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

CM(M) 988/2017

BHARAT SINGH @ BHARAT LAL HASIJA Petitioner

Through: Mr. Mohit Gupta, Adv.

Versus

NEERAJ GUPTA & ORS

..... Respondents

Through: None.

AND

+ CM(M) 998/2017

BHARAT SINGH @ BHARAT LAL HASIJA Petitioner

Through: Mr. Mohit Gupta, Adv.

Versus

NEERAJ GUPTA & ORS

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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12.09.2017

CM No.33022/2017 in CM(M) 988/2017 & CM No.33200/2017 in CM(M) 998/2017 (both for exemption)

1. Allowed, subject to just exceptions.

2. The applications are disposed of.

CM(M) 988/2017 & CM No.33021/2017 (for stay) & CM(M) 998/2017 & CM No.33199/2017 (for stay)

3. These petitions under Article 227 of the Constitution of India impugn the common judgment [dated 29th May, 2017 in CIS-RCT-43-2016 (CNR-DLST01-003785-2016) and CIS-RCT-44-2016 (CNR-DLST01-003786-2016) of the Rent Control Tribunal (RCT), South District, Saket Courts, New Delhi] dismissing the two separate appeals under Section 38 of the CM(M) 988/2017 & CM(M) 998/2017

Delhi Rent Control Act, 1958 filed by the petitioner against the common order dated 14th July, 2016 in E No.47/2010 of the Court of Rent Controller (South), Saket Courts, New Delhi of dismissal of two applications, one under Order XI Rules 12 & 14 and other under Order VI Rule 17 of the Code of Civil Procedure, 1908 (CPC), filed by the petitioner in a petition for eviction under Section 14(1)(a) of the Act filed by the respondents against the petitioner.

4. The RCT has dismissed the appeal against the order of dismissal of application under Order XI Rules 12&14 of CPC (i) agreeing with the reasoning given by the Rent Controller that in a petition for eviction under Section 14(1)(a) of the Act, the respondent is not required to prove ownership of the premises from which eviction was sought and qua which documents vide the said applications were sought; (ii) reasoning that the defence of the petitioner to the petition for eviction was of being a tenant under one Kishan Chand and not under the respondents and in the light of the said defence also, the claim of the petitioner for documents of ownership of the respondents was misconceived.

5. The RCT has dismissed the appeal against the order of dismissal of the application under Order VI Rule 17 of CPC to amend the written statement (a) agreeing with the Rent Controller that the amendments sought were not merely of typographical error but setting up a new defence; (b) reasoning that by way of amendment, admissions were sought to be withdrawn and lacunas sought to be filled up; (c) reasoning that by way of amendment a totally new defence was sought to be set up; and, (d) reasoning that some of the amendments were not even material for the purposes of a

petition under Section 14(1)(a) of the Act.

6. The RCT has also reasoned that an appeal under Section 38 of the Rent Act is maintainable only on a question of law and as per the dicta in ***Ved Parkash Kapur Vs. Harish Chander Rastogi*** (1967) 3 DLT 341 and ***Central Bank of India Ltd. Vs. Gokal Chand*** AIR 1967 SC 799, the appeal even otherwise was not maintainable.

7. The counsel for the petitioner has not argued anything to dent the aforesaid reasoning.

8. The counsel for the petitioner has at this stage referred to ***Surendra Kumar Vs. Krishna Dwivedi*** 2005 (6) AD (Delhi) 508 but which does not consider the judgment supra in ***Central Bank of India Ltd.*** of the Supreme Court.

9. I may also mention that the dicta of the Supreme Court is of pre-amendment of the Rent Act with effect from 1st December, 1988 whereafter the right of appeal under Section 38 has been restricted to on question of law only and Section 39 providing for second appeal to this Court has been deleted. Therefrom also, the legislative intent is clear.

8. In fact, the procedure before the Rent Controller, per Section 37 of the Act is of a summary court and there appears to be a misconception that it is a full trial in accordance with CPC.

9. There is no merit in the petitions.

10. Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

SEPTEMBER 12, 2017/bs..
CM(M) 988/2017 & CM(M) 998/2017

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