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

+ C.R.P. No.213/2017 & CM No.35164/2017 (for stay).

JASWINDER SINGH HORA

..... Petitioner

Through: Mr. Sameer Dewan, Adv.

versus

HARSH MIGLANI & ANR

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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25.09.2017

CM No.35165/2017 (for exemption).

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

C.R.P. No.213/2017 & CM No.35164/2017 (for stay).

3. This Revision Petition under Section 115 of the Code of Civil Procedure, 1908 (CPC) impugns the order (dated 28th August, 2017 in Suit No.2665/16 (Old No.548/16) of the Court of Civil Judge-08 (Central), Tis Hazari Courts, Delhi) of dismissal of the application filed by the petitioner / defendant under Order VII Rule 11 of the CPC.
4. The counsel for the petitioner / defendant has commenced his arguments by stating that he is troubled by the order dated 12th October, 2015 of Justice Valmiki Mehta in CS(OS) No.1210/2011 titled *Vikas Chander Vs. Harsh Miglani* and CS(OS) No.2150/2013 *Harsh Miglani Vs. Vikas Chander*.

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5. The remedy of the petitioner / defendant against the order aforesaid is not before this Bench but would be before either the Division Bench or before the Supreme Court.

6. The counsel for the petitioner / defendant then states that that is not what he means.

7. The position which emerges on reading of the paper book is as under:-

- (i) that the petitioner / defendant was inducted as a tenant at a rent of Rs.11,000/- per month in the immovable property by Vikas Chander; there were disputes between the respondents and the said Vikas Chander, with Vikas Chander disputing the title claimed by the respondents / their predecessor to the property and the said disputes were subject matter of suits aforesaid i.e. CS(OS) No.1210/2011 and CS(OS) No.2150/2013;
- (ii) a settlement was arrived at in the aforesaid suits whereunder the said Vikas Chander withdrew his challenge to the title of the respondents; the respondent thereafter instituted the suit aforesaid from which this petition arises, for ejectment of the petitioner / defendant; and,
- (iii) the petitioner / defendant made an application in the aforesaid suits for recall of the order disposing of the CS(OS) No.1210/2011 and CS(OS) No.2150/2013 in terms of settlement aforesaid and which application was dismissed by order dated 20th May, 2016 of Justice Valmiki Mehta observing that since the petitioner / defendant was not a party to the settlement, he will be unaffected by the settlement and

acceptance thereof and disposal of suit in terms thereof.

8. I have today also enquired from the counsel for the petitioner / defendant as to what is the title claimed by the petitioner / defendant to the premises.

9. The counsel for the petitioner / defendant states that the petitioner / defendant came into possession of the premises as a tenant at a rent of Rs.11,000/- per month under Vikas Chander.

10. The petitioner / defendant applied for rejection of the plaint in the suit from which this petition arises contending that the settlement aforesaid did not give any right to the respondents to seek ejectment of the petitioner / defendant. The said application has been dismissed by the learned Civil Judge.

11. No error is found in the order of the learned Civil Judge. The possession of the petitioner / defendant, who came into possession of the premises as a tenant under Vikas Chander who was disputing the title of the respondents to the property, after the said Vikas Chander has given up the said challenge and has admitted the respondents to be the owners of the property, would be either as tenant if accepted by the respondents as tenant or as unauthorised occupant. The respondents having accepted the petitioner / defendant as a tenant and are entitled to seek ejectment of the petitioner / defendant in accordance with law and the petitioner / defendant who was merely a tenant has no right to challenge the settlement between the person who had admitted him to the premises as a tenant i.e. Vikas Chander and the respondent.

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12. The counsel for the petitioner / defendant on being asked to argue, states that his application was not dismissed by order dated 20th May, 2016 supra but was allowed.

13. The same would not make any difference to the aforesaid.

Dismissed.

No costs.

SEPTEMBER 25, 2017

'pp'..

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RAJIV SAHAI ENDLAW, J

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