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

Decided on: 1st February, 2018

+ CM(M) 1249/2015 and CM APPL.31333/2015 (stay)

SOM DUTT TIWARI

..... Petitioner

Through: Mr. Jaykant Prasad, Advocate

versus

VINOD KUMAR

..... Respondent

Through: Mr. Sitab Ali Chaudhary, Advocate
with Mr. Azharuddin Chaudhary,
Advocate

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The respondent herein concededly was not a party to the civil suit (Suit No.407/08) which was instituted by the petitioner herein on 02.06.2008 against one Pawan Kumar son of Ram Kumar, the prayer in that suit being for the decree in the nature of recovery of possession of premises described as bearing No.248, Block A, Pocket-II, Sector 8, Rohini, Delhi-110085, besides arrears of rent and *mesne* profits. The suit was decided by an *ex parte* judgment dated 24.01.2012 by the Civil Judge. It is undisputed now that the said decree has since been satisfied, possession having been taken over by the first respondent (decree holder) from the said judgment debtor (Pawan Kumar), the

issue of *mesne* profits/damages also having been amicably resolved through mediation.

2. During the execution proceedings, however, the respondent filed objections invoking Order XXI Rule 97 of the Code of Civil Procedure, 1908 (CPC) claiming certain interest in the property. The said objections were dismissed by the Civil Judge by order dated 01.05.2013 in execution proceedings (Execution No.7/2012). The respondent/ objector then preferred an appeal (M-75/2014) in the court of Additional District Judge (ADJ) which has been allowed by judgment dated 25.04.2015 whereby the objections under Order XXI Rule 97 CPC have been remitted to the Civil Judge for fresh consideration and adjudication.

3. In the background facts, it may also be noted that the respondent/objector had earlier filed civil suit (No.590/2008) impleading the petitioner and the said Pawan Kumar as defendants. He, however, withdrew the said suit and it came to be accordingly dismissed as withdrawn by order of Civil Judge on 01.09.2012.

4. After some hearing, the counsel for the respondent/objector fairly conceded that the provision contained under Order XXI Rule 97 CPC has been wrongly invoked by him and that the possession of the subject property now being with the petitioner, he is obliged in law to take independent proceedings in the court of law for the necessary relief. He submits his right to institute such independent proceedings may be protected while the petition is allowed, the impugned judgment of the first appellate court set aside and his objection

petition under Order XXI Rule 97 CPC dismissed.

5. The objection petition of the respondent under Order XXI Rule 97 CPC is dismissed. The impugned order of the first appellate court is set aside. The respondent is at liberty to take out such remedies as may be available to him in law.

6. The petition and the applications filed therewith stand disposed of in above terms.

FEBRUARY 01, 2018

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R.K.GAUBA, J.