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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ C.R.P. 223/2018 & CM APPL. 42388-42390/2018
VINOD KUMAR Petitioner

Through: Mr. DK Sharma, Adv.

versus

HARGIRI GOSWAMI Respondent
Through:

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA
ORDER
% **10.10.2018**
CM APPL. 42390/2018(Exemption)

Exemption allowed, subject to just exceptions.

CM APPL. 42389/2018

This is an application filed on behalf of the petitioner seeking condonation of 5 days delay in filing the petition through which it has been submitted that the counsel for the applicant could not keep track of the case due to his ill health. Taking the same into account, the delay in filing the petition is condoned.

C.R.P. 223/2018 & CM APPL. 42388/2018

Submissions have been made on behalf of the petitioner. vide the present petition, the petitioner assails the impugned order dated 22.05.2018 of the learned Court of the ACJ/CCJ/ARC (North) in CS No.538369/2016 vide which an application under Order 1 Rule 10 of the CPC filed by the applicant i.e. the petitioner herein seeking to be

arrayed as a party to the said suit titled '*Har Giri Goswami Vs. Urmil*' was declined observing to the effect that the applicant i.e. the petitioner herein who claimed his right derived from a mortgage agreement, which mortgage agreement was not even produced on record and copy of which was also stated to have been lost, could seek redressal by institution of a separate independent suit and that there was no reason to burden the proceedings in CS No.538369/2016 which was filed by the plaintiff thereof claiming to be owner of the suit property against the defendant thereto, observing *inter alia* to the effect that the learned trial Court found the application to be false and frivolous and filed in order to prolong the proceedings.

On behalf of the petitioner reliance has been placed on a document i.e. an authority letter/NOC which is not even dated, executed by allegedly the respondent to the present petition i.e. the plaintiff of CS No.538369/2016 authorizing Mr. Vinod Kumar, s/o late Shri Jeet Singh i.e. the present petitioner to take the entire rental amount of the property bearing No.2/7, First Floor, Indra Vikas Colony, Delhi-09 from Smt. Urmil arrayed as the defendant to the said suit w.e.f. 13.09.2016 till Mr. Hargiri Goswami redeemed the mortgaged property after repayment of the entire amount. Reliance is also sought to be placed on behalf of the petitioner herein on a receipt of rent dated 15.08.2016, in which the applicant herein is stated to have received a sum of Rs.2,31,000/- @ Rs.10,000/- for the period 13.09.2016 to 13.07.2017 and Rs.11,000/- for the period 13.08.2017 to 13.06.2018 for the premises 2/7, first floor, Indra Vikas Colony,

Delhi-9 with it having been stated that he has received this amount as the property in question has been mortgaged to him by Mr. Hargiri Goswami who introduced him to the petitioner herein and authorized him to collect the rent till the mortgaged property was redeemed by Mr. Hargiri Goswami. It is essential to observe that this rent receipt dated 15.08.2016 annexed as Annexure-C to the present petition does not even state from whom the amount of Rs.2,31,000/- had been received @ Rs.10,000/- for the period as detailed therein as depicted hereinabove. It has been submitted on behalf of the petitioner by the learned counsel for the petitioner that there are signatures however of the defendant to the said suit CS No.538369/2016 on the same and that in the event of the prayer made by the petitioner seeking to be brought on record as a party to the said suit was not allowed, it would create multiplicity of litigations and the applicant's rights qua the property in question would be defeated.

In view of the factum that there was a mortgage of the property evicted by the plaintiff of the said suit in his favour, on a consideration of the submissions made and the record produced, taking into account also the aspect that the original mortgage agreement has not been produced and even the copy thereof has not proved to be in existence with the receipt of rent dated 15.08.2016 of alleged rent having been received by the petitioner from the defendant to the civil suit, the stated tenant without it even having been so stated that the rent was received from the said defendant pursuant to an authority letter executed allegedly by the plaintiff of

CS No.538369/2016 in favour of the petitioner, it is apparent that there is no infirmity whatsoever in the impugned order.

The petition and the accompanying application is thus dismissed.

ANU MALHOTRA, J

OCTOBER 10, 2018

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