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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ RC.REV. 110/2015 & C.M. Nos.4179/2015, 17026/2015 &
29877/2015
M/S SOBTI FURNITURE MART PVT LTD

..... Petitioner

Through Mr. Pradeep Dewan, Sr. Adv. with
Mr. Lovkesh Sawhney, Adv.

versus

RAVINDER KUMAR SURI

..... Respondent

Through Mr. Sanjeev Sindhwani, Sr. Adv. with
Mr. Sumit Ahuja and Mr. Sanjay Dua,
Adv.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **28.01.2016**

Order impugned before this Court is the order dated 27.08.2014 wherein the application filed by the tenant seeking leave to defend in a pending eviction petition under Section 14 (1)(e) of the DRCA had been dismissed.

Learned senior counsel for the petitioner points out that there were certain subsequent events which had been brought to the notice of the Court by filing an appropriate application under Order 6 Rule 17 of the CPC. This application was dealt with in the order dated 11.09.2013 wherein the Court had noted that the appropriate remedy available to the tenant/petitioner would be to file an additional affidavit incorporating these subsequent facts in that affidavit. Learned senior counsel for the petitioner submits that this affidavit

was filed and reference to the same finds mention in the order dated 01.03.2014 wherein the Court had noted that matter will now be listed for arguments on the application seeking leave to defend as also for consideration of the affidavit.

Per contra, learned senior counsel for the landlord submits that this affidavit is not a part of the Trial Court record and this has been noted by the Trial Court in the impugned judgment at para 11.

Admitted position is that certain subsequent events had been brought to the notice of the Court; this was by filing an application under Order 6 Rule 17 of the CPC. The fact that these subsequent events were brought to the notice of the Court is thus a matter of record. The vehement contention of the learned senior counsel for the petitioner is that the affidavit in compliance had also been filed before the Court and this is clear from the endorsement given by the counsel for the non-applicant/landlord which is dated 05.12.2013 and his signatures having received the copy of this additional affidavit on 05.12.2013 is also a part of the Court record.

This additional affidavit was admittedly not dealt with by the Trial Judge as the Trial Judge in its impugned order had noted that no such affidavit in compliance (in terms of the directions contained in the order dated 11.09.2013) had been filed. Today before this Court an application has been filed under Section 151 of the CPC to cure that defect; submission is that although the additional affidavit in compliance had been filed before the Trial Court yet to safeguard the interest of the client of the petitioner, this application has also been filed that if there was any lapse (for no fault of the party) and the said

additional affidavit if not a part of the Trial Court record yet the fact that the subsequent events had admittedly been brought to the notice of the Trial Judge in terms of the application under Order 6 Rule 17 of the CPC, this defect can now be cured.

Needless to state that this argument has been refuted. Learned senior counsel for the landlord submits that the endorsement appearing in the additional affidavit dated 05.12.2013 is not the signatures of the counsel for the landlord/non-applicant.

Be that as it may, noting the factual matrix as also noting the fact that the subsequent events were admittedly brought to the notice of the Court through an application under Order 6 Rule 17 of the CPC which the Trial Court do not think was the proper mode of bringing subsequent events on record and taking the application under Order 6 Rule 17 of the CPC on record yet directing the petitioner to file an additional affidavit in compliance and detailing the subsequent events in his additional affidavit, even if that additional affidavit (which remains under a cloud) was not a part of the Trial Court, this Court is of the considered view that the subsequent events which had been brought to the notice of the Trial Court during the pendency of the eviction petition have to be answered by the Trial Judge.

Impugned order is accordingly set aside. Parties are relegated to appear before the Trial Judge who shall deal with the additional affidavit of Rajender Sobti (dated 21.03.2012 copy of which has been handed over to the learned counsel for the non-applicant today), the same shall be answered in the fresh order to be passed by the Trial Judge noting the pleadings of the parties. The Trial Court shall

endeavour to dispose of the eviction petition within an outer limit of three months from the receipt of this order after response has been obtained from the landlord/non-applicant on the additional affidavit.

A certified copy of the said additional affidavit be furnished to the learned counsel for the petitioner who is permitted to place it in on the record of the Trial Court.

With these directions, petition disposed of.

INDERMEET KAUR, J

JANUARY 28, 2016

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