

\$~24

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 155/2018
J AZAD Petitioner

Through: Mr. O.P. Verma, Adv.

versus

DHARAM SINGH Respondent
Through

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

ORDER
% **07.02.2018**

CM No. 4754/2018 (exemption)

Allowed, subject to all just exceptions.

CM(M) 155/2018 & CM No. 4755/2018 (stay)

A novel procedure appears to have been adopted by the Administrative Civil Judge presiding over the trial of Civil Suit (Suit No. 1524/2006) instituted by the respondent (hereinafter “the plaintiff”) against the petitioner (hereinafter “the defendant”), the prayer in the suit being for recovery of possession, licence fee, mesne profits and damages with electricity charges. The suit was earlier decided by the trial judge on 20.07.2011 granting the decree as prayed. One of the contentions raised by the defendant in the trial was that he is a tenant in the premises in question at rental of Rs. 2,500/- per month and, therefore, the suit insofar as it sought recovery of possession was barred under Section 50 of Delhi Rent Control Act, 1958. An issue in this regard (issue no.2) was also framed. The trial judge, by the judgment dated 20.07.2011, held that the defendant was in occupation of the premises as a licensee at Rs. 4,000/- per month and,

therefore, the suit was not barred. This conclusion was based on presumption drawn with the assistance from a document (Ex.PW-1/DX) which was a declaration submitted by the plaintiff as to his immovable assets to the Government department (where he is employed) for the period 1997-98, 2000 and 2001. The judgment dated 20.07.2011 was challenged before the First Appellate Court (by RCA No. 98/16/11) which was allowed by judgment dated 27.01.2016. The First Appellate Judge was not satisfied with the conclusion about the terms of occupation of the defendant in the premises and made references to some variations in the income from house property as declared. On that basis, the judgment of the trial Court was set aside and the matter was remanded with direction for further “evidence” to be called for in support of the rental income, as shown in the office record and original record which were to be also summoned.

In carrying out the directions of the First Appellate Court in the remand proceedings, the trial Judge by proceedings recorded on 27.02.2017 only noted the presence of two official witnesses one Kamlesh Bajaj, an official from Municipal Corporation, House Tax Department and other Prkalp Sharma, an official from the department of the Government where the plaintiff is employed. The first witness produced an assessment order (on House Tax) in respect of the suit property dated 01.04.2002 while the second witness produced the declaration of assets made by the plaintiff to the employer. The trial Judge retained copies of both the documents labelled them as Ex.P-10 & Ex.P-11 (4 pages) respectively and discharged the witnesses.

The defendant later moved an application under Section 151 of the Code of Civil Procedure, 1908 seeking summoning of the second said

witness as he wanted opportunity to cross-examine him. The said opportunity has been declined with the observation that the declaration made to the employer by the plaintiff “*operates as estoppel on the plaintiff regarding the facts declared*” and consequently the employer would not be “*competent witness to depose regarding the contents of the declaration*”.

Prima Facie, the trial Judge has not understood the purpose and object of the opportunity for cross-examination. As pointed out by the counsel for the defendant (the petitioner before this Court), he would be within his right to raise the issues with regard to the declaration of other periods as well so that a comparison can be made and the correctness of the declarations made can be tested. This, in his submission is just by way of an illustration, his broad argument being that his right to cross-examine the witnesses on whom the plaintiff relies cannot be curtailed or taken away.

At this stage, the counsel for the petitioner submitted that he may be allowed to withdraw the present petition and instead approach the Trial Judge with a review application for which he seeks liberty and condonation of delay, if any, if such issue is raised.

In the above facts and circumstances, the prayer is granted. The petition and the applications are dismissed as withdrawn with liberty as prayed granted. In considering the application for review, the trial Judge will pass the necessary order, should such issue be raised, regarding condonation of delay.

Dasti under the signatures of Court Master.

R.K.GAUBA, J

FEBRUARY 07, 2018/nk