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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision : 12th August, 2015

CM(M) 719/2015

RAJENDER KANAUIA

..... Petitioner

Through: Mr.Sachin Chopra, Advocate with
Mr.A.K.Chopra, Advocate

versus

ASHA RANI GUPTA

..... Respondent

Through: Mr.Sunil Malhotra, Advocate

PRATIBHA RANI, J. (Oral)

CM(M) 719/2015

1. The grievance of the petitioner/tenant (respondent in Eviction Petition No.8/2013) is that the learned Trial Court, in order to ensure compliance of order dated 14th August, 2014 passed by this Court in RC.Rev.No.271/2014, has practically denied opportunity to the petitioner/tenant to lead evidence.
2. In order to bring home this point Mr.Sachin Chopra, learned counsel for the petitioner/tenant has placed on record the copies of the proceedings before learned Trial Court to highlight that in fact it was the respondent/landlady (petitioner in Eviction Petition No.8/2013) who has taken most of the time to lead evidence not only after passing of order dated 14th August, 2014 in RC. Rev.No.271/2014 to decide the eviction petition in a time bound manner. Even after the amendment of the eviction petition and filing of the written statement to the amended petition, the respondent/landlady has consumed the entire time to lead evidence.

3. Another grievance of the petitioner/tenant is that on 01st August, 2015 when four applications filed by him were listed for hearing before learned Rent Controller, lawyers were abstaining from work. Despite that without giving an opportunity to the counsel to address arguments on all the four applications, the same have been dismissed and very short adjournments have been given for name sake just to show that three opportunities have been availed by the petitioner/tenant to lead the evidence.

4. Mr.Sachin Chopra, learned counsel for the petitioner/tenant has submitted that in the light of above facts it is necessary that the effective opportunity should be given to the present petitioner to conclude his evidence in Eviction Petition No.8/2013.

5. Mr. Sunil Malhotra, learned counsel for the respondent/landlady has submitted that vide order dated 1st August, 2015 though the lawyers were abstaining from work, the learned Trial Court dealt with all the applications in detail. It has been further submitted by the learned counsel for the respondent/landlady that as per direction of this Court the Execution Petition No.8/2013 was to be decided within one year from the date of receipt of the copy of the said order. Learned Trial Court is just trying to comply with the order of this Court. If the petitioner/tenant failed to take necessary steps within time to lead his evidence, he cannot blame the learned Trial Court for his inaction.

6. I have considered the rival contentions and carefully gone through the record. While disposing of the RC.Rev. No.271/2014 following order was passed by this Court:-

“1. After arguments this petition is dismissed as not pressed in view of the observations which have been made by this Court hereinafter.

2. The Additional Rent Controller is requested to expedite the disposal of the petition subject to the condition that the

petitioner/landlady will not take any unnecessary adjournments. If any party seeks unnecessary adjournments, the Additional Rent Controller will burden the adjournments with heavy costs as this is a bonafide necessity petition.

3. In case, the petitioner/landlady completes her evidence in two hearings, then the respondent will not be entitled to more than three hearings to complete the evidence.

4. The Additional Rent Controller is requested to the extent possible to complete the hearing of the final arguments within one year of receipt of the copy of the present order.

5. Nothing contained in the impugned judgment will reflect on the merits of the case, and which merits obviously will be decided at the stage of final hearing as per the evidence led by the parties.

6. Dismissed as not pressed.”

7. From the copy of the proceedings before the learned Trial Court it can be seen that after passing of the above order making disposal of Eviction Petition No.8/2013 time bound, on 1st November, 2014 the respondent/landlady filed an application under Order VI Rule 17 CPC which was allowed by the learned Rent Controller vide order dated 5th December, 2014 with the following observations:-

“In my considered opinion, no prejudice shall be caused to the respondent if the subsequent events/facts are brought on record. Respondent shall have the opportunity to cross examine the witnesses at appropriate time. Though the matter is fixed for PE but no witness has been examined by the petitioner so far. Therefore, the application under Order 6 Rule 17 CPC and the amended petition is taken on record. The respondent can be compensated by way of costs which are computed at ₹ 4000/- to be paid by the petitioner to the respondent.”

8. Thereafter on various dates the matter was listed for PE which was ultimately concluded on 14th July, 2015. The matter was adjourned for RE on 20th July, 2015, 30th July, 2015 and 1st August, 2015. In the meantime the

petitioner/tenant also filed four applications which have been disposed of by the impugned order.

9. Vide impugned order the learned Rent Controller disposed of the four applications details of which are as under:-

(i) Application under Section 151 CPC was filed seeking four weeks time to lead evidence. The prayer made in this application was rejected in view of the direction of this Court's order dated 14th August, 2014 passed in RC.Rev. No. 271/2014 i.e. to dispose of the matter within one year from the date of receipt of the order.

(ii) Application under Order VII Rule 14 CPC was filed for filing additional documents along with another application for further cross-examination of PW-1. These applications were filed taking the plea that certain documents recently came into the possession of the petitioner and the same need to be confronted to the PW-1. These applications have been disposed of after dealing with the nature of the documents as well their relevancy and the fact that none of these documents could show that they could have been obtained prior to 1st July, 2015.

(iii) The fourth application under Order 11 Rule 12 CPC, which was filed for discovery of documents, has also been disposed of after considering the relevancy of those documents giving reasons why no case was made out to allow the further cross-examination of PW-1. Thereafter, learned Trial Court vide impugned order dated 1st August, 2015 recorded that number of opportunities (three opportunities) have been given to the petitioner/tenant (respondent in Eviction Petition No.8/2013) but no evidence has been led till date. Learned Trial Court has also observed that out of the list of 26 witnesses, for the purpose of deciding the issue in hand, only four witnesses were relevant. Thereafter the learned Rent Controller after observing that

lists of irrelevant witnesses have been given just to unnecessary prolong the case knowing fully that the same was required to be decided in a time bound manner, granted one opportunity for RE on 7th August, 2015.

10. After examining the copies of proceedings in Eviction Petition No.8/2013 it is obvious that the learned Rent Controller was making every possible effort to ensure compliance of the order dated 14th August, 2014 i.e. to dispose of the matter in a time bound manner. However, the fact remains that while direction was given by this Court to dispose of the case in a time bound manner, it was also recorded that there shall not be any unnecessary adjournment by the respondent/landlady and in case respondent/landlady completes her evidence in two hearings then the respondent will not be entitled to more than three hearings to complete the evidence.

11. As noted above it was the respondent/landlady who failed to complete her evidence in two hearings. It is not disputed that PE was closed only on 14th July, 2015 and thereafter in a short span i.e. between 14th July, 2015 and 7th August, 2015 four opportunities (three opportunities and one last and final opportunity) have been granted to the petitioner herein to conclude RE. In fact the time given cannot be termed as adequate especially in the light of the fact that lawyers were abstaining from work and the list of witnesses was long.

12. No doubt on 1st August, 2015 when the four applications were disposed of, assistance of the learned counsel for the parties was not available to the Court but bare perusal of the impugned order shows that learned Trial Court has taken pain to consider each and every aspect pleaded in the applications before disposing of the applications.

13. I am of the opinion that the limited relief that should be granted to the petitioner/tenant is to give him reasonable time to lead his evidence The

petitioner/tenant (respondent in the Eviction Petition No.8/2013) is given three months time from the date of this order to conclude his evidence which shall be restricted to witness listed at serial No.9, 10, 11 and 21 in the list of witnesses. The learned Trial Court shall ensure that within period of three months adequate opportunities, not exceeding three, are given to the petitioner/tenant to conclude his evidence.

14. With a view to release the pressure on the learned Trial Court i.e. to dispose of the matter on or before 26.08.2015, it is necessary that time to dispose of the matter should be extended by this Court to enable the learned Trial Court to provide effective hearing to the parties before disposing of the matter.

15. Thus, it is directed that after the RE is closed within three months by the respondent in Eviction Petition No.8/2013, within next three months the learned Trial Court shall try to dispose of the eviction petition after giving an opportunity to the parties to make written/oral submissions.

16. Petition is allowed in above terms.

17. No costs.

As prayed copy of the order be given dasti to learned counsel for the parties.

CM No.14182/2015

Dismissed.

PRATIBHA RANI, J.

AUGUST 12, 2015

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