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

+ CM(M) No.1097/2017

SANTOSH

..... Petitioner

Through: Mr. Saurabh Kansal, Adv.

Versus

YOGESH

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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27.09.2017

CM Nos.35874-75/2017 (both for exemptions)

1. Allowed, subject to just exceptions.

2. The applications are disposed of.

CM(M) 1097/2017 & CM No.35873/2017 (for stay)

3. This petition under Article 227 of the Constitution of India impugns the order [dated 5th August, 2017 in SCJ No.612153/2016 of the Court of Civil Judge-01 (West), Tis Hazari Courts, Delhi] closing the right of the petitioner / defendant to file written statement.

4. The suit filed by the respondent is for permanent injunction restraining the petitioner from dispossessing the respondent / plaintiff from an immovable property.

5. The suit being for injunction simpliciter, I have enquired from the counsel for the petitioner / defendant, whether the petitioner / defendant admits the respondents / plaintiff to be in possession of the said property inasmuch as if the respondent / plaintiff is in possession and the only relief in the suit being to restrain the petitioner / defendant from forcibly dispossessing the respondent

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/ plaintiff therefrom, there is no need even for the petitioner / defendant to file written statement and the petitioner / defendant can simply make a statement before the Court that she will not dispossess the respondent / plaintiff forcibly from the portion in possession of the respondent / plaintiff.

6. The counsel for the petitioner / defendant states that the portion with respect to which the respondent / plaintiff has claimed injunction is indeed in possession of the respondent / plaintiff and the petitioner / defendant will make a statement before the Suit Court and in terms whereof the suit can be disposed of.

7. I may notice that though the respondent / plaintiff in the suit has also sought injunction to restrain the petitioner from creating any nuisance outside the portion of the property in possession of the respondent / plaintiff but it *prima facie* appears that such injunction would be in teeth of Section 41(f) of the Specific Relief Act, 1963. However the learned Civil Judge would be at liberty to pass appropriate orders with respect to any specific act which the respondent / plaintiff seeks to restrain the petitioner / defendant from doing and it appears that there is no need to put the suit to trial for the said purpose.

8. With the aforesaid observations, the petition is disposed of.

No costs.

RAJIV SAHAI ENDLAW, J.

SEPTEMBER 27, 2017

‘gsr’..