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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 97/2016
BABLI

..... Petitioner

Through Mr.R.K.Singh, Advocate.

versus

MANOJ SHARMA

..... Respondent

Through

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER
% **29.01.2016**

C.M. No.3314/2016 (exemption)

Exemption is allowed subject to just exceptions. Application disposed of.

CM(M) 97/2016 and C.M. 3313/2016

Order impugned before this Court is the order dated 03.10.2015 vide which the application filed by the petitioner (defendant in the trial Court) under Order VII R. 11 CPC had been dismissed.

This Court notes that this was a second application which had been filed by the petitioner. The first application had been disposed of on 07.9.2012. In that application the averments of the petitioner was that the relief of declaration without possession could not be claimed; it was on the premise after hearing arguments on merits that application was disposed of. The second application came to be filed by the petitioner

wherein bar of Section 50 of the Delhi Rent Control Act (DRCA) has been pleaded. Submission is that it a tenant-landlord relationship and under Section 50 of the Delhi Rent Control Act the Civil Court will not have jurisdiction; it is the Court of the Rent Controller alone which would have jurisdiction in the present matter.

The proposition of law to deal with an application under Order VII Rule 11 CPC is clear. There is no doubt that it is only the averments which are made in the plaint which have to be perused. The defence is not to be taken into account to deal with such an application.

The present suit is a suit for declaration, possession, recovery of damages and permanent injunction. The averments made in the plaint discloses that the petitioner/defendant before the Trial Court was a tenant; last paid rent was Rs.2150/- per month. It is this submission noted in the plaint which has been heavily relied upon by the petitioner to advance a submission that this is a landlord-tenant relationship which could have decided only by the Rent Controller as the rent was below Rs.3500/- per month. The petitioner has overlooked the other averments given in the plaint. Para 6 of the plaint is relevant. Para 6 of the plaint clearly states that the landlord has earlier filed an eviction petition no.25/2010 where a claim had been set up by the present petitioner that he is the owner of the property. In that view of the matter the proceedings under the DRCA had been withdrawn. The question of ownership set up by both the parties could not have been decided by the Rent Controller. Accordingly, the present suit has been filed. All this has been pleaded in the petition.

The Trial Judge noting the factual matrix has thus rightly declined

the prayer made by the petitioner in the application under Order VII R. 11 CPC; the Rent Controller in such an eventuality could not have dealt with these submissions and counter submissions of the parties. This petition is mischievous and an abuse of the process of law. It is dismissed with costs of Rs.10,000/-.

INDERMEET KAUR, J

JANUARY 29, 2016

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