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

+ C.R.P. 225/2017

SANDEEP GOEL & ANR

..... Petitioners

Through: Mr. V.K. Malik and Mr. Rahul Raj
Malik, Advs.

Versus

MERA BABA REAL ESTATE PVT LTD

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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13.10.2017

CM No.36850/2017 (for exemption)

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

C.R.P. 225/2017 & CM No.36849/2017 (for stay)

3. This Revision Petition under Section 115 of the Code of Civil Procedure, 1908 (CPC) impugns the order [dated 16th September, 2017 in CS No.59912/2016 of the Court of Additional District Judge (ADJ)-1 (North), Rohini Courts, Delhi] closing the right of the petitioners/plaintiffs to cross-examine DW-1 upon the counsel for the petitioners/plaintiffs not appearing before the Court inspite of the suit having been kept pending till 1425 hours.

4. The contention of the counsel for the petitioners/plaintiffs is that the suit was not shown in the cause list of the Court on 16th September, 2017 and thus he could appear. It is however admitted that as per the diary

maintained by the counsel, the case was listed on 16th September, 2017 but when the counsel went to the Court, the case was not found listed.

5. The remedy of the petitioners/plaintiffs for what is urged is by moving the Trial Court and not by approaching this Court directly under Article 227 of the Constitution of India.

6. Moreover, the petition under Section 115 of CPC is also not maintainable and is barred by proviso thereto.

7. The suit, vide the impugned order, was adjourned for final arguments on 7th October, 2017.

8. The counsel for the petitioners/plaintiffs, on enquiry, states that he does not know why the final arguments were not heard on 7th October, 2017 and whether it was on request of the petitioners/plaintiffs. It is however informed that the suit is now listed for final arguments on 17th October, 2017.

9. The petition is dismissed. The petitioners/plaintiffs shall however have liberty to apply to the ADJ.

Copy of this order be given *dasti* under the signatures of the Court Master.

RAJIV SAHAI ENDLAW, J.

OCTOBER 13, 2017
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