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

+ CM(M) 939/2016

KAILASH GARG & ORS

..... Petitioners

Through

Mr.Ashish Mohan, Ms.Manpreet
Kaur & Mr.Mohit Kumar, Advocates

versus

GURBACHAN SINGH CHOUDHARY

..... Respondent

Through

Mr.Jasmeet Singh, Advocate

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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20.09.2016

CM No.34479-80/2016 (exemption)

Allowed subject to all just exceptions.

CM(M) 939/2016, CM No. 34478/2016

1. By the present petition, the petitioners seek to impugn the order dated 25.07.2016 by which the application filed by the respondent under Order 6 Rule 17 CPC was allowed.

2. The respondent has filed the present eviction petition under Section 14(1)(e) of the Delhi Rent Control Act (*hereinafter referred to as the 'DRC Act'*). The petitioners/tenants have been granted leave to defend and at that stage, the present application has been filed whereby the respondent sought to introduce broadly two amendments to the eviction petition. Firstly, it was sought to be averred that the respondent and the petitioners have not entered into any tenancy agreement. However, after the death of Sh.S.P.Garg, the original tenant in 2006, the petitioners are in occupation of the suit premises

as tenants. Secondly, amendment which was sought to be made which pertain to description/occupation of the neighbouring properties which are owned by the respondent/respondent family members.

3. By the impugned order, the trial court noted the stand of the petitioners that they nowhere claim to be the owner of the premises and are occupying the same as LRs of tenant Late Sh.S.P.Garg. The trial court noted that the first amendment was merely a clarification. Regarding the second amendment the trial court noted that these are the subsequent developments and allowed the amendment subject to payment of Rs.20,000/-.

4. The learned counsel for the petitioners has argued that the entire stand of the respondent in the eviction was that the petitioners are trespassers. Accordingly, he submits that the petitioners as per the respondent are not the tenants, hence the present eviction petition under DRC Act would not lie. He also submits that this is an important admission inasmuch as on account of the said admission, the eviction petition would liable to be dismissed. He relies upon a judgment of the Supreme Court in the case of *Laxmidas Morarji v. Behrose Darab Madan*, (2009) 10 SCC 425 to contend that in a similar circumstance, the Supreme Court had held that an eviction petition was not maintainable.

5. The learned counsel for the respondent has pointed out that the petitioners have acted on the impugned order on the last date of hearing before the trial court. By the impugned order cost of Rs.20,000/- was imposed. The petitioners have accepted the cost and have also taken time to file written statement to the amended eviction petition. He submits that by their conduct they have accepted the order of the trial court and now they have filed the present petition to challenge the said order of the trial court.

6. A perusal of the eviction petition shows that the petitioners have been described by the respondent as legal heirs of Late Sh.S.P.Garg and at some places the petitioners have been stated as unauthorised persons. However, the matter of fact is that the petitioners have always been claiming to be the tenants of the respondent so much so when the respondent refused to accept the rent, the petitioners have filed a petition under Section 27 of the Delhi Rent Control Act and deposited the rent stating themselves to be the tenants of the respondent. The petitioners have always held themselves out as tenants. Hence, the clarification now sought to be done by the amendment clearly stating their status as tenants is in order.

7. I may also note that the petitioners have accepted the cost and taken time to file written statement to the amended eviction petition before the trial court. They have taken steps as per the order. They cannot now be permitted to challenge the present impugned order. In the light of the above there is no infirmity in the impugned order. The petition stands dismissed.

JAYANT NATH, J.

SEPTEMBER 20, 2016/v