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

+ CM(M) 1385/2016 & CM Nos.48169-48170/2016

RAKESH NANDA Petitioner
Through Mr.R.D.Itorora, Advocate

versus

RENU GUPTA Respondent
Through

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **02.01.2017**

1. By the present petition under Article 227 of the Constitution of India the petitioner seeks to impugn the order dated 17.9.2016 passed by the Rent Control Tribunal dismissing the appeal under section 38 of the Delhi Rent Control Act (hereinafter referred to as the DRC Act). The respondent has filed a petition under section 14(1)(a) of the DRC Act. The Additional Rent Controller (hereinafter referred to as the ARC) passed an order on 5.1.2016 allowing the Eviction Petition filed under section 14(1)(a) subject to enquiry under section 14(2) of the DRC Act in view of the fact that the petitioner had failed to pay arrears of rent w.e.f. October 2011.

2. The said order was challenged before the Rent Control Tribunal. Two limited pleas were taken by the petitioner before the Tribunal, namely, that the Eviction Petition is not accompanied by a valid and proper affidavit as para 1 of the affidavit of Ms.Renu Gupta is factually incorrect and secondly the siteplan accompanying the eviction petition does not specify the tenancy premises in red as stated in para 20 of the Eviction Petition.

3. The Rent Control Tribunal dismissed the appeal holding that the error in the affidavit of Mrs.Renu Gupta is immaterial as the eviction petition is accompanied by an affidavit of her attorney Shri Ravinder Kumar Gupta where no discrepancy has been pointed out. Further, it held that the objection regarding this nature ought to have been taken at the threshold of the proceedings but no such objection has been raised. Regarding the site plan the impugned order held that the eviction petition clearly describes the tenanted premises and hence rejected the said contention. Appeal was accordingly dismissed.

4. I have heard learned counsel for the petitioner. He strenuously pointed out to the defect in the affidavit accompanying the eviction petition that was filed by Mrs.Renu Gupta. He points out that the impugned order itself accepts that there is a defect in the affidavit.

5. I have perused the defective affidavit. Paragraph 1 of the affidavit which is defective reads as follows:-

“1.That I am the legal and constituted attorney and husband of the petitioner and well conversant with the facts of the case.”

6. It is obvious that above is a typographical error. Had the petitioner pointed out this error at the outset the defect being a curable defect and steps would have been taken by the respondent.

7. I may point out that the eviction petition has also been duly verified by the respondent. It is also accompanied by an affidavit of Shri Ravinder Kumar Gupta the husband of the petitioner who is a constituted attorney of the respondent who has also filed his affidavit in that capacity where there is no error.

8. The error as noted above, cannot be a ground to dismiss the eviction petition. The defect pointed out by the petitioner is a curable defect.

9. Reference may be had to the judgment of the Supreme Court in *M/s.Ganesh Trading Co. Vs. Moji Ram, (1978) 2 SCC 91* where the Supreme Court held as follows:-

“5. It is true that, if a plaintiff seeks to alter the cause of action itself and to introduce indirectly, through an amendment of his pleadings, an entirely new or inconsistent cause of action, amounting virtually to the substitution of a new plaint or a new cause of action in place of what was originally there, the Court will refuse to permit it if it amounts to depriving the party against which a suit is pending of any right which may have accrued in its favour due to lapse of time. But, mere failure to set out even an essential fact does not, by itself, constitute a new cause of action. A cause of action is constituted by the whole bundle of essential facts which the plaintiff must prove before he can succeed in his suit. It must be antecedent to the institution of the suit. If any essential fact is lacking from averments in the plaint the cause of action will be defective. In that case, an attempt to supply the omission has been and could sometime be viewed as equivalent to an introduction of a new cause of action which, cured of its shortcomings, has really become a good cause of action. This, however, is not the only possible interpretation; to be put on every defective state of pleadings. Defective pleadings are generally curable, if the cause of action sought to be brought out was not ab initio completely absent. Even very defective pleadings may be permitted to be cured, so as to constitute cause of action where there was none, provided necessary conditions, such as payment of either any additional court fees, which may be payable, or, of costs of the other side are complied with. It is only if lapse of time has barred the remedy on a newly constituted cause of action that the Courts should, ordinarily, refuse prayers for amendment of pleadings.”

Hence, defective pleadings are normally curable.

10. There is no merit in the present petition. Same is dismissed. All pending applications, if any, also stand disposed of accordingly.

JAYANT NATH, J

JANUARY 02, 2017

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