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

+ CM(M) 341/2016

NAWAB @ NAWABUDDIN Petitioner

Through Mr.R.S.Sharma, Advocate.

versus

KARTA RAM Respondent

Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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29.09.2016

CM No. 13300/2016 (exemption)

Exemption is allowed subject to all just exceptions.

CM(M) 341/2016 and CM No.13299/2016 (stay)

1. By the present petition, the petitioner seeks to impugn the order dated 19.01.2016 by which an application filed by the petitioner under Section 9 CPC praying that the order/decreed dated 16.03.2011 passed be declared null and void and that the execution petition be stayed till the disposal of the application was dismissed.

2. The respondent had filed a suit for recovery of possession. On 16.03.2011, the trial court on an application filed under Order 12 Rule 6 CPC passed a decree of possession in respect of the suit property which was built on the land bearing Khasra No. 272, Village Nasirpur, Block K, now

known as Shankar Park, Gandhi Market, West Sagarpur, New Delhi.

3. The petitioner filed this application under Section 9 CPC in the execution petition stating that the order/decreed dated 16.03.2011 be declared as null and void. Apart from other points it was urged in the application that the another tenants, namely, Shri Omkar had been running a shop under the tenancy of the decree holder. Against the said tenant Shri Onkar an ejectment order was passed by the Civil Court. However, before this court in CM(M)565/2013, this Court held that the notification relied upon would have to be proved and examined before a final finding can be arrived at as to whether Delhi Rent Control Act is applicable or not to the suit premises.

4. The trial court by the impugned order noted the contention of the petitioner and also noted that the order relied upon by the petitioner of this court had subsequently been reviewed by the court. By order dated 24.1.2014 this Court was pleased to modify the earlier order dated 24.5.2013 which had been relied upon by the petitioner. Accordingly, the trial court dismissed the application with costs.

5. Learned counsel appearing for the petitioner has again reiterated that the property in question at village Nasirpur is covered by Delhi Rent Control Act and a civil court had no jurisdiction. He also relies upon an order passed by the trial court in another matter titled Bakshish Singh vs. Bhawani Shankar on 31.3.2011 where the trial court had held that as per the evidence the property is situated in the revenue estate of Najafgarh and that schedule to the Delhi Municipal Corporation Act provides that West Sagarpur is part of the revenue estate established at Najafgarh and hence the Delhi Rent Control Act is applicable to such properties in that area.

6. I may note at the outset that a decree was passed against the petitioner

on 16.3.2011. The decree notes that the objection regarding jurisdiction of the court under Delhi Rent Control Act has been decided against the petitioner vide order dated 30.7.2010. This order is neither placed on record nor is any averment made regarding this order in the present petition. Further, in the application moved under Section 9 CPC reference was made to an order of this court in the case of the tenant Shri Omkar where it is averred that this court had held that the issue of application of the Delhi Rent Control Act would require evidence. The trial court has noted that this order was subsequently recalled in a review by this court and dismissed the application of the petitioner.

7. Now, the petitioner has come up with a new contention before this court about a different matter where it was held by the trial court that a property situated in West Sagarpur is covered by the Delhi Rent Control Act.

8. In my opinion this contention is of no help to the petitioner. The exact location of the tenanted shop of the petitioner is not known. The petitioner cannot repeatedly keep raking up this issue at every stage of the Execution Petition. The facts show that even before the trial court before passing of the decree this issue was decided against the petitioner on 30.7.2010. The petitioner never challenged the same and it has attained finality. He cannot now keep challenging the said finding again and again.

9. Merely because as alleged by the petitioner in a subsequent judgment a different view has been expressed on the same subject matter by the Court cannot be a basis to keep repeatedly filing applications to nullify the decree and stall its execution. The petitioner cannot keep obstructing execution of the decree in this manner.

10. There is no merit in the present petition. Same is dismissed.

JAYANT NATH, J

SEPTEMBER 29, 2016
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