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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ C.R.P. No.187/2017 & CM No.30957/2017 (for stay).
KISHORE SINGH Petitioner
Through: Mr. S.S. Panwar, Adv.
versus

BADRI BHAGAT JHANDEWALAN
TEMPLE SOCIETY Respondent
Through: None.

AND

C.R.P. No.190/2017 & CM No.31198/2017.
KISHORE SINGH Petitioner
Through: Mr. S.S. Panwar, Adv.
versus

BADRI BHAGAT JHANDEWALAN TEMPLE
SOCIETY Respondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **29.08.2017**

CM No.30956/2017 (for exemption) in C.R.P. No.187/2017 and CM No.31197/2017 in C.R.P. No.190/2017.

1. Allowed, subject to just exceptions.
2. The applications stand disposed of.

C.R.P. No.187/2017 & CM No.30957/2017 (for stay) and C.R.P. No.190/2017 & CM No.31198/2017 (for stay).

3. The petitions, both under Section 115 of the Code of Civil Procedure, 1908 (CPC), impugn the common order dated 26th April, 2017 in CS No.295/2016 of the Court of Additional District Judge-02, Central, Tis Hazari Courts, Delhi) of dismissal of two separate applications, one under Order VII Rule 11 of the CPC and the other under Order XII Rule 6 of the

CPC filed by the petitioner / defendant for rejection of the plaint and for dismissal of the suit filed by the respondent / plaintiff on admissions.

4. Neither from the impugned order nor from the applications filed by the petitioner / defendant, the ground on which the petitioner / defendant was seeking rejection of the plaint or dismissal on admissions of the suit could be understood. Rather, the applications are found to be merely reproducing contents of the written statement on merits.

5. The counsel for the petitioner / defendant has been informed so and asked to explain, why he says that the suit is liable for summary dismissal. The counsel however admits that the applications under Order VII Rule 11 and Order XII Rule 6 of the CPC merely reproduce the contents of the written statement on merits.

6. The respondent / plaintiff has instituted the suit from which these petitions arise for recovery of possession from the petitioner / defendant of a portion of immovable property forming part of property no.10196 Jhandewalan Estate, Desh Bandhu Gupta Road, New Delhi – 110 055 and for recovery of *mesne* profits / damages for use and occupation thereof.

7. The counsel for the petitioner / defendant has at the outset invited the attention of this Court to page 248 of the paper book in CRP No.187/2017, being an application under Order XXIII Rule 3 of the CPC in Suit No.350/1998/83 titled ***Mukesh Chand Vs. Badri Bhagat Jhandewala Temple Society*** of the Court of Shri S.K. Singh, Civil Judge, Delhi and particularly to para 4(e) at page 252 thereof where it is recorded that the portion shown with letter ‘F’ in the site plan annexed to that application is in possession of the petitioner / defendant, being the son of the plaintiff no.2 in *C.R.P. No.187/2017 & C.R.P. No.190/2017*

the suit and that the petitioner / defendant has been allowed to live in the said property gratis, on licence basis. It is informed that the plaintiff no.2 in the said suit was the mother of the petitioner / defendant. The counsel for the petitioner / defendant has next invited attention to page 242 of the paper book, being the order dated 15th September, 2005 in that suit, disposing of the suit in terms of the said compromise application.

8. On enquiry, the counsel for the petitioner / defendant contends that the respondent / plaintiff has now instituted the suit with respect to the portion 'F' in the site plan annexed to the aforesaid compromise application.

9. I have enquired from the counsel for the petitioner / defendant as to how on the basis of the said argument it can be said that the suit filed by the respondent / plaintiff is not maintainable.

10. The counsel for the petitioner / defendant argues that the petitioner / defendant has been in possession of the premises for long, since the time of his ancestors.

11. I have enquired from the counsel for the petitioner / defendant that if as per the compromise application aforesaid, the possession of the petitioner / defendant is licensee as a gratis, is not the petitioner / defendant liable to deliver possession on his licence being terminated.

12. The counsel for the petitioner / defendant has argued that the suit has been filed pleading a cause of action, of the petitioner / defendant having commenced the activity of construction in the property and which is wrong.

13. The aforesaid cannot constitute a argument for rejection of the plaint or for dismissal of the suit on admissions. It is to be put to trial whether the cause of action pleaded exists or not.

14. The counsel for the petitioner / defendant has next argued that the petitioner / defendant was not a party to the suit in which compromise was effected.

15. It is not understood that if the petitioner / defendant claims to be not bound by the said compromise, then on what basis the applications under Order VII Rule 11 and Order XII Rule 6 of the CPC against dismissal whereof these petitions have been preferred, were filed.

16. The counsel for the petitioner / defendant has not been able to raise a single argument to make out a case for rejection of the plaint or for dismissal of the suit on admissions.

17. The applications as well as these petitions are thoroughly misconceived and are dismissed with costs payable to the Delhi High Court Bar Association Lawyers Social Security and Welfare Fund, New Delhi in each of the petitions of Rs.10,000/- and proof of payment whereof to be shown by the counsel for the petitioner / defendant to the Suit Court on the next date of hearing as a condition for further defending the suit.

RAJIV SAHAI ENDLAW, J

AUGUST 29, 2017

‘pp’..