

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

% Judgment pronounced on: August 29, 2013

+ **CM(M) No.1353/2012 & C.M. No.20719/2012**

CRI LTD

..... Petitioner

Through Mr.B.B. Sawhney, Sr. Adv. with
Mr.Dipak Kumar Jena, Mr.Lakshay
Sawhney & Mr.Sunil Kumar, Advs.

versus

PRAN MEHTA & ORS

..... Respondents

Through Mr.Anil Kumar Gputa, Adv. with
Mr.P.P.Ahuja, Adv. for R-1 to R-5.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The present petition has been filed by the petitioner under Article 227 of the Constitution of India against the order dated 22nd November, 2012 passed by the learned Rent Control Tribunal, Delhi in RCT Appeal No.76/2012 whereby the appeal was partly allowed. The other part of the order was decided against the petitioner which has been challenged before this Court.

2. The evidence of respondents No.1 to 5 was completed on 13th March, 2008. The petitioner also closed its evidence. Thereafter, the petitioner filed an application under Section 151 CPC for recalling of witnesses AW-1 to AW-6 for cross-examination on the grounds mainly the petitioner's appeal against the order dated 23rd July, 2008 was allowed by the Rent Control

Tribunal by directing to take all the documents on record and on 4th September, 2012 the petitioner filed an affidavit of Mr. V.P. Khetan DW-1 before Rent Control Tribunal to prove additional documents which were exhibited as Exh.DW-1/1 to DW-1/60.

3. Since the witnesses of the respondents had been examined prior to the said documents being on record and there had been no occasion for the petitioner to confront the same being additional document, therefore, the petitioner wished to cross-examine AW-1 to AW-6.

4. The contention of the respondents before the learned trial Court was that since the evidence of the petitioner had already been closed, the petitioner cannot be allowed to recall any witness. It is done by the petitioner in order to delay the matter. The said documents were already exhibited by the witnesses of the petitioner. The Addl. Rent Controller dismissed the application for recalling the witnesses of the respondents/landlords vide order dated 29th September, 2012.

5. The said order of the Addl. Rent Controller was challenged by the petitioner in appeal under Section 38 of the Delhi Rent Control Act, 1958 (hereinafter called the "DRC Act") being RCT Appeal No.76/2012. The Rent Control Tribunal by order dated 22nd November, 2012 partly allowed the appeal to the extent that AW-6 Pran Nath Mehta who is respondent No.1 herein be called for further cross-examination by the petitioner subject to cost of ₹10,000/- and one single opportunity was granted in this regard. It was also clarified in the order passed in appeal that the cross-examination would be confined to the documents which were filed by the petitioner.

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6. The impugned order of the Rent Control Tribunal has been assailed by the petitioner in the present petition filed under Article 227 of the Constitution of India.

7. Mr.B.B.Sawhney, learned Senior counsel appearing on behalf of the petitioner has argued that the Rent Control Tribunal has incorrectly held in last para of the order wherein it was clarified that the cross-examination would be confined to the documents only, and further, only one single opportunity was granted to the petitioner. It is stated by him that the landlord took several adjournments before the Addl. Rent Controller. At least the main witnesses of the contesting respondents/landlords ought to have been allowed to be cross-examined by the petitioner. The Rent Control Tribunal ought not to have confined the cross-examination to the documents which were filed by the petitioner. In nut-shell, his submission is that the other witnesses would have also been allowed to be recalled for the purpose of cross-examination. In support of his submissions, learned Senior counsel has relied upon a decision in the case of *National Agro-Chemical Industries Ltd. vs. National Research Development Corporation*, 118 (2005) DLT 653 wherein it was held that:-

“7. As a matter of fact, the harmonious construction of procedural rules leaves no doubt that Court at any stage of a suit may recall any witness who has been examined and we may say that the examination includes cross-examination as well. The aforesaid rule postulates that when a witness has been examined, the Court at any stage of the suit may recall the said witness but that final stage of examination (which includes complete cross-examination) is under a question mark in this case. Therefore, in such cases, in our view, the Court will have the power to order for recall of such a witness for the

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purpose of examination which includes cross-examination, when it is brought to the notice of Court....”

8. Learned counsel for respondents No.1 to 5, on the other hand, argued that despite of one more opportunity having been granted to the petitioner by the Tribunal, still the petitioner has challenged the said order without having valid reason. He submits that it is done by the petitioner in order to delay the proceedings pending before the Addl. Rent Controller which are pending for the last more than a decade.

9. In fact, it is true that the matter was at the stage of final arguments when the application was filed by the petitioner for recalling of the witnesses examined by the respondents for the purposes of cross-examination. Earlier the same very witnesses were cross-examined, though some of the documents were exhibited in the absence of the counsel. Total six witnesses were examined by the respondents, out of whom five witnesses were from Sales Tax Department. AW-6 is only the main witness of the respondents who was allowed to be cross-examined by the impugned order. The examination-in-chief of two witnesses of the respondents was recorded in the presence of the counsel for the petitioner and, therefore, it is incorrect to say by the petitioner that the documents were exhibited in the absence of the counsel. It is also a matter of fact that no such liberty was granted in appeal for cross-examination of six witnesses as alleged by the petitioner.

10. After considering the overall facts and circumstances of the case, I am not inclined to interfere with the order passed by the Rent Control Tribunal, except to the effect that the cross-examination of AW-6 Pran Nath Mehta would be conducted by the petitioner in view of the material already on



record. The prayer for recalling the other witnesses for the purpose of cross-examination has been rightly rejected by the learned trial court who had partly allowed the appeal in favour of the petitioner with the above said clarification. The present petition is accordingly disposed of, by modification of the impugned order dated 22nd November, 2012 only to the extent that the Addl. Rent Controller will fix up some date for cross-examination of AW-6 Pran Nath Mehta who will be allowed to be cross-examined by the petitioner on the documents already placed on the record. Incase the cross-examination of AW-6 is not completed on the date fixed, another date be fixed for the same purpose. No further orders are required to be passed.

11. The present petition alongwith pending application stand disposed of.


(MANMOHAN SINGH)
JUDGE

AUGUST 29, 2013