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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) No.874/2017 and CM No.29175/2017 (for stay).
ROHIT RAJPAL & ANR Petitioners
Through: Mr. Angad Mehta, Adv.
versus
KRITIKA SURI & ORS Respondents
Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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18.08.2017

CM No.29176/2017 & CM No.29177/2017 (both for exemption).

1 Allowed, subject to just exceptions.

2. The application stands disposed of.

CM(M) No.874/2017 and CM No.29175/2017 (for stay).

3. This petition under Article 227 of the Constitution of India impugns the order (dated 7th April, 2017 in EX/2634/2016 of the Court of Additional District Judge-03 (South), Saket Courts, New Delhi) of dismissal of objections under Section 47 of the Code of Civil Procedure, 1908 (CPC) filed by the two petitioners, in execution filed by the respondents no.1&2 / decree holders of a decree for ejectment against the respondent no.3 / judgment debtor.

4. It has been enquired from the counsel for the petitioners as to how a petition under Article 227 of the Constitution of India would be maintainable and whether not the order is appealable.

5. The counsel for the petitioners first states that the order is not appealable under Order XLIII of the CPC.

6. However attention of the counsel for the petitioners is drawn to Order XXI Rule 103 of the CPC which provides for such an order to have the same force as if it were a decree.

7. The counsel for the petitioners then states that the objections filed by the petitioners were not under Order XXI Rule 98 or under Rule 100 of the CPC but was under Section XLVII of CPC.

8. Merely because the petitioners chose to give a wrong nomenclature, would not change the substantive provisions of law.

9. The decree in favour of the respondents no.1&2 and against the respondent no.3 is of ejectment of the respondent no.3 from immovable property after determination of tenancy at a rent in excess of Rs.3,500/- per month. The petitioners' claim right to the property as owners of the property along with the respondent no.3 (the two petitioners and the respondent no.3 are brothers) and state that the Sale Deed executed by the petitioners and the respondent no.3 of the property was in fact a mortgage and thus the said Sale Deed and the Lease Deed by the respondents no.1&2 in favour of the respondent no.3 are sham documents.

10. The aforesaid pleas amount to questions within the meaning of Rule 101 of Order XXI of the CPC and dismissal of the same would have the force of a decree under Rule 103 of Order XXI of the CPC.

11. The counsel for the petitioners has next contended that the petitioners are not seeking stay of dispossession inasmuch as possession has already been recovered and are only wanting to intervene in the execution and only

want their claims to the property to be adjudicated in the execution.

12. The same fortifies what has been observed hereinabove.

13. This petition is misconceived and is dismissed with liberty to the petitioners to avail of appropriate remedy in law.

No costs.

RAJIV SAHAI ENDLAW, J

AUGUST 18, 2017

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CM(M) No.874/2017

page 3 of 3