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

+ CM(M) 557/2017 & CM No. 19035/2017 (stay)

HARSH LATA AGGARWAL

..... Petitioner

Through: Mr. M.S. Rohilla & Ms. Ruchika
Verma, Advocate

versus

PRABHAKAR SHARMA & ANR

..... Respondents

Through: Mr. Satya Narayan, Advocate for R-1.
Ms. M. Shukla, proxy for Mr. Neeraj
Bansal, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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01.03.2018

The case filed by the petitioner (RC ARC No. 8293/2016), it being a suit for eviction of the first respondent and for recovery of arrears of rent, electricity and water charges was rejected by the Administrative Civil Judge by order dated 23.04.2016. At that stage, the application of the second respondent seeking impleadment in the suit invoking the provision contained in Order 1 Rule 10 of the Code of Civil Procedure, 1908 (CPC) was pending. The said application and the other pending applications consequently became infructuous and stood disposed of. The petitioner challenged the said order of rejection of his plaint before the first appellate court (by RCA 276/2016) which is pending before the District and Sessions Judge of East district. During the course of hearing on the said appeal, the

second respondent moved another application seeking impleadment under Order 1 Rule 10 CPC. The said application was allowed by the first appellate court by order dated 11.04.2017 holding that the second respondent is a necessary party. The said order is challenged by the petition at hand.

After some hearing, the learned counsel for the second respondent whose impleadment in the proceedings arising out of the appeal taken out by the petitioner is under challenge fairly conceded that he not being a party to the Civil Suit at the stage of rejection of the plaint could not have been impleaded in the appeal. Thus, while conceding that the petition seeking setting aside of the order dated 11.04.2017 may be allowed and the application under Order 1 Rule 10 CPC submitted before the first appellate court may be dismissed as withdrawn, liberty is sought by the second respondent for appropriate application for impleadment being moved and necessary relief pressed in the event of the suit being revived.

The petition is allowed, the impugned order dated 11.04.2017 of the first appellate court stands set aside. The application of the second respondent under Order 1 Rule 10 CPC submitted before the first appellate court is dismissed as withdrawn. The second respondent will have the liberty to move an appropriate application for impleadment before the trial Court in the event of the suit being revived.

The petition and the application stand disposed of in above terms.

R.K.GAUBA, J.

MARCH 01, 2018/nk

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