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

+ **CS(OS) 355/2018**

ANURADHA SEN MOOKERJEE Plaintiff

Through: Mr. Rudra Dutta and Ms. Kashui
Dutta, Advocates (M: 9999775824).

versus

K.S. SAXENA & ANR. Defendants

Through: Mr. P.B.A. Srinivasan and Mr. Abhay
Kumar, Advocates for D-1 (M:
9871643443).
Mr. Shanesh Relaw, Standing
Counsel for SDMC (M: 9810272270).

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

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25.02.2019

I.A. 937/2019 (delay in filing)

1. This is an application filed by Defendant No.1, seeking condonation of delay in filing the written statement. For the reasons stated in the application, the same is condoned. I.A. is disposed of.

I.A. 939/2019 (delay in refiling)

2. Delay in refiling is condoned for the reasons stated in the application. The I.A. is disposed of.

I.A. 17765/2018 (for direction)

3. This is an application moved by the Plaintiff for seeking directions for deposit of the rent, being collected by the Defendant No.1, in this Court. The original owner of this plot was Shri Wazir Singh, who had two heirs, Shri S.S. Saxena and Shri K. S. Saxena. Will dated 16th May, 1974 was executed



by Shri Wazir Singh, under which Shri S. S. Saxena became the owner of the ground floor of the property. He sold the property to the Bhandari family and the Plaintiff premises her right on the sale deed dated 28th April, 2005 executed by the Bhandari family in her favour.

4. It is the Plaintiff's stand that she has bought the ground floor of the property and also owns proportionate share in the land below. Defendant No.1, who is the son of Shri Wazir Singh, has built the first, second and also the third floor of property bearing no. 1/7, Hauz Khas Enclave, New Delhi - 110016. While he resides with his daughter on the first floor of the property, he has given out the second and third floor on rent. The Plaintiff prays in this application for deposit of the rent in this Court on the ground that Plaintiff also owns proportionate share in the land.

5. A Local Commissioner had been appointed on 25th July, 2018 to report as to the number of tenants in the suit property and the amount being received as rent. The said report has been received by the court. The Court has perused various documents including the agreement to sell dated 8th April, 1995 and sale deed dated 28th April, 2005. The Plaintiff's rights, insofar as the proportionate share of land is concerned, would have to be adjudicated by this Court. At this stage, without further evidence, a conclusion cannot be arrived at as to what is the exact share of the Plaintiff in the suit property and whether under the sale deed executed in her favour she gets a share in the land. Thus, at this stage, no direction can be passed directing deposit of rent. However, the Defendant No. 1 is directed to place on record a quarterly statement of accounts, as to the exact amount of rent received, along with bank statements showing such receipt.

6. I.A. is disposed of in the above terms. The observations above shall



not bind the final adjudication in the suit.

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7. It is submitted by the Defendant No.2, that written statement is on record, however, costs in terms of the order of this Court dated 28th November, 2018 have not been paid. Let the costs be paid within two weeks. Both the written statements are taken on record. The replication to the written statements has been filed. Let the affidavit of admission/denial be filed by all the parties.

8. List before the Joint Registrar for marking of exhibits on 5th March, 2019. Any party unjustifiably denying documents would be burdened with costs.

9. List for framing of issues before Court on 13th May, 2019.

PRATHIBA M. SINGH, J.

FEBRUARY 25, 2019/MR