

\$~52

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

+ CM(M) 1251/2018 & CM APPL. 42703-42704/2018
KHURSHID ALAM Petitioner

Through: Mr. A Maitri, Adv.

versus

MITHLESH Respondent

Through

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

% **16.10.2018**

CM APPL. 42704/2018 (Exemption)

Exemption allowed, subject to just exceptions.

CM(M) 1251/2018 & CM APPL. 42703/2018

Submissions have been made on behalf of the petitioner assailing the impugned order dated 06.09.2018 of the learned ACJ-cum-CCJ-cum ARC, North-West, Rohini in Eviction Petition No.5456/2016 whereby an application under Order 8 Rule 3 of the CPC filed by the respondent to the said eviction petition arrayed as present petitioner seeking to place on record documents in the form of agreement to sell, GPA, possession letter, receipt and affidavit stated to have been traced out subsequently in the first week of March, 2017 after submission of the application seeking leave to defend and they are sought to be relied upon qua the application of the petitioner herein as respondent to the said petition qua the application seeking

leave to defend which is yet to be considered.

It has been submitted on behalf of the petitioner that the impugned order suffers from irregularities inasmuch as it misread the verdict of the Hon'ble Supreme Court in ***Prithipal Singh Vs. Satpal Singh (dead)*** in Civil Appeal No.8501/2009 decided on 18.12.2009 and thus holds that the provision of Rule 23 of the Delhi Rent Control Rules, 1959 cannot be made applicable in the facts and circumstance of the instant case. It has been submitted on behalf of the petitioner by learned counsel for the petitioner whilst advertng to the said verdict of the Hon'ble Apex Court to the effect that said verdict was in the facts and circumstances of the said case and cannot be applied as a general rule qua the documents sought to be submitted on record in terms of Order 8 Rule 3 of the CPC inasmuch as Rule 23 of the Delhi Rent Control Rule, 1959 cannot be given a go by completely.

Undoubtedly, in terms of Rule 23 of the Delhi Rent Control Rules, 1959 it has been provided to the effect that in deciding any question relating to procedure not specifically provided by the Act that is the reference to the Delhi Rent Control Act, 1958 and the rules that are framed i.e. Delhi Rent Control Rules, 1959, the Controller and the Rent Control Trbunal shall, as far as possible, be guided by the provisions contained in the Code of Civil Procedure, 1908 and that the Rules of the Delhi Rent Control Rules, 1959 are to be applicable to the extent possible as guided by the provisions contained in the CPC, 1908 as amended as are specifically set forth through the

said Rules and through the verdict in **Prithipal Singh (Supra)**. However, it is essential to observe that the verdict in **Prithipal Singh (Supra)** makes it apparently and specifically clear that where the Delhi Rent Control Act, 1958, as amended provides for a complete code in the form of Section 25-B of the DRC Act, 1958 as amended in relation to petition filed by landlords on the ground of bona fide requirement, there has to be a strict compliance of the said provision. This is despite the factum that Section 25-B (7) provides to the effect that:

“7. Notwithstanding anything contained in sub-section (2) of section 37, the Controller shall, while holding an inquiry in a proceeding to which this Chapter applies, follow the practice and procedure of a Court of Small Causes, including the recording of evidence.”

and also despite the reliance placed on behalf of the petitioner by learned counsel for the petitioner on the provision of Section 37 of the DRC Act, 1958, as amended which reads to the effect:

“37. Procedure to be followed by Controller.- (1) No order which prejudicially affects any person shall be made by the Controller under this Act without giving him a reasonable opportunity of showing cause against the order proposed to be made and until his objection, if any, and any evidence he may produce in support of the same have been considered by the Controller.

(2) Subject to any rules that may be made under this Act, the Controller, shall, while holding an inquiry in any proceeding before him, follow as far as may be the practice and procedure of a Court of Small Causes, including the recording of evidence.

(3) In all proceedings before him, the Controller shall consider the question of costs and award such costs to or against any party as the Controller considers reasonable.”

In view thereof, the petition CM(M) 1251/2018 and the accompanying applications are declined.

Nothing stated hereinabove shall however amount to any expression on the merits or demerits of the petition filed by the petitioner before the learned trial Court seeking leave to defend.

Copy of the order be given Dasti, as prayed.

ANU MALHOTRA, J

OCTOBER 16, 2018

vm

CM(M) 1251/2018

page no.4 of 4