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

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RFA 597/2017

JAGDISH RAI

..... Appellant

Through : Mr.Rajesh Yadav, Ms.Chandrani Prasad, Mr.Anuj Jain, Advocates with appellant in person.

versus

RAM KRISHAN & ORS

..... Respondents

Through : Mr.Deepak Dhingra, Ms.Miranda Solaman, Ms.Rachita Garg, Advocates.

**CORAM:**

**HON'BLE MR. JUSTICE YOGESH KHANNA**

**ORDER**

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**26.02.2020**

**CM APPL.No. 37562/2019**

This order be read in continuation of the order dated 06.02.2020. Vide this application CM APPL.No.37562/2019, the respondent no.3 viz. the wife of respondent no.2 intends to let out a part of the subject property, earlier used by her son for his business, now lying vacant. One of the contentions raised was since it is a dwelling a house its portion cannot be let out for commercial purposes. However the learned counsel for respondent no.3 has filed documents to show the subject property is on a 30 feet wide road with a mixed land use and the ground floor of the property can be used for commercial purposes. The receipts qua the payment of conversion/parking charges w.e.f. 25.11.2014 till 23.01.2018 are also filed on record.

The learned counsel for the appellant then argued clause 4(a) of the Perpetual Lease Deed dated 11.12.1972 says the lessee would not

sell, transfer, assign or otherwise part with the possession of the whole or any part of the residential plot except with the previous consent in writing of the lessor. The learned counsel for the respondent no.3 has agreed to obtain the necessary permissions as required from the DDA prior to letting of the premises. Further 1/3<sup>rd</sup> interest of the appellant shall also be secured by deposit of 1/3<sup>rd</sup> of the rental per month in this Court within a week of receiving the same every month.

Though it was argued the sons of respondent no.3 have various businesses and are earning a huge amount and she also has 1/5<sup>th</sup> in Wazirpur Industrial Area property, but one may refer to paras 3 and 4 of the application which makes out a case for the applicant. Even otherwise, if the property is lying waste/vacant it is always better to use it and earn income from it. The learned counsel for respondent no.3 says she has a tenant which may pay Rs.45,000/- per month approx., hence unless the appellant is able to find a tenant who could pay more than Rs.45,000/- per month, the portion of property be let out by respondent no.3 at the rate of Rs.45,000/- per month or more.

The tenant however shall have to file an affidavit and an undertaking alongwith respondent no.3 that he would vacate the premises within two months from the date per order of this Court.

The application stands disposed of in terms of above.

**CM APPL.No. 43289/2019**

This is an application moved by respondent no.3 for deciding CM APPL No.37562/2019 which has since been disposed of above.

Accordingly, this application stands disposed of.

**RFA 597/2017 & CM APPL Nos.35091/2018, 49952/2019, 7658/2020**

CM APPL.No.35091/2018 is an application under Order *XLI* Rule 27 CPC for filing on record additional documents. The learned counsel for the respondent intends to file a reply. Be filed within two weeks from today.

The learned counsel for the appellant also presses CM APPL.No.49952/2019 for directing the respondent to file on record the lease deeds executed in respect of the premises viz. Plot No.5, Block-A, Wazirpur, New Delhi. The counsel for respondents no.1 and 4 have not appeared, hence Court notice(s) be issued to them to answer this query for 17.09.2020.

**YOGESH KHANNA, J.**

**FEBRUARY 26, 2020**

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