

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

+ **CM(M) 468/2015**

% Decided on: 19th May, 2015

MANJU MEHRA & ANR Petitioner
Through Mr. Pramod Ahuja, Adv.

versus

DEV PRATAP SEONIE & ORS Respondent
Through

Coram:
HON'BLE MS. JUSTICE MUKTA GUPTA
MUKTA GUPTA, J. (ORAL)

CM 9253/2015

Exemption allowed subject to just exceptions.

CM(M) 468/2015 & CM 9254/2015 (stay)

1. Vide order dated 23rd March, 2015 which is impugned in the present petition the respondents in eviction petition No. 23/2012 were permitted to place on record the certified copy of the lease deed and to exhibit the same subject to opportunity of rebuttal by the petitioner at an appropriate stage subject to a cost of ₹5000/- to be paid to the petitioner.
2. Dev Pratap Seonie, Harsh Pratap Seonie and Varun Pratap Seonie filed an eviction petition against the petitioners Mrs. Manju Mehra and Karan Mehra seeking eviction of shop No. 9, Block No.171, Sunder Nagar Market. In the eviction petition it was claimed that the tenancy was old and

the same was let out to Shri J.K. Mehra who was the husband of Smt. Manju Mehra and father of Karan Mehra in the year 1963 and after the death of Shri J.K. Mehra, Manju Mehra and Karan Mehra have been accepted as tenants by Dev Pratap, Harsh Pratap and Varun Pratap. It was stated that the shop was required by Dev Pratap for his son Sanjay and daughter-in-law Sakshi who were dependent on him as they wanted to set up a boutique business from the tenanted premises. The daughter-in-law of Dev Pratap was qualified in the field of fashion retail management and technology and Dev Pratap had no other accommodation to start the business.

3. Written statement was filed by the petitioners Manju Mehra and Karan Mehra, inter alia, pleading that all necessary and proper parties to the eviction petition had not been impleaded. Details of other accommodations available have not been given. Original documents have not been filed with the eviction petition and the lease agreement was by the firm M/s. Ellora and not in individual capacity etc.

4. An application was filed by Dev Pratap seeking leave of the Court for placing on record certified copy of the registered lease deed dated 25th September, 1961 executed between late Shri S.P. Seonie and late Shri Jugal Kishore Mehra and permission to the applicant to exhibit the said lease deed in support of his evidence given by him by evidence affidavit dated 26th February, 2014. It was stated that the said lease deed was not available with Dev Pratap and after untiring efforts the lease deed dated 25th September, 1961 was finally located and traced for the first time by the concerned staff of Department of Archives, Govt. of NCT Delhi and thus soon thereafter a certified copy was applied on 22nd May, 2014 which was made available on 5th June, 2014. The lease deed would prove beyond doubt that lease of the

tenanted premises was executed between late Shri S.P. Seonie and late Shri J.K. Mehra in individual capacity and not by the firm M/s. Ellora as urged in the written statement.

5. In reply to the application the petitioners contended that the lease deed was not filed with the eviction petition and Order XIII Rule 2 CPC having been deleted the document could not have been filed now by the respondent. The evidence by way of affidavit had already been tendered by the respondents and hence the trial has begun and no additional affidavit can be permitted at this stage.

6. Declining the contentions of the petitioner, the learned ARC vide the impugned order held that Order VII Rule 14 CPC provides that the document which ought to be produced in Court by the plaintiff when the plaint is presented or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly shall not without leave of the Court be received in evidence on his behalf at the hearing of the suit. Since the petitioners have challenged the fact that the tenanted premises was let out to J.K. Mehra husband of petitioner No.1 and father of petitioner No.2 the validity of the lease deed was an important issue and at appropriate stage petitioner would be at liberty to rebut the same, hence the application was allowed subject to cost of ₹5000/- to be paid to the petitioners.

7. Learned counsel for the petitioner states that no application under Order VI Rule 17 CPC is permissible after the trial starts and hence permitting filing of the additional document would amount to permitting evidence without amending the plaint and since the trial has begun the same is impermissible. Order XIII Rule 2 CPC stands deleted. Since the

respondents have now taken a different stand, the petitioner will have to amend his written statement, thus the impugned order be set aside.

8. As noted above in the eviction petition itself the case of Dev Pratap, Harsh Pratap and Varun Pratap was that the tenanted premises was let out to Shri J.K. Mehra and after his death Manju Mehra and Karan Mehra have been accepted as the tenants. It was the defence of the petitioners that Shri J.K. Mehra was having firm namely M/s. Ellora and from the said firm the respondents had been accepting the rent after issuing acknowledgement receipts of the rent and the firm having not been impleaded as necessary and proper party, the eviction petition was bad for non-joinder of necessary parties and thus liable to be dismissed. Since the respondents have not sought amendment of the eviction petition as they have not changed their stand and they have only placed on record now the certified copy of the lease deed in support of their contention, merely because on receiving this document in evidence, the stand of the petitioners in written statement is belied, or that the petitioner has to amend his written statement is not a ground to reject receiving this document which is necessary to determine the real controversy between the parties. .

9. Under Order VI Rule 17 amendment to the plaint or written statement is also permissible after the trial has commenced if the party is able to show that despite due diligence the party could not raise the matter before commencement of trial. Further Order XVII Rule 14(3) permits a party to produce or prove in evidence a document with the leave of the Court which has not been presented along with the plaint or entered in the list of witnesses. Thus deletion of Order XIII Rule 2 CPC has no effect.

10. As noted above the original lease deed was not in possession of Dev Pratap. He tried to locate the same and finally it was traced by Department of Archives, Delhi and thus a certified copy was applied on 22nd May, 2014 which was received on 5th June, 2014 where after the application was filed. There being no illegality in the impugned order the present petition and application are dismissed.

(MUKTA GUPTA)
JUDGE

MAY 19, 2015
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