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

+ CM(M) 1117/2017 and CM No.36351/2017 (for stay).

MOHD SALMAN QURESHI

..... Petitioner

Through: Mr. M. Sufian Siddiqui, Mr. Rakesh
Bhugra and Mr. M. Tabishzia, Advs.

versus

MOHD RAFI

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **10.10.2017**

CM No.36352/2017, CM No.36354/2017 (for exemption) and CM No.36353/2017 (exemption from filing complete Trial Court record).

1. Allowed, subject to just exceptions.
2. The applications stand disposed of.

CM(M) 1117/2017 and CM No.36351/2017 (for stay).

3. This petition under Article 227 of the Constitution of India impugns the order (dated 11th August, 2017 in CS No.18202/2016 of the Court of Additional District Judge-09 (Central), Tis Hazari Court, Delhi) *inter alia* appointing a Court Commissioner and the order dated 23rd September, 2017 dismissing the application of the petitioner seeking review of the order dated 11th August, 2017.

4. The suit from which this petition arises, was for partition of immovable property. A preliminary decree for partition declaring the petitioner and the respondent to be having equal share in the property was passed on 3rd April, 2017 and the suit adjourned to 11th August, 2017 to enable the parties to suggest the mode of partition.

5. On 11th August, 2017, both parties in the first instance offered to purchase the share of the other. However, neither was willing to sell his share. Thereafter, both parties suggested division of the property into equal share and sought appointment of an impartial person for the same.

6. It was in the aforesaid light that a Court Commissioner was appointed.

7. The counsel for the petitioner has argued that in fact the order dated 11th August, 2017 wrongly records that the respondent had proposed to purchase the share of the petitioner. It is stated that the respondent never proposed to purchase the share of the petitioner and only said that he is not interested in selling his share and wanted partition by metes and bounds.

8. I have enquired from the counsel for the petitioner whether the petitioner is interested in selling his share.

9. The answer is in the negative.

10. There is thus nothing wrong in what has been recorded in this respect in the order dated 11th August, 2017 and the argument made is misconceived.

9. The counsel for the petitioner has next urged that the Court Commissioner has been appointed not for exploring the possibility of division of the property by metes and bounds but to partition the property.

10. A perusal of the orders shows that the Court Commissioner has filed a report before this Court.

11. I have perused a copy of the said report handed over in the Court and the same appears to suggest that the Court Commissioner is assuming his task to be of physically dividing the property by having a wall constructed.

12. The said course of action is not in accordance with law. The Court

cannot delegate to a Court Commissioner division of the property without first examining the proposal for division of the property and without hearing the objections if any of the parties thereto.

13. For clarifying the aforesaid, need to issue notice is not felt.

14. This petition is disposed of with the clarification that the Court Commissioner appointed by the Court to only submit his report, qua divisibility, if possible of the property by showing the possible division on a site plan, to the Court and with a request to the learned Additional District Judge to thereafter, after giving an opportunity to the parties to make their submissions on the said report, pass the requisite order.

Dasti.

RAJIV SAHAI ENDLAW, J

OCTOBER 10, 2017

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