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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ CM(M) 1114/2018 & CM APPL. 37966-37967/2018  
PRITAM KUMARI MAKKAN & ANR ..... Petitioner

Through: Ms. Radhika Arora, Adv.

versus

SUDERSHAN ANAND & ORS ..... Respondent  
Through: None.

**CORAM:**  
**HON'BLE MS. JUSTICE ANU MALHOTRA**

**ORDER**

% **17.09.2018**

**CM APPL. 37967/2018 (Exemption)**

Exemption allowed, subject to just exceptions.

**CM(M) 1114/2018 & CM APPL. 37966/2018**

Vide the present petition, the petitioner assails the impugned order dated 27.07.2018 of the learned ADJ-03, West in Suit No.457/2018 vide which an application under Order 26 Rule 9 of the CPC filed by the petitioner as plaintiff of the said suit was declined. Vide the said impugned order it has been observed to the effect that there was an application previously also filed by the petitioner herein as plaintiff of the said suit under Order 26 Rule 9 of the CPC, which was declined vide order dated 24.04.2018 inasmuch as there was a contention raised through the said application by placing reliance on a legal notice dated 23.12.2016 qua termination of tenancy of defendant nos. 1 & 2 which was in fact not found to be in existence and subsequently it was submitted by the plaintiff that the termination of the tenancy was vide a legal notice dated 18.06.2011 and on

production of the same, the prayer made by the plaintiff i.e. the present petitioner seeking amendment/ correction of the said fact in the plaint was allowed. The copy of the said legal notice dated 18.06.2011 is on the record.

Vide the present petition, the petitioners seek to submit that the respondent nos. 1 & 2 to the present petition have sublet the tenanted premises to the respondent nos.3, 4 & 5 and the petitioners seek the appointment of a Local Commissioner for bringing the said aspect on record. As rightly observed vide the impugned order, it is not for the Court to collect the evidence of either party and it would be for the plaintiff i.e. the present petitioners to prove their own stand.

Reliance is *inter alia* placed on behalf of the petitioner on the verdict of the Hon'ble High Court of Madras in ***P. Moosa Kutty Vs. Unknown***, a verdict dated 16.12.1952 submitting to the effect that an ex parte Local Commissioner can be appointed for ascertainment of the facts in order to assist the petitioner herein to bring forth the true facts on record. As regards the aspect that an ex-parte receiver can be appointed, there is no dispute to the said proposition.

Taking into account, however, the factum that the legal notice is stated to have been issued on 18.06.2011 and the suit has been instituted in the year 2018, the contention now of the petitioner that a Local Commissioner be appointed in order to ascertain the existence of such tenancy in the tenanted premises has rightly been rejected by the learned trial Court with it having observed to the effect that it is for the plaintiffs to prove their own case and the prayer made seeking the setting aside of the impugned order dated 27.07.2018 is declined.

Vide the impugned order, it has been observed to the effect that for the last two dates of hearing, the plaintiff had not taken steps for service of the defendants and summons of the suit were thus directed to the defendants on taking of steps by the plaintiff subject to cost of Rs.2,000/- to be deposited in the DLSA with the matter having been renotified for the date 16.10.2018.

During the course of submissions made on behalf of the present petitioners, learned counsel for the petitioners submits that she seeks to move an application before the learned trial Court to seek police protection to visit the premises in question to bring forth her submissions on record and till consideration of such application by the learned trial Court, the operation of the impugned order to the extent that it directs issuance of summons of the suit to the defendants as per terms thereof returnable for the date 16.10.2018 be stayed. To this limited extent that the prayer is made on behalf of the petitioners that the petitioners seek to move an appropriate application before the learned trial Court to seek police protection to visit the premises in question and that the process may not be issued till consideration of the said application, the prayer made by the petitioners is allowed. The issuance of the process thus for the date 16.10.2018 as directed vide the impugned order dated 27.07.2018 is stayed till the date 16.10.2018.

The petition is disposed of accordingly.

**ANU MALHOTRA, J**

**SEPTEMBER 17, 2018/vm**