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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 780/2017**
NIRMALA GUPTA & ANR Petitioners

Through: Mr. A. Ahmad, Adv.

Versus

SUNIL KUMAR JAIN Respondent

Through: Mr. Vineet Jain, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **26.07.2017**

Caveat No.676/2017

1. The counsel for the caveator / respondent has appeared.
2. The caveat stands discharged.

CM No.26288/2017 (for exemption)

3. Allowed, subject to just exceptions.
4. The application is disposed of.

CM(M) 780/2017 & CM No.26287/2017 (for stay)

5. This petition under Article 227 of the Constitution of India impugns the order [dated 22nd May, 2017 in RCT No.30474/2016 of the Court of District & Sessions Judge (HQ), Tis Hazari Courts, Delhi acting as the Rent Control Tribunal (RCT)] of dismissal of an appeal preferred by the petitioners / tenants against the order dated 28th July, 2016 of the Additional Rent Controller (ARC) on an application of the petitioners / tenants for amendment of their written statement.
6. The counsels have been heard.

7. The respondent / landlord as far back as in the year 2010 has filed before the Rent Controller the petition for eviction of the petitioners / tenants under Section 14(1)(e) of the Delhi Rent Control Act, 1958. The said petition for eviction was pending at the stage of evidence of the respondent / landlord, when the petitioners / tenants filed the application for amendment to plead availability of two other shops to the respondents / landlords.

8. The respondent / landlord filed reply to the application, denying that he had anything to do with one of the shops pleaded and stating that the other shop mentioned, though was earlier owned by him, has been sold in the year 2009 i.e. prior to the institution of the petition for eviction.

9. The learned ARC dismissed the application of the petitioners / tenants for amendment of their written statement observing that the pleas sought to be taken by way of amendment were bald allegations, unsupported by any documents.

10. The RCT dismissed the appeal reiterating that with respect to one of the shops there was a bald averment and that the second shop, though admitted by the respondent / landlord was stated to have been sold prior to the institution of the petition and thus there was no need for considering the same.

11. The counsel for the respondent / landlord states that the respondent / landlord has also placed before the ARC as well as the RCT the documents of sale of the shop, ownership of which was admitted by him.

12. The counsel for the petitioners / tenants states that the said documents are not sale deed but an agreement to sell and have been prepared subsequently. He states that in another civil suit filed by the respondent / landlord against the petitioners / tenants, the respondent / landlord had examined the purchaser as a witness and the said purchaser in cross-examination stated that the stamp papers for agreement to sell etc. were purchased from Tis Hazari, Delhi while as per response received to RTI query, the agreement to sell was engrossed on stamp paper sold from Najafgarh, Delhi. He thus states that the plea of sale is fictitious and an afterthought.

13. I have enquired from the counsel for the petitioners / tenants whether he remembers the dates given in the cases that he appeared in yesterday; the answer is in the negative.

14. To expect a witness to in his / her cross-examination after several years remember the place from which the stamp papers were purchased is an unrealistic expectation. Judicial notice can also be taken of the fact that the purchase of stamp papers is rarely made personally by the parties to the transaction and is usually effected through an agent, whether it be an advocate or a Deed Writer or a property broker and the parties to a transaction cannot be said to be falsified owing to not knowing from where the stamp paper was purchased or incorrectly remembering the vendor of stamp paper.

15. Though I am conscious that the discussion aforesaid is in the realm of going into the merits of the amendment and which error has also been committed by the RCT while dealing with the application for amendment

and is not permissible but is only to demonstrate the stand which is taken by the petitioners / tenants to keep alive indefinitely a petition for eviction already pending for seven years.

16. No merit is found in the petition.

17. I may however add that the respondent / landlord having already placed the documents of sale before the Court, the same can always be read against the respondent / landlord.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

JULY 26, 2017
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