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

+ CM(M) No.1077/2017

NAZIR HUSSAIN

..... Petitioner

Through: Mr. Javed Ahmad and Mr. Anis
Ahmad, Advs.

versus

RAM AVTAR JAIN &ORS

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **25.09.2017**

CM No.35249/2017 (for exemption).

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

CM(M) No.1077/2017.

3. This petition under Article 227 of the Constitution of India impugns the order (dated 5th July, 2017 in CS No.1523/17 of the Court of Additional District Judge-04 (Central), Tis Hazari Courts, Delhi) of dismissal of suit filed by the petitioner as a consequence of dismissal of the application filed by the petitioner under Section 5 of the Limitation Act, 1963 for condonation of delay in filing the suit.

4. Though the petition under Article 227 of the Constitution of India against the dismissal of the suit is not maintainable, the remedy of the petitioner being to prefer an appeal but since the counsel for the petitioner presses for arguments on merits, option has been given to him to address on merits and it has been informed to him that on a *prima facie* view, the suit itself was as misconceived as this petition.

5. The counsel for the petitioner then seeks to withdraw this petition with further liberty to take appropriate remedies.

6. Dismissed as withdrawn with liberty aforesaid on the condition that the petitioner, along with the remedy if any availed, files a copy of this order.

No costs.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 25, 2017

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