

IN THE HIGH COURT OF DELHI AT NEW DELHI

% **Date of Decision: 29th April, 2008**

+ CM(M) No.116/2008

MOHINI DEVI Petitioner
! Through: Mr. Harish Kumar, Advocate

versus

\$ KIRAN DEVI Respondent
^ Through: Mr. J. Das, Advocate

CORAM:
* **HON'BLE MS. JUSTICE VEENA BIRBAL**

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

* **Veena Birbal, J. (Oral)**

In the present petition, petitioner/tenant has challenged order dated 15.01.2008 by which respondent evidence is closed. It is submitted that petitioner is a tenant of a shop bearing no. L-4/11, Vijay Chowk, Lakshmi Nagar, Delhi-110092 on a monthly rent of Rs. 440/- per month. Eviction petition has been filed against the petitioner which is pending before learned ARC, Karkardooma Court, Delhi. It is stated that respondent/landlord has already led his evidence. It is stated that the case was fixed for the evidence of petitioner/tenant on 16.08.2007. On the said date, the affidavit could not be prepared as father of counsel for respondent was unwell.

Thereafter, another date was given. On the said date also, the counsel for respondent was not available as he was appearing in Uttar Pradesh Higher Judicial Examination. It is further stated that thereafter the matter was adjourned to 15.01.2008. It is stated that on said date, petitioner could not present herself as her husband had died on 31.12.2007 and she was busy in performing the last rites of her husband. It is submitted that without considering the tragedy that had happened with the petitioner, learned ARC has passed impugned order closing her evidence vide impugned order dated 15.01.2008. It is prayed that impugned order may be set aside and respondent be given an opportunity to lead her evidence, otherwise it will materially affect her rights in as much as she will not be able to prove her stand in the case.

Learned counsel for respondent/landlord has not opposed the petition.

There is nothing on record to show that petitioner/tenant is trying to delay the proceedings. There is no observation by learned ARC also to this effect. Petitioner/tenant had a genuine cause in not leading evidence on 15.01.2008. The impugned order materially affects her rights in as much as petitioner/tenant is deprived of getting fair opportunity to prove her defence. In the peculiar facts and circumstances of the case

and in the interest of justice and for effective adjudication of case on merits, impugned order is set aside. Respondent is given one more opportunity as last opportunity to lead her evidence, subject to cost of Rs. 1,000/- which shall be paid to the petitioner. Respondent shall lead her evidence on the date which shall be fixed by learned ARC for her evidence. If on that date, her evidence could not be concluded due to some reasons, not attributable to petitioner/tenant, in that event, learned ARC will adjourn the matter to some other date as per its convenience. Copy of this order be sent to concerned court.

Petition stands disposed of accordingly.

VEENA BIRBAL, J

APRIL 29, 2008

kks/srb