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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CM(M) 976/2017

M.K. RASTOGI

..... Petitioner

Through: Ms. Vandana Sehgal and Mr. Anand
Daga, Advs.

Versus

LATA DETWANI

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **06.09.2017**

CM No.32457/2017 (for exemption)

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

CM(M) 976/2017 & CM No.32456/2017 (for stay)

3. This petition under Article 227 of the Constitution of India impugns the order [dated 24th August, 2017 in Ex. No.57792/2016 filed by the respondent/decreed holder (DH) of a judgment and decree dated 30th September, 2014 in CS No.659/2013 (UID No.02404C0194952011)] finding the petitioner/judgment debtor (JD) to be liable to pay a further amount of Rs.5,19,132/- under the decree.

4. The counsel for the petitioner/JD on being asked to show the decree has drawn attention to page 80 of the paper book being para 61 of the judgment dated 30th September, 2014, finding the respondent/DH

entitled to damages towards unauthorised use and occupation of the premises @ Rs.20,000/- per month from the date of filing of the suit i.e. 1st August, 2011 till handing over of vacant peaceful possession of the premises. A perusal of para 74 of the said judgment shows the decree to be also of recovery of possession of property, for arrears of rent, for permanent injunction and for costs of the suit.

5. I have enquired from the counsel for the petitioner/JD the date when the petitioner/JD delivered possession.

6. The counsel for the petitioner/JD states that the possession was delivered some times in October, 2016.

7. It is not understandable as to on what basis error is pointed out in the impugned order without even knowing the date on which the possession was delivered.

8. While this order is being dictated, it is stated that the possession was delivered before October, 2016.

9. I however find from the list of dates filed with the petition, though not part of pleadings and only for convenience, that the possession is claimed to have been delivered on 15th October, 2016.

10. Thus, according to the decree, the petitioner/JD would be liable for *mesne* profits as awarded with effect from 1st August, 2011 till 31st October, 2016.

11. I have next enquired from the counsel for the petitioner/JD as to for how many months between the dates aforesaid, the *mesne* profits are due.

12. It is quite evident that the counsel has filed this petition without adverting to the said facts, as the counsel for the petitioner/JD vaguely states that it will be 25 months.

13. At this stage, the counsel for the petitioner/JD withdraws the petition and states that the petitioner/JD be only granted time to deposit the balance decretal amount found due vide the impugned judgment and decree.

14. The petition is dismissed as withdrawn. Liberty is given to the petitioner/JD to apply to the Executing Court for grant of said indulgence.

No costs.

RAJIV SAHAI ENDLAW, J.

SEPTEMBER 06, 2017

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