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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: January 12, 2010
Date of Order: February 22, 2010

+ CM(M) 1619/2005

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22.02.2010

Satinder Nath Sharma & Anr.

...Petitioners

Through: Mr. V.K. Sharma, Advocate

Versus

Hari Chand

...Respondent

Through: Mr. P.K. Rawal, Advocate

JUSTICE SHIV NARAYAN DHINGRA

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

JUDGMENT

1. By way of present petition under Article 227 of the Constitution of India, the petitioner has assailed an order dated 19th January, 2005 passed by learned trial court allowing amendment application seeking amendment of the written statement filed by the respondent. (The petitioner hereinafter shall be referred as "landlord" and the respondent as "tenant").

2. Brief facts relevant for the purpose of deciding the present petition are that the landlord filed an eviction petition under Section 14(1)(h) of Delhi Rent Control Act (DRC) against tenant Hari Chand on the ground of subletting the premises in question to a third person without obtaining his consent in writing. The eviction petition was filed in 1978. Issue regarding validity of the order under Section 19 of Slum Areas (I&C) Act, 1956 remained pending first before the High Court and thereafter, on remand back, before the competent authority (Slum). Thus, the petition remained dormant up to 2003 when the permission was again granted by the competent authority. After the petition proceeded further, the tenant made an application under Order VI Rule 17 CPC seeking leave to amend the written statement so as to incorporate in the written statement paragraph 12 regarding developments that had taken place subsequent to filing of eviction petition.

3. The order passed by the trial court would show that the tenant wanted to incorporate the fact that the landlord had tried to obtain possession from tenant by all means and the tenant had

to file a suit for permanent injunction in order to avoid taking of forcible possession. A case under Section 448 Indian Penal Code was also registered. The tenant by way of amendment wanted to incorporate the proceedings of the suit. The tenant also sought to insert averment that the landlord with *malafide* intention of seeking possession of the premises filed a suit for declaration and permanent injunction against Mr. Naseeb Dass and Mr. Hari Chand alleging him to be the tenant in the premises. The tenant also sought to amend the written statement to include the fact that the landlord intended to raise illegal construction. It was submitted that all these facts were subsequent events which were necessary to adjudicate the real controversy.

4. The learned trial court brushed aside all objections raised by the landlord against amendments observing that amendments sought by respondent were material in order to adjudicate upon the issue between the parties. The order of learned Additional Rent Controller is, however, surprisingly silent about the relevancy of the amendment. It is not stated as to how each amendment was necessary or relevant for deciding the issue of subtenancy, which was the subject matter of adjudication before the trial court.

5. In case of an eviction petition, Delhi Rent Control Act provides specific grounds and these grounds are gone into by the ARC. An ARC has to adjudicate if the ground on which eviction is sought is made out or not. If any of the grounds of eviction as enumerated in Delhi Rent Control Act is made out then only he can pass an eviction order, but in case no ground is made out, he has to reject the eviction petition. Thus, the only issue before the learned ARC was whether any part of the premises had been sublet by the respondent without consent of the landlord. In order to adjudicate this issue, none of the amendments sought by the respondent were relevant. Whether the petitioner had tried to take forcible possession or not, whether the petitioner intended to raise the illegal construction or not, whether the petitioner had malafide intention or not, were not the issues before the learned ARC. He had no jurisdiction to devolve upon these issues. Nor he had jurisdiction to go beyond the scope of DRC Act. Every landlord and tenant had legal right to resort to filing suits and to take lawful action against each other. There is no bar put by any law against filing suits and petitions. Institution of suits by the landlord or tenants in respect of matters not concerned with sub-tenancy could have no relevancy in this matter. The learned ARC was supposed to apply his mind on the nature of amendment sought and how the amendment was relevant for the purpose of adjudicating the issue of subletting. The learned ARC in this case seems to have abdicated his function of deciding an application on merits and did not exercise his jurisdiction.

6. The order passed by learned trial court is set aside being contrary to law. None of the amendments sought by the respondents are necessary to adjudicate the issues of subtenancy.

The application of respondent under Order VI Rule 17 CPC is hereby dismissed. The petition stands allowed in above terms.

February 22, 2010
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SHIV NARAYAN DHINGRA J.