, Faridabad; (iii) that the respondent was holder of a bank account

having balance of Rs.65,017/-; and, (iv) that as per the field report, the son of the respondent had died and the husband of the respondent was not living with the respondent.

4. The learned Additional District Judge, in the impugned order, has noted that the petitioners chose not to cross-examine the respondent and also did not lead any evidence. The learned Additional District Judge, in the light of the affidavit filed by the SDM, has held that the respondent is not possessed of sufficient means to enable her to pay the prescribed court fees on the suit sought to be filed and has thus allowed the respondent to sue as an indigent person.

5. The counsel for the petitioner has argued that the respondent is admittedly the owner of the property at Tuglaqabad for recovery of possession whereof the respondent wants to institute the suit as an indigent person and also has a half share in the house at Faridabad. It is informed that the house at Faridabad was owned by the respondent and her son in equal share and on the demise of the said son, the son's share in the property has been inherited by the four petitioners, being the wife and children of the deceased, and the respondent being the mother of the deceased.

6. It thus appears that the respondent, besides her own 50% share in Faridabad property, would have a share in the 50% share of her son also in the Faridabad property.

7. It is however not in dispute that the Faridabad house is in exclusive possession of the petitioners.

8. The counsel for the petitioners has argued that the respondent is thus possessed of two immoveable properties and cannot be considered as an

indigent person.

9. This Court in *Suneal Mangal Vs. Prime Max Mall Management* (2013) 196 DLT 234 and *Krishan Kumar Vs. State* MANU/DE/3893/2013 has held that a person is not expected to pay court fees by selling immoveable properties and need not be a pauper, to obtain permission to sue as an indigent person. The criteria for determination of indigency is whether, considering the family and social background, the person is in a position to pay court fee. Merely being the owner of two properties does not satisfy the criterion of the respondent being able to spend monies readily on the court fees, particularly when the counsel is unable to tell the status of the Faridabad property and whether the petitioners are willing to join the respondent in sale thereof.

10. Moreover, the petitioners having chosen not to cross examine the respondent and having chosen not to lead any evidence on their own, notwithstanding the argument of the onus being on the respondent to prove her indigency, cannot be allowed to make such arguments.

11. No ground for interference under Article 227 is made out; more so, considering the nature of the relationship between the parties.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

AUGUST 02, 2017

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