

\$~11

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 1080/2017 & CM No.35368/2017 (for stay)
KRISHAN GULATI Petitioner

Through: Mr. Vikas Nagwan, Adv.

Versus

RAVINDER SAINI & ORS Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **26.10.2017**

1. This petition under Article 227 of the Constitution of India impugns the order [dated 31st August, 2017 in TP(Civil) No.48/2017 of the Court of District & Sessions Judge, North-West District, Rohini Courts, Delhi] of dismissal of the petition under Section 24 of the Code of Civil Procedure, 1908 (CPC) filed by the petitioner for transfer of the suit filed by the respondents against the petitioner from the Court before which it was pending to some other Judge, reasoning that no ground for transfer was disclosed.

2. The ground, on which the petitioner / defendant had sought transfer of the suit, was that the Judge of the Court before which the suit was pending had suggested to the counsel for the respondents / plaintiffs to file an application under Order XII Rule 6 of the CPC and that he would decree the suit in favour of the respondents / plaintiffs.

3. The counsel for the petitioner / defendant has argued “that the judiciary is one of the organs under the Constitution with the duty to administer justice and the procedure should be just, fair and impartial”.

4. It has been held by the Supreme Court in *Mina Lalita Baruwa Vs. State of Orissa* (2013) 6 SCC 173 that though the judicial system in the country is adversarial and not inquisitorial but that does not mean that the Court is to be a silent spectator during the proceedings and rather is to assist in the just decision being reached.
5. In a large number of cases, where the Courts find that the counsel representing litigant is raw and with not enough experience and / or during the course of hearing and deciding the application, the correct remedies are mentioned. Merely because of the same, no aspersions can be cast on the Judge and thus no merit is found in the petition. Needless to state that the petitioner/defendant, if remains aggrieved from the decision on the application under Order XII Rule 6 of the CPC, will have remedies in law.
6. I have nevertheless enquired from the counsel for the petitioner / defendant the nature of the suit filed by the respondents/plaintiffs.
7. The counsel for the petitioner / defendant informs that the petitioner / defendant is a tenant in an immovable property in Delhi under the respondents at a rent of Rs.4,500/- per month and the respondents / plaintiffs have instituted the suit, of which transfer is sought, for ejectment of the petitioner after determination of tenancy and for recovery of arrears of rent.
8. The counsel for the petitioner / defendant states that the tenancy has never been terminated.
9. Attention of the counsel for the petitioner / defendant is drawn to the dicta of this Court in *Jeevan Diesels & Electricals Ltd. Vs. Jasbir Singh Chadha (HUF)* (2011) 183 DLT 712 and to the judgment of the Division

Bench of this Court in *Shri Ram Pistons & Rings Ltd. Vs. M/s C.B. Agarwal Huf* ILR (2009) 3 Del 249 laying down that once such a suit has remained pending for 15 days, no notice of termination of tenancy is required.

10. Even otherwise, most of the suits of such nature, in the absence of a registered lease deed at least for the relief of ejectment, are decreed under Order XII Rule 6 of the CPC.

11. The petition in the circumstances is found to be *mala fide* and in an attempt to delay the ejectment of the petitioner / defendant and is dismissed with costs of Rs.20,000/- payable to the Delhi High Court Bar Association Lawyers' Social Security and Welfare Fund, New Delhi.

12. The counsel for the petitioner / defendant apologises and withdraws the aspersions cast on the Judge from whom transfer of the suit was sought.

13. Accepting the said apology, the costs are waived.

A copy of this order be forwarded to the Suit Court.

RAJIV SAHAI ENDLAW, J

OCTOBER 26, 2017

'gsr'..