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IN THE HIGH COURT OF DELHI AT NEW DELHI

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C.R.P. 72/2015

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Decided on: 15th May, 2015

ABDUL WAHAB & ORS

..... Petitioners

Through: Mr. Javed Ahmad and Mr. Abdul
Wajid, Advocates.

versus

SARFARAZ ALI KHAN

..... Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J (ORAL)

CM No.8939/2015 (Exemption)

Allowed, subject to all just exceptions.

CM No. 8940/2015 (Delay in filing)

For the reasons stated in the application the delay of 35 days in filing the petition is condoned.

Application is disposed of.

C.R.P. 72/2015

1. Aggrieved by the order dated 11th December, 2014 whereby the application under Order 12 Rule 6 CPC was dismissed, the Petitioners prefer the present petition.

2. Petitioners filed a suit for possession against Sarfaraz Ali Khan claiming that Smt. Chameli Devi Gupta was the original owner of the suit property which devolved on her two legal heirs, that is, Mool Chand and Gian Chand, who sold their half undivided shares each in the property to

Nasiruddin and Mst. Amina Begum. Nasiruddin and Amina Begum passed away leaving behind Mohd. Akbar, Mohd. Yahya, Mst. Parveen Begum, Mst. Yasmeen Begum, Mohd. Imran, Mst. Saira Bani and Mohd. Akram as legal heirs who sold the suit property, that is, a shop on the ground floor in property No.509, Tokriwala, Churiwala, Jama Masjid, Delhi to the Petitioners/Plaintiffs. The said shop when purchased had already been let out to the Defendant/Respondent by Smt. Chameli Devi Gupta. The Defendant in order to harass the family members of late Chameli Devi Gupta forged and fabricated a Sale Agreement dated 13th August, 1996. The Defendant had also filed a civil suit for permanent injunction against Mool Chand, Gian Chand, Shakuntala Devi and Smt. Anita but withdrew the same and filed a suit for specific performance of the contract in 1999 against them. The said suit is still pending before the learned Civil Judge and the Plaintiffs/Petitioners are also the Defendants in the said suit being Defendant Nos. 5-A, 5-B and 5-C. It is stated that since the filing of the civil suit, the Defendants neither paid nor tendered any rent to the landlord nor deposited the rent in Court and relies upon the alleged forged agreement which is not a registered document.

3. In the written statement Sarfaraz Ali Khan stated that the suit was not maintainable and was liable to be stayed under Section 10 CPC in view of the suit filed by him titled as 'Sarfaraz Ali Khan vs. Mool Chand and others' for specific performance of the contract and injunction pending before the learned Civil Judge. It was also stated that the suit was barred under Section 50 of the Delhi Rent Control Act, 1958 (in short 'the DRC Act'). Further the Petitioners had earlier filed an eviction petition under Section 14 (1) (e) of DRC Act which petition was withdrawn vide order dated 9th December 2013.

The valuation of the suit with regard to the court fee and jurisdiction was not proper and the suit was pre-mature as no objection from the competent authority under the Slum Areas (Improvement and Clearance) Act, 1956 has not been obtained.

4. In the written statement the only admission was to the extent that Smt. Chameli Devi Gupta was the owner of the suit property and the Defendant along with Naseem Jahan was inducted as a tenant in the shop bearing No.509 however, during her lifetime to meet her basic financial needs Chameli Devi agreed to sell the two shops bearing No.509 and 512 to the Defendant for a total consideration of Rs.1 lakhs and out of the same she received a sum of Rs.80,000/- and executed an Agreement to Sell dated 13th August, 1996. The balance amount of Rs.20,000/- was payable at the time of execution and registration of the Sale Deed for which a suit for specific performance has already been filed as the legal heirs of Chameli Devi became dishonest and were not willing to execute the Sale Deed. It is further claimed that the last rent paid to Mool Chand, son of Chameli Devi Gupta being @ Rs.133/- per month the tenancy was protected under the provisions of DRC Act besides the Defendant's right to get the Sale Deed executed and registered in respect of Shop No.509 and 512.

5. On the basis of averments in the written statement and the Defendant having filed the suit for specific performance of Agreement to Sell and pleading the bar of Section 50 DRC Act and the fact that the Petitioners in the suit did not disclose that they had earlier filed a petition for eviction which was withdrawn, the Court dismissed the application.

6. I have heard learned counsel for the Petitioner.

7. It is trite law that for passing a judgment on admission under Order 12 Rule 6 CPC the admission has to be clear and unambiguous. In the present case the Defendant has challenged the maintainability of the suit in view of the protection under the provisions of DRC Act. Further the Plaintiffs had earlier filed an eviction petition under Section 14 (1) (e) read with Section 25B of the DRC Act which they withdrew with liberty to file a fresh petition on the same cause of action in accordance with law. There is no averment in the plaint that the rent of the premises is more than Rs.3,500/- per month which is admitted. Hence there is no clear unambiguous admission which would warrant a judgment to be passed by the Civil Judge in the suit filed by the Petitioners on the basis of admissions of the respondent.

8. I find no infirmity in the impugned order.

9. Petition is dismissed.

(MUKTA GUPTA)
JUDGE

MAY 15, 2015
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