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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 787/2017 & CM No.26375/2017 (for stay)
MOHAN LAL Petitioner

Through: Mr. Gaurang Bindra, Adv.

Versus

GURDEEP SINGH BHATIA & ORS Respondents

Through: Ms. Naina Kejriwal, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **26.07.2017**

CM No.26376/2017 (for exemption)

1. Allowed, subject to just exceptions.
2. The application is disposed of.

CM(M) 787/2017 & CM No.26375/2017 (for stay)

3. This petition under Article 227 of the Constitution of India impugns the orders (dated 11th January, 2017 & 1st June, 2017 in E No.482/14/12 (New No.78713/2016) filed by the respondent / landlord for eviction of the petitioner under Section 14(1)(d) and (h) of the Delhi Rent Control Act, 1958 of the Court of Additional Rent Controller (ARC)-2, Central District, Tis Hazari Courts, Delhi) closing the right of the petitioner / tenant to lead further evidence and of dismissal of the application of the petitioner / tenant for recall of the earlier order dated 11th January, 2017.
4. The counsel for the respondent / landlord appears stating that she had filed a caveat.
5. The counsels have been heard.

6. The petition for eviction was first listed for evidence of the petitioner / tenant on 13th September, 2013 when though the affidavit by way of examination-in-chief of one of the witnesses of the petitioner / tenant was tendered but on the request of the counsel for the petitioner / tenant, the cross examination by the respondent / landlord of the said witness deferred to 5th October, 2013.
7. On 5th October, 2013, the evidence of the said witness was completed and the petition for eviction adjourned to 7th November, 2013 for remaining evidence of the petitioner / tenant.
8. On 7th November, 2013 two more witnesses of the petitioner / tenant were examined and since another witness from Delhi Jal Board (DJB) summoned had not appeared, notice under Order XVI Rule 12 of the CPC was issued to him for 8th January, 2014.
9. On 8th January, 2014, though the witness from DJB appeared but the counsel for the petitioner / tenant sought adjournment which was allowed by way of last and final opportunity and the matter adjourned to 19th February, 2014.
10. On 19th February, 2014 statement of one of the witnesses of the petitioner / tenant was recorded and part statement of another witness also recorded. Summons sent to another witness viz. Jai Bhagwan had been received back with the report of refusal and notice under Order XVI Rule 12 was ordered to be issued to him for 11th September, 2014.
11. On 11th September, 2014 it was reported that the tenant had expired (the present petitioner is the son of the original tenant) and thereafter till 4th December, 2015 substitution of the present petitioner as heir of his father

who was the tenant was taking place. Upon the same having been accomplished, vide order dated 4th December, 2015 the petition for eviction was adjourned to 7th February, 2016 for evidence of the petitioner / tenant. The said date was changed to 23rd February, 2016 when another witness of the petitioner / tenant was examined and though no other witness was present but on request last opportunity was again given to the petitioner / tenant to conclude his evidence on 12th May, 2016.

12. On 12th May, 2016, the counsel for the petitioner / tenant sought adjournment and though on earlier occasions last opportunity had been given but giving yet another last opportunity, the matter was adjourned to 30th July, 2016.

13. On 30th July, 2016 no witness of the petitioner / tenant was present and ignoring that it was the last opportunity, the matter was adjourned to 7th October, 2016 for remaining evidence of the petitioner / tenant.

14. On 7th October, 2016, the Presiding Officer was on leave and the matter was adjourned to 11th January, 2017 when another witness of the petitioner / tenant was examined and further opportunity sought by the petitioner / tenant denied and the evidence of the petitioner / tenant closed.

15. As the aforesaid narrative would show, the petitioner / tenant has availed more than sufficient opportunities and no ground for interference with the orders of the ARC is made out.

16. The counsel for the petitioner / tenant states that the petitioner / tenant is to examine only one more witness viz. Jai Bhagwan. On being asked the need for examining the said witness, it is stated that he is the son of the earlier owner of the property from whom the respondent / landlord has

acquired the property and is required to depose that the tenancy was in the name of the present petitioner and not in the name of his father.

17. The counsel for the respondent / landlord states that though during the lifetime of the father of the present petitioner the said plea had relevance but now with the demise of the father of the present petitioner and the present petitioner / tenant having been substituted in his place, the said question is no longer relevant for disposal of the petition.

18. The counsel for the petitioner / tenant though unable to rebut the aforesaid, states that since there are pleadings to the said effect, Jai Bhagwan be permitted to be examined.

19. Not only has the petitioner / tenant availed sufficient opportunities and no error found in the orders impugned but otherwise also the witness sought to be examined is not found to be relevant.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

JULY 26, 2017

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