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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) No.1094/2017
KASHMIRI LAL BHUTANI Petitioner
Through: Mr. Ashish Kapur and Ms. Chhavi
Luthra, Advs.

versus

ARVIND KUMAR ADHUKIA Respondent
Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **09.10.2017**

CM No.35789/2017 (for exemption).

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

CM(M) No.1094/2017.

3. This petition under Article 227 of the Constitution of India impugns the order (dated 10th July, 2017 in Suit No.93294/16 of the Court of Civil Judge-06 (Central), Tis Hazari Courts, Delhi) of dismissal of the application of the petitioner / plaintiff under Order XV-A of the Code of Civil Procedure, 1908 (CPC) finding that the respondent / defendant was already depositing under Section 27 of the Delhi Rent Control Act, 1958, rent at the rate of Rs.125/- per month at which he claimed to be tenant in the premises and no direction for deposit / payment by the respondent / defendant at any rate higher than that was called for.

4. I may at the outset state that prior to the incorporation in Delhi of Order XV-A of the CPC, the applications as under Order XV-A used to be made under Order XXXIX Rule 10 of the CPC and an order whereunder is

appealable under Order XLIII Rule 1(r) of the CPC. While incorporating Order XV-A, the aspect of, also amending Order XLIII Rule 1 qua Delhi, to also provide for an appeal against an order under Order XV-A of the CPC, remained to be considered. It is deemed appropriate that Hon'ble the Chief Justice considers the matter and if finds any merit therein, places the same before the Rules Committee of this Court under Section 123 of the CPC for consideration of the said aspect. A copy of this order be placed before Hon'ble the Chief Justice.

5. Else, the learned Civil Judge in the impugned order has dealt with the matter from all aspects and has reasoned, that the respondent / defendant is an old occupant of the property since prior to the purchase of the property by the petitioner / plaintiff; that while according to the petitioner / plaintiff the respondent / defendant's occupation was as a licensee, according to the respondent / defendant, his occupation was as a tenant at a rent of Rs.125/- per month; that if merit was ultimately found in the plea of the respondent / defendant, the suit for recovery of possession on the ground of termination of license and for recovery of *mesne* profits itself would be barred.

6. In the aforesaid circumstances, the view taken by the learned Civil Judge, of the occupation of the respondent / defendant being *prima facie* as a tenant does not require any interference in exercise of powers under Article 227 of the Constitution of India. I may state that in the plaint, no circumstances in which the respondent / defendant was permitted to occupy the premises as a licensee were stated and else it is less likely that an owner of the property would permit occupation of and the person being so permitted would choose to occupy the premises as a licensee, in the absence

of any disclosed relationship.

7. The counsel for the petitioner / plaintiff has argued that the Sale Deed by which the petitioner / plaintiff has purchased the property also shows the respondent / defendant as an unauthorised occupant.

8. A document which is a creation of the petitioner / plaintiff himself and even if the earlier owner joins therein cannot change the aforesaid position. Similarly, the reliance placed by the counsel for the petitioner / plaintiff on my judgment dated 15th May, 2014 in FAO(OS) No.597/2013 titled ***Raghubir Rai Vs. Prem Lata*** is misconceived in the facts of the present case. It is not in every case of recovery of possession of immovable property, even if the plaintiff does not even *prima facie* make out a case for recovery of possession or the possession of the respondent / defendant being unauthorised, that an order under Order XV-A has to follow.

9. There is thus no merit in the petition.

Dismissed.

10. I may add that I find the order of the learned Civil Judge to be extremely well written and reasoned and cogent. A copy of the said order as well as a copy of this order be sent to the Inspecting Committee of the learned Civil Judge and a copy of this order be also forwarded to the learned Civil Judge.

RAJIV SAHAI ENDLAW, J

OCTOBER 09, 2017

‘pp’..