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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 188/2018 & CM 5966/2018**

RAKESH JAIN

..... Petitioner

Through: Mr. Sumit Kumar Khatri, Advocate.

versus

V P YADAV & ANR

..... Respondents

Through

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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16.02.2018

1. The petitioner is the plaintiff of civil suit (CS-50/2017) in which he seeks the reliefs in the nature of injunction - prohibitory and mandatory. It is his case that he is in possession of second floor of premises bearing No.C-7, Shivaji Park, Punjabi Bagh, New Delhi-110026 as a tenant under the first respondent V.P. Yadav, who is arrayed as first defendant. It is his case that the staircase leading to the portion under his tenancy has been blocked by a masonry wall constructed illegally. He sought interim relief in that regard by application under Order 39 Rules 1 and 2 of the Code of Civil Procedure, 1908 (CPC), which was dismissed by the civil judge by order dated 01.02.2017 accepting the contention of the first respondent that the plaintiff is not even in possession of the subject property on the basis of electricity bills for certain period showing no power consumption.

2. The senior civil judge in appeal (MCA 05/2017) which was dismissed on 12.01.2018, which is the order sought to be challenged by the petition at hand, also did not apply mind to the issue of easementary rights on the basis of which the petitioner is claiming relief from the court. The senior civil judge also observed that municipal authority has not been impleaded, as was necessary to show unauthorised construction having been carried out.

3. While this Court reserves comment as to whether municipal agency would be required for granting or declining relief in a case based primarily of easementary rights, it may be added that the order of the first appellate court is *prima facie* deficient in that merely on account of the plaintiff not being “continuously using the tenanted premises” could not be the reason to decline relief.

4. At this stage, the counsel for the petitioner submitted he may be allowed to withdraw the present petition and the application filed therewith and instead be given liberty to approach the first appellate court by way of a review application.

5. The petition and the accompanying application are dismissed as withdrawn with liberty, as prayed for, granted.

6. *Dasti* under the signatures of Court Master.

R.K.GAUBA, J

FEBRUARY 16, 2018

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