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

+ W.P.(CRL) 2175/2015, CRL.M.A. 14296/2015

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..... Petitioner

Through: Mr. Rajeev Khosla and Mr. H.S.
Sodhi, Advocates.

Versus

STATE OF NCT OF DELHI & ORS

..... Respondents

Through: Mr. Piyush Singhal, Advocate for Mr.
Ashish Aggarwal, ASC for State with
SI Prakash, PS-Sadar Bazar.
Mr. Tahir Ashraf Siddiqui, Advocate
for R-2.
Ms. Rebecca M. John, Senior
Advocate, Amicus Curiae.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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17.12.2018

In this writ petition, the petitioner seeks restoration of his property which is occupied by respondent No.2. The petitioner has filed a complaint against her apropos alleged trespass into his property.

Ms. Rebecca M. John, the learned *Amicus Curiae* has been heard. She states that the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, 1950, would be sparingly exercised in disputed questions of fact, as raised in the present case. She submits that insofar as respondent No. 2 states that she was in possession of three rooms and not only one room, although, in an eviction suit by the petitioner, she had admitted that she was in possession of only one rented room, there is a

disputed question of fact. She relies upon the judgment of the Supreme Court in **Roshina T. Vs. Abdul Azeez K.T. & Ors.** 2 in Civil Appeal No. 11759 of 2018 decided on 03.12.2018, which held *inter alia*:-

“2. This appeal is filed against the final judgment and order dated 30.08.2017 passed by the High Court of Kerala at Ernakulam in Writ Petition (C) No. 15385/2017 whereby the Division Bench of the High court allowed the writ petition filed by respondent No. 1 herein and directed the appellant herein, by issuing a writ of mandamus, to restore the possession of the flat in question to respondent No. 1 herein .

10. In our considered opinion, the writ petition filed by the respondent No.1 under Article 226/227 of the Constitution of India against the appellant before the High Court for grant of relief of restoration of the possession of the flat in question was not maintainable and the same ought to have been dismissed in limine as being not maintainable. In other words, the High Court ought to have declined to entertain the writ petition in exercise of extra ordinary jurisdiction under Article 226/227 of the constitution for grant of reliefs claimed therein.

11. It is not in dispute that the relief for which the writ petition was filed by respondent No.1 herein against the appellant pertained to possession of the flat. It is also not in dispute that one Civil Suit No. 807/2014 between the appellant and the respondent No.1 in relation to the flat in question for grant of injunction was pending in the Court of Munsif private individuals and both are claiming their rights of ownership and possession over the flat in question on various factual grounds.

12. In the light of such background facts arising in the case, we are of the considered opinion that the filing of the writ petition by respondent No. 1 herein against the appellant herein under Article 226/227 of the Constitution of India in the High Court, out of which this appeal arises, was wholly misconceived.

13. This question as to who is the owner of the flat in question, whether respondent No. 1 was/is in possession of

the flat and, if so, from which date, how and in what circumstance, he claimed to be in its possession, whether his possession could be regarded as legal or not qua its real owner etc. were some of the material questions which arose for consideration in the writ petition.

14. These questions, in our view, were pure questions of the fact and could be answered one way or the other only by the Civil Court in a property constituted civil suit and on the basis of the evidence adduced by the parties but not in a writ petition filed under Article 226 of the Constitution by the High Court.

15. It has been consistently held by this Court that a regular suit is the appropriate remedy for settlement of the disputes relating to property rights between the private persons. The remedy under Article 226 of the Constitution shall not be available except where violation of some statutory duty on the part of statutory authority is alleged. In such cases, the Court has jurisdiction to issue appropriate directions to the authority concerned. It is held that the High Court cannot allow its constitutional jurisdiction to be used for deciding disputes, for which remedies under the general law, civil or criminal are available. This Court has held that it is not intended to replace the ordinary remedies by way of a civil suit or application available to an aggrieved person. The jurisdiction under Article 226 of the Constitution being special and extraordinary, it should not be exercised casually or lightly on mere asking by the litigant.”

Formal charges are yet to be framed by the learned Trial Court.

Disputed questions of fact, as may be, would be looked into by the learned Trial Court.

In the circumstance, the learned Trial Court is requested to complete the trial and dispose-off the case bearing FIR No. 333/2015 registered under sections 448/380/34 IPC at Police Station Sadar Bazaar, by 31st March, 2019, especially keeping in view the fact that the *lis* between the parties has

been pending for many years; earlier the dispute covered a civil suit between the parties.

In view of the above, at this stage, the learned counsel for the petitioner submits that he would not like to press the petition any further.

The Court expresses its gratitude to the learned *Amicus Curiae* for her assistance.

The learned counsel for the parties submit that they will not seek any adjournment in the matter, on any date whatsoever.

Nothing stated in this order shall be deemed to be an adjudication on the merits of the case.

The petition stands disposed-off in the above terms.

NAJMI WAZIRI, J.

DECEMBER 17, 2018

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