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

+ **C.R.P. 27/2024**

VIKAS SHOKEEN

..... Petitioner

Through: Mr. Peeyoosh Kalra, Mr. Rohan
J. Kapoor, Mr. Yashwant S.
Baghel, Mr. Abhinav Shokeen,
Advts. alongwith petitioner in
person

versus

JAYANTA KUMAR BERA

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

% **22.01.2024**

CM APPL. 4000/2024 (Ex.)

1. Allowed, subject to all just exceptions.
2. The application stands disposed of.

CM APPL. 4001/2024 (Delay of 23 days in filing the present appeal)

3. This application has been moved on behalf of the petitioner seeking condonation of delay of 23 days in filing the present appeal.
4. For the reasons stated in the application, the delay of 23 days in filing the present appeal is condoned.
5. The application stands disposed of.

C.R.P. 27/2024 and CM APPL. 3999/2024 (Stay)

6. The petitioner, who was the plaintiff in the main suit bearing CS No. 76848/2016, sought reclaiming of possession of the suit property under Section 6 of the Specific Relief Act, 1963, assailing the



impugned order dated 28.08.2023 whereby the learned ADJ-03, North West District, Rohini Courts, Delhi, dismissed the suit.

7. Learned counsel for the petitioner has pointed out that the property in question had been sold to the petitioner/plaintiff vide Deed of Transfer of Lease dated 24.10.2013 and possession was delivered to him on the same day, which document was registered on 28.10.2013. It is urged that there was a clear deposition of PW-3, who was an immediate neighbour, stating that the locks put up by the petitioner/plaintiff on the suit property had been broken on 26.10.2013 pursuant to which a police complaint was lodged at the behest of the petitioner/plaintiff on 26.10.2023, pursuant to which an FIR bearing No. 330/2013 was registered on 31.10.2013 under Section 448 of the IPC with PS: Bharat Nagar, Delhi.

8. Learned counsel for the petitioner/plaintiff has further urged that the learned Trial Court has wrongly relied on an unregistered mortgage and possession letter dated 02.03.2012, which are Ex.DW1/1 and Ex.DW1/2 respectively, and came to an erroneous and perverse conclusion that the respondent/defendant was in occupation of the premises since 02.03.2012. Perusal of the testimony of DW-2 Sh. Ashok Kumar Santra and DW-3 Sh. Shankar Dhara would go to suggest that they had not affirmed the averments in the affidavits filed in their evidence and at the same time they also denied any knowledge about the contents of the above-noted two documents.

9. Further, one of the stipulations of the alleged unregistered Mortgage Deed dated 02.03.2012 was that the repayment was to be made within 30 months which probably expired sometime in August/September 2015. Learned counsel for the petitioner/plaintiff has pointed out that there was no evidence that any legal notice was



served upon the erstwhile owner of the property.

10. It is borne out from the record that the erstwhile owner of the property was not examined by either of the parties, but in the face of the fact that the registered Deed of Transfer was executed in favour of the petitioner/plaintiff coupled with testimony of PW-3 and the lodging of FIR against the respondent/defendant, the matter requires deeper examination.

11. Since none has appeared on behalf of the respondent/defendant despite advance notice, let fresh notice of the present civil revision petition be issued to the respondent by all permissible modes including *dasti* and *via* approved courier as well.

12. In the meanwhile, respondent/defendant is directed to maintain *status quo* with regard to the possession and title of the property in question and no third party rights shall be created in the suit property till a decision of this Court.

13. Digitized Lower Court Record also be requisitioned before the next date of hearing.

14. Re-notify on 22.03.2024.

DHARMESH SHARMA, J.

JANUARY 22, 2024

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