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IN THE HIGH COURT OF DELHI AT NEW DELHI

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C.R.P. No.167/2017 & CM No.27172/2017 (for stay).

SAHEID AHMED

..... Petitioner

Through: Mr. Prabodh Shukla, Adv.

versus

JITENDRA VERMA

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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01.08.2017

CM No.27173/2017 (for exemption).

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

C.R.P. No.167/2017 & CM No.27172/2017 (for stay).

3. This Revision Petition under Section 115 of the Code of Civil Procedure, 1908 (CPC) impugns the order (dated 31st May, 2017 in Suit No.535116/2016 of the Court of Additional Senior Civil Judge (North), Rohini Courts, Delhi) of dismissal of the application of the petitioner / defendant under Order VII Rule 11 of the CPC.
4. The petitioner / defendant sought rejection of the plaint, in the suit for recovery of possession of immovable property on the basis of title, on the ground of limitation. The learned Additional Senior Civil Judge, in the impugned order, has correctly reasoned that limitation for such a suit would be governed by Article 65 of the Schedule to the Limitation Act, 1963 and since the petitioner / defendant himself was not setting-up a title adverse to the respondent / plaintiff but a title as a tenant, the question of the suit being barred by time did not arise; accordingly, the application under Order VII

C.R.P. No.167/2017

page 1 of 3

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By:AMULYA

Rule 11 of the CPC was dismissed.

5. The counsel for the petitioner / defendant has drawn attention to para 4 of the plaint which is as under:-

"The Defendant never remained the tenant of the Plaintiff as neither Defendant have ever tendered rent to him nor he had any authority to be in the suit property i.e. shop no.4 situated in property No.WZ-2843, Sant Nagar, Rani Bagh, Dehli. Whenever, Defendant was asked about his status he always claimed that he has some documents in his favour and shall show at the appropriate time. Since Plaintiff was minor despite having knowledge of his illegal occupation, no steps were taken by him except requesting the Defendant orally to vacate the shop. Every time Defendant took different excuses and kept on delaying the matter on or the other pretext".

and has contended that therefrom it is evident that the petitioner / defendant was claiming adversely to the respondent / plaintiff since long and the suit was barred by time. It is contended that for the purposes of Order VII Rule 11 of the CPC, only the averments in the plaint have to be seen and not the defence of the petitioner / defendant of being a tenant in the premises.

6. Not only is there no plea in para 4 of the plaint of the petitioner / defendant having set-up an adverse title to the respondent / plaintiff but in the subsequent paragraphs of the plaint also the respondent / plaintiff has pleaded that the respondent / plaintiff had filed a petition under Section 27 of the Delhi Rent Control Act, 1958 for deposit of rent, thereby showing that while as per the plaint, the petitioner / defendant was an unauthorised occupant of the premises, according to the petitioner / defendant, he is a

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tenant in the subject premises. The question for adjudication in the suit thus would be, whether the petitioner / defendant is a tenant protected by the Delhi Rent Control Act. If so, the suit for possession in the Civil Court will be dismissed. If the petitioner / defendant fails to prove the same, the respondent / plaintiff would be entitled to a decree.

7. The counsel for the petitioner / defendant has also argued that once unauthorised and illegal occupation of the petitioner / defendant was pleaded, the period of limitation began to run.

8. There is no merit in the said contention also. Article 65 of the Schedule to the Limitation Act, 1963 provides limitation of twelve years for instituting such a suit, commencing from the date when the possession of the defendant becomes adverse to the plaintiff. Mere unauthorised occupation, for howsoever long, does not bar the suit for possession on the basis of title, limitation whereof commences to run only from the date the defendant sets up a hostile title to the plaintiff in himself.

8. There is no merit in the petition.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

AUGUST 01, 2017
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C.R.P. No.167/2017