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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 1082/2017**

MERRY FERNANDEZ Petitioner

Through: Mr. M.K. Perwez, Adv.

Versus

GRISH KUMAR Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **25.09.2017**

CM No.35387/2017 (for exemption)

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

CM(M) 1082/2017 & CM No.35386/2017 (for stay)

3. This petition under Article 227 of the Constitution of India impugns the order [dated 8th September, 2017 in CSDJ No.292/2017 of the Court of Additional District Judge (ADJ)-14, Central District, Tis Hazari Courts, Delhi] of grant to the petitioner of leave to defend the suit filed by the respondent under Order XXXVII of the CPC for recovery of principal amount of Rs.12 lacs subject to the condition of the petitioner depositing in the Suit Court in the form of FDR in the name of Court of Rs.6 lacs within two weeks therefrom.
4. The counsel for the petitioner has been heard.
5. The respondent instituted the suit aforesaid on the basis of a registered Rent Agreement and an unregistered Loan Agreement, both dated 11th January,

2016. While as per the Rent Agreement, the petitioner had agreed to let out her immovable property to the respondent and had received a security deposit of Rs.6 lacs from the respondent, under the Loan Agreement, the petitioner had taken a loan of Rs.6 lacs from the respondent repayable with interest.

6. It is the case of the respondent/petitioner in the suit that the petitioner could not put the respondent in possession of the premises subject matter of the Rent Agreement owing to the same having not been vacated by the earlier tenant and was thus liable to refund the security amount of Rs.6 lacs to the respondent/plaintiff. It was further the case of the respondent/plaintiff that the loan was also in anticipation of the Rent Agreement and since the petitioner did not let out the premises, the loan of Rs.6 lacs also was repayable.

7. The petitioner in her leave to defend application did not dispute that the respondent was not put in possession of the premises though contended that it was owing to the respondent reneging from the Rent Agreement and she has refunded to the respondent Rs.6 lacs received by way of security deposit. With respect to the Loan Agreement, the plea of the petitioner was that the same was got executed by the respondent from the petitioner fraudulently and there was no loan transaction.

8. The learned ADJ has granted conditional leave as aforesaid reasoning that the security of Rs.6 lacs having been admittedly received under a registered Rent Agreement, the plea of refund thereof in cash, without taking any receipt was highly improbable and not believable.

9. I fail to see as to what is wrong with the reasoning given by the learned ADJ.

10. The counsel for the petitioner relies on *Mechelec Engineers & Manufacturers Vs. Basic Equipment Corporation* (1976) 4 SCC 687 and *R. Saravana Prabhu Vs. Videocon Leasing & Industrial Finance Ltd.* (2013) 14 SCC 606 in turn relying on *Mechelec Engineers & Manufacturers* supra only.

11. The reliance on the said judgments is in ignorance of the latter judgment in *IDBI Trusteeship Services Limited Vs. Hubtown Limited* (2017) 1 SCC 568 holding *Mechelec Engineers & Manufacturers* supra to be no longer good law. The reliance on the said judgments is thus misconceived.

12. Else, save for raising the argument of mercy, owing to the petitioner being a woman and old, no other argument has been urged.

13. There is no merit in the petition.

14. Dismissed.

15. The counsel for the petitioner at this stage seeks extension of time for complying with the condition. Liberty in accordance with law is granted to the petitioner to make such request before the ADJ.

Dasti.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 25, 2017

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