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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CM(M) 1013/2017

OM PRAKASH

..... Petitioner

Through: Mr. A.K.Dey and Mr. Sachin Sharma,
Advocates

versus

OMWATI & ORS

..... Respondents

Through: Mr. Gaurav Sharma, Advocate

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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20.11.2017

1. This order is in continuation of the earlier order dated 15th September, 2017.
2. Respondents are reported to have been served and the counsel appears on their behalf.
3. The counsel for the respondents states that time may be given to file reply to the petition.
4. There is no reply to be filed to a petition under Article 227 of the Constitution of India or for that matter to a revision petition and which are to be decided on the basis of the proceedings before trial court and not on any fresh pleadings.
5. Counsel for the respondents states that he is not fully prepared.
6. There is no reason for the counsel to come unprepared to the Court or for these proceedings to be kept pending or to be adjourned for that reason.

7. I have enquired from the counsel for the respondents, whether the respondents have any objection to the rent of the properties subject matter of the suit for partition being deposited in the court.
8. The counsel for the respondents replies in the affirmative.
9. I have next enquired from the counsel for the respondents, whether the respondents are receiving the rent of the properties from the tenants in the property.
10. The answer is in the negative.
11. If the respondents also are not receiving rent from the tenants in the property, it is not understood as to why the respondents are opposing a direction for deposit of the rent in the court inasmuch as owing to the inter-se disputes between the petitioner/plaintiff and the respondent/defendants, the rent recoverable from the tenant cannot be allowed to become time barred.
12. The counsel for the respondents has next contended that the petitioner/plaintiff, in the suit from which this petition arises, has not claimed the relief of recovery of rent and has only claimed the partition of the properties.
13. This is the reason which has also prevailed with the Additional District Judge in the impugned order and which has already been dealt with by me in the earlier order dated 15th September, 2017.
14. I have next enquired from the counsel for the petitioner/plaintiff as to what is the defence of the respondents/defendants to the suit and what are the issues framed in the suit.
15. Counsel for the petitioner / plaintiff is equally clueless.

16. In this view of the matter, this petition is disposed of by setting aside the impugned order dated 3rd July, 2017 and by directing the learned Additional District Judge to decide the application of the petitioner/plaintiff for deposit of rent in the Court after hearing the counsels afresh and on the parameters of prima facie case and no loss being caused of the rent owing to inter-se disputes between the petitioner and the respondents and if finds the petitioner/plaintiff to be entitled to an order, to, after satisfying with respect to the rate of rent paid by each of the tenants, appropriate directions to the tenants be issued.

17. The petition is disposed of.

No costs.

RAJIV SAHAI ENDLAW, J

NOVEMBER 20, 2017

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