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

+ **CM(M) 1268/2017**

MANJU MEHRA & ANR Petitioners

Through: Mr. Pramod Ahuja, Adv.

Versus

DEV PRATAP SEONIE & ORS Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **10.11.2017**

CM No.40394/2017 (for exemption)

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

CM(M) 1268/2017 & CM No.40395/2017 (for stay)

3. This petition, under Article 227 of the Constitution of India, impugns the order [dated 19th September, 2017 in Eviction Petition No.5952/2016 of the Court of Additional Rent Controller, District South, Saket Courts, New Delhi] dismissing the application of the petitioners / tenants for taking off the record the affidavit by way of examination-in-chief of PW2 filed by the respondents / landlords.
4. The ground on which the petitioners / tenants sought the said relief was that the affidavit by way of examination-in-chief of PW2 was exactly the same as the affidavit by way of examination-in-chief of PW1 who had already been cross-examined at length and that PW2 along with his affidavit by way of examination-in-chief has filed some new documents.

5. The learned ARC enquired from the counsel for the petitioners / tenants as to which law bars a party to the lis from examining another witness even if was on the same aspect on which the earlier witness has been examined and has recorded that nothing was shown by the counsel for the petitioners / tenants with respect thereto.

6. The position before this Court remains the same.

7. Moreover, on enquiry it is informed that the respondents / landlords have sued the petitioners / tenants for eviction under Section 14(1)(e) of the Delhi Rent Control Act, 1958 and while PW1 was the respondent / defendant no.2 Harish Pratap Seonie, PW2 Sanjay Seonie is the son of respondent / defendant no.1 Dev Pratap Seonie. Once the petition for eviction on the ground of requirement of tenancy premises for own use has been filed by three respondents/landlords, even otherwise each of the respondents / landlords is entitled to step into the witness box to prove his / her state of mind as to the requirement and to prevent the tenant from ultimately taking a plea that only one landlord appeared in the witness box and the other landlords, though their requirement was pleaded, did not come forward.

7. As far as the other ground, of new documents having been filed, is concerned, the learned ARC before whom only the affidavit by way of examination-in-chief of PW2 was tendered has recorded that permission therefor had been granted. Once the learned ARC has recorded so, there is no reason for this Court to, in exercise of jurisdiction under Article 227 of the Constitution of India, doubt the same.

8. Moreover, the challenge by the petitioners / tenants is in the teeth of the amendment made in Order XVIII of the CPC by providing that all objections raised during the recording of evidence are to be argued at the stage of final arguments. The impact of entertaining this petition at this stage would be to derail the trial and to prevent which only the said amendment to the CPC was made.

9. There is no merit in the petition.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

NOVEMBER 10, 2017

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