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**HIGH COURT OF DELHI : NEW DELHI**

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**C.M(M) Nos. 33, 34, 35 of 2008**

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**Date of decision: 08.01.2008**

Ravi Khanna

.....Petitioner

Through: Mr. R. K. Gupta, Advocate

versus

Shri Amrit Singh

..... Respondent

Through:

**CORAM:**

**HON'BLE MR. JUSTICE VIPIN SANGHI**

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

**VIPIN SANGHI, J**

CM Nos.272/2008, 274/2008 & 276/2008

Allowed, subject to all just exceptions.

C.M.(M) No.33/2008 & CM No.271/2008

C.M.(M) No.34/2008 & CM No.273/2008

C.M.(M) No.35/2008 & CM No.275/2008

1. These petitions have been filed by the petitioner against the common order passed by the Additional Rent Controller, Delhi in Eviction Case Nos.1378/2006, 1379/2006 & 1380/2006, wherein the

petitioner herein is the respondent/tenant. The eviction petitions have been filed by the landlord on various grounds including those under Sections 14(1) (c), (d), (e) & (h) of Delhi Rent Control Act (in short 'Act').

2. The petitioner moved an application under Section 11 of the CPC in all the aforesaid eviction petitions contending that the petitions under Sections 14(1) (c), (d), (e) & (h) of the Act were not maintainable as it had already been determined in another suit bearing No.974/1996 between the same parties titled “Ravi Khanna vs. Amar Singh & Ors.”, decided by Sh. S.N. Dhingra learned ADJ, Delhi, as his lordship then was on 21.11.1998, that the premises had been let out for commercial purposes. It was thus contended that the finding of the commercial purpose of letting recorded in suit No.974/1996 was *res judicata* and precluded the respondent/ landlord from contending that the purpose of letting was residential. The petitioner moved another application in two of these eviction cases namely E-1379/2006 and 1380/2006 seeking condonation of delay in filing the list of witnesses. In eviction case No.1378/2006 an application was moved seeking refund of the excess amount deposited by the petitioner on account of the modification of the order dated 12.09.1997 whereby the petitioner was directed to pay the rent @ Rs.2178/- per month w.e.f. 09.06.2003. As aforesaid all these applications have been dismissed by the learned ARC by the

impugned common order dated 15.11.2007.

3. So far as the ground of *res judicata* raised by the petitioner is concerned, the learned Rent Controller has not accepted the petitioners submission and, in my view, rightly so. The petitioner has relied on the decision in suit No.974/1996 dated 21.12.1998. A perusal of the said judgment shows that it was rendered in a suit filed by the petitioner claiming damages from the respondent on the ground that the respondent/landlord has disconnected the electricity supply to the petitioner's tenanted premises due to which he had incurred losses. The only two issues that were framed were as follows: -

- “1. Whether the plaintiff is entitled to recover the damages of Rs.1,05,000/-? O.P.P.
2. Relief.”

4. In those proceedings it had come on record that the premises were situated in a residential area and the electricity connection was also a domestic one. In fact, in that case the issue that came up for consideration before the Court was whether the respondent/ landlord was responsible for the disconnection of the electricity to the tenanted premises and on the said issue the Court come to a finding that the disconnection was not on account of the respondent but on account of the meter getting burnt due to overloading. Thus the suit of the petitioner herein was dismissed. The petitioner places reliance

on para 7 of the said decision, wherein the court had made the following observation:

*"It **seems** that plaintiff took the premises on rent for running Fabrication Unit and he was knowing fully well that the premises was situated in residential area and was having domestic electricity connection." (emphasis supplied)*

5. From this observation it cannot be said that the Court returned a definite finding that the purpose of letting was not residential. The use of the expression 'seems' only suggests that the Court did not give a definite finding of fact to this effect. At best it was a prima facie inference drawn by the Court. In fact, the defence of the respondent/landlord in that suit was that he was residing abroad and taking advantage of his absence the petitioner/tenant had started to use the premises for non-residential purposes. The Court in the said Judgment, in any case, has not returned a finding that the purpose of letting was non-residential. At best, it only shows that the premises was being used for non-residential purposes. It is well-settled that merely because the tenant starts using the premises for non-residential purposes, though it was initially let out for residential purposes, does not non-suit the landlord from seeking eviction on the ground that the premises was let out for residential purposes. In my view the ARC rightly held that the said decision in suit No.974/1996 did not operate as *res judicata* since there was no issue raised or decided with regard to the purpose of letting in the said suit.

6. Turning now to the consideration of the two applications filed in eviction petition Nos.1379/2006 and 1380/2006 seeking condonation of delay in filing the list of witnesses I find that the learned ARC has rightly rejected the said applications. In these cases the evidence of the respondent/landlord was closed on 20.04.2004 and the matter was fixed for the petitioner's evidence on 20.05.2004 with a direction to supply a copy of the petitioner's list of witnesses to the respondent/landlord at least one week in advance. However, no witnesses were examined till 11.10.2004 when the petitioner's evidence was closed. Thereafter, an application under Section 151 CPC was moved by the petitioner and by order dated 11.10.2004 the petitioner was given an opportunity to examine himself while making it clear that the petitioner shall not examine any other witness except himself, as, admittedly, no other witness was present nor summoned for 11.10.2004. This was so directed on 18.10.2005 by the then presiding officer in these eviction petitions.

7. The submission of the petitioner in the applications in question was that the petitioner had given the names of witnesses to his counsel, who had however, failed to file the list of witnesses though he laboured under the impression that the same stood filed. Learned ARC observed that the said assertions were vague as details have not been mentioned about when the petitioner had given the names of the witnesses to his counsel, and how the petitioner and his counsel

got the impression that the list had been filed. I see no infirmity in the reasoning adopted by the learned ARC. The order restricting the petitioner's rights to lead evidence on account of his own defaults had been passed way back on 18.12.2005. Learned counsel for the petitioner states that the petitioner had preferred an appeal before the Tribunal against the said order, which was dismissed as non-maintainable in November, 2005 itself. It is clear that the petitioner slept over the matter and did not take immediate steps even thereafter. From this conduct I am not satisfied that the petitioner has acted *bona fide* in this respect and it appears that the same is a dilatory tactics.

8. So far as the application moved in eviction case No.1378/2006 for refund of excess amount is concerned, learned counsel for the petitioner does not want to press the petition in respect of the said relief.

9. In view of my aforesaid discussions these petitions are dismissed.

January 08, 2008  
Rsk

VIPIN SANGHI, J.