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

+ CM(M) 1434/2017 & CM 45989/2017

ANAND KUMAR

..... Petitioner

Through: Mr. Abhishek Kumar with
Mr. Jitender Garg, Advocates

versus

RATTAN KAUR

..... Respondent

Through: Mr. Anil Sharma with Mr. Jaskaran
Singh, Advocates

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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24.01.2018

1. The petition at hand was filed seeking to assail the order dated 08.12.2017 of the Additional District Judge passed on the file of civil suit (CS No. 611790/2016) instituted by the respondent herein (the plaintiff) against herein the petitioner (the defendant) thereby dismissing the application of the latter under Order XVIII Rule 17 of the Code of Civil Procedure, 1908 (CPC).

2. The suit was instituted by the respondent/plaintiff against the petitioner/defendant for the reliefs in the nature of possession and recovery of damages/mesne profits in respect of property described as Flat No.19, Lord Buddha Cooperative Group Housing Society, Paschim Vihar, New Delhi. The defendant is concededly the son of the plaintiff. It appears on account of family discord they have fallen apart and, thus, the plaintiff treats him as an unauthorised occupant of the property of which she concededly is the recorded owner. The plaintiff has sought vacant possession of the said

premises to be handed over to which the defendant would not concede. He seems to be contesting the suit on the ground that there was a formal settlement by virtue of which the property has fallen to his share. Concededly, no document in the nature of said family settlement has so far been shown light of the day, even copy having not been submitted on record. It is stated that the pleadings in regard to the said document have been kept vague, there being no mention even of the date of execution of such document or of it having been registered or stamped in accordance with law.

3. Be that as it may, the case had gone to trial after framing of issues when it was pending on the original side of this Court. It is not disputed that after the plaintiff had examined herself as witness (PW-1), opportunities were given for her cross-examination on several dates in 2015, but the same were not availed. Eventually, the right stood closed by order dated 18.04.2015 recorded by the Joint Registrar (Judicial). The case was subsequently transferred, on account of change of the pecuniary jurisdiction, to the file of district court. The proceedings would reveal that it was taken to the stage of defendant's evidence, the petitioner having examined himself and his father-in-law as two witnesses. The opportunity for defendant's evidence was closed on 14.10.2017.

4. The application under Order XVIII Rule 17 CPC was moved seeking recall of PW-1 for cross-examination after the defendant's evidence had been closed and the petitioner had engaged a new counsel, attributing neglect to the previous counsel. The said application has been dismissed by the Additional District Judge by order dated 08.12.2017 recording observations that default in availing the opportunity granted earlier has not been satisfactorily explained.

5. Though the proceedings do reveal that the petitioner as defendant in the suit has tried to stall the progress of the case to the extent possible and has intentionally caused delay, at the hearing, the counsel for the respondent/plaintiff, on instructions, submitted that he leaves the matter of revival of opportunity to the discretion of the Court on suitable terms to be fixed, one of such terms suggested being that the petitioner/defendant be called upon to pay the user/occupation charges during the pendency of the case, given the admitted position that the property stands in the name of the respondent/plaintiff and that till date there has been no document or any other kind of evidence shown reflecting any interest having been created in the property in favour of the petitioner/defendant.

6. After some hearing, on instructions, the counsel for the petitioner submitted that the petitioner/defendant is ready and willing to deposit with the civil court, without prejudice to his contentions, an amount of Rs.10,000/- per month as user/occupation charges with effect from 01.01.2018, month by month, during the pendency of the suit. The counsel for the respondent/plaintiff agrees to these terms as pre-condition for the opportunity to the petitioner/defendant to cross-examine the plaintiff (PW-1) being revived.

7. In view of the above, the petition is allowed. The impugned order rejecting the prayer under Order XVIII Rule 17 CPC is set aside. The petitioner/defendant is bound by the undertaking about deposit in the civil court of the amount of user/occupation charges at the rate of Rs.10,000/- per month, month by month, by 7th day of each consecutive month during the pendency of the suit, without prejudice to the contentions raised in the matter. The amount deposited shall be kept in interest bearing fixed deposit

receipt in a nationalized bank, the proceeds to be applied in light of findings reached on conclusion of the trial. Subject to strict and scrupulous compliance with the said undertaking, the right of the petitioner/defendant to cross-examine the plaintiff (PW-1) stands revived but with a rider that the petitioner/ defendant would be entitled to only one opportunity for the purpose and to avail the same it shall be his obligation to remain present on the first call of the case with the counsel duly briefed and instructed, ready to proceed with the matter. In case of any default, the right hereby revived shall stand exhausted by virtue of this order itself. The learned trial court is requested to fix a suitable date for such opportunity to be afforded to the petitioner/defendant, after seeking the convenience of both sides.

8. With these directions/observations, the petition and the application stand disposed of.

9. Copy of order be given *dasti* under signatures of Court Master.

R.K.GAUBA, J.

JANUARY 24, 2018

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