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

Date of Decision: 9th December, 2019

+ **CM (M) 1746/2019 & CM APPLs. 52680-81/2019**

RAMESH SIKRI

..... Petitioner

Through: Mr. L. C. Rajput & Mr. Anurag
Chauhan, Advocates.
(M:9910091236)

versus

RAMESHWAR GOPAL

..... Respondent

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. The present petition has been filed challenging the impugned order dated 3rd October, 2019, by which the application under Order XXIII Rule 3 and 3A of the CPC, filed by the Petitioner/Tenant (*hereinafter*, “Tenant”) has been dismissed with costs and the Tenant has been directed to lead evidence in the matter.
2. The present proceedings arise out of an eviction petition filed by the Respondent/Landlord (*hereinafter*, “Landlord”) under Section 14(1)(e) of the Delhi Rent Control Act, 1958. The Tenant had moved a leave to defend application, which has been allowed and the suit is now pending before the Ld. Additional Rent Controller.
3. The evidence of the Landlord stands concluded. It is at this stage that an application was moved by the Tenant claiming that the disputes between the parties stood settled in an earlier round of litigation, wherein the suit for permanent injunction was dismissed as withdrawn in view of the settlement.

4. The Tenant claims that during the pendency of the earlier suit for permanent injunction, a rent agreement/compromise deed (*hereinafter, "agreement/deed"*) dated 19th January, 2005, was executed between the parties. Various terms were agreed upon in the said agreement/deed. The Tenant relies upon a hand-written notation on the said agreement/deed, which reads as *"during the lifetime of the second party"* and bears the signature of the landlord below it. This notation appears on every page of the agreement/deed. According to the Tenant, this agreement/deed is binding on the parties, to the effect that the Tenant cannot be evicted during his lifetime.

5. Ld. counsel for the Tenant further submits that there is also a clause in the agreement/deed that the Landlord would not interfere in the work of additions/alterations in the tenanted shop. On the strength of this agreement/deed, an application was moved by the Tenant praying that the eviction petition be dismissed and orders be passed under Order XXIII Rule 3 & 3A CPC. The said application has been rejected by the impugned order. Vide the impugned order, the Id. ARC has held that the application is nothing but a method to delay the proceedings, inasmuch as the Tenant's submission that the disputes stood settled has been considered in detail in the order directing the leave to defend.

6. The Id. Trial Court also records that on 16th July, 2019, a last opportunity was given to the parties to lead evidence, however, thereafter the present application was moved. The observations of the Id. ARC are as under:

"5. Perusal of written statement to the eviction petition shows that such ground of withdrawal of the previous

case on 19.01.2005 has been taken by the respondent. Even perusal of the order on leave to defend shows that the such issues raised by the respondent in the leave to defend has been thoroughly dealt with by the Ld. Predecessor while granting the leave to defend to the respondent.

Record shows that the matter is fixed for respondent's evidence and on 16.07.2019, last opportunity was given to both the parties for the purposes of leading respondent's evidence and cross examination but on 07.08.2019, the present application was filed by the respondent which has further delayed the present old matter.

6. As such, the issues raised in the present application by the respondent may be dealt with by this court while passing the judgment in the present case on merits.

Moreover, it is pertinent to mention that respondent himself has admitted that such compromise was recorded in the year 2005. And the present eviction petition was filed on 02.09.2011 and the present application has been filed on 07.08.2019 when the matter is fixed for R.E.

As such, the present application has been filed only after the lapse of more than seven years. The present application appears to be a dilatory tactic by the respondent.

7. As such in my considered view, there is no merit in the present application. Hence, it is dismissed with the costs of Rs.5,000/- to be deposited with the DLSA within one week from today and receipt thereof be filed on the next date of hearing."

7. It is submitted by the ld. counsel for the Tenant that once there is a compromise in the matter, a fresh suit on the same issue would not arise and the compromise ought to be treated as final and binding on the parties. He relies upon the following judgments of the Supreme Court:

a) Ved Pal (D) through L.Rs. & Ors. v. Prem Devi (D) through

L.Rs. & Ors., 2018 (189) AIC 124 (SC);

b) Sir Sobha Singh & Sons Pvt. Ltd. v. Shashi Mohan Kapur (deceased) through L.R., 2019 (203) AIC 51 (S.C.)

8. A perusal of the leave to defend application shows that the Tenant did raise the issue of the agreement/deed in the leave to defend application. The contention of the Tenant as to the notations made in the lease deed, as also the signatures in the same, has been considered by the Id. Trial Court. The observations in respect of the said settlement in the order dated 23rd July, 2013, deciding the leave to defend application are as under:

“3. Notice of the eviction petition was sent to the respondent which was duly served upon him. Respondent filed his affidavit admitting relationship of landlord and tenant between the parties. It is stated that petitioner with his son Amit Diwan is carrying on the furniture business under the name and style of M/s Ashu Furniture at 2nd floor of property bearing no. WZ-296, G Block, Hari Nagar, Jail Road, Delhi. It is also stated that petitioner in connivance of his son Amit Diwan got filed one suit bearing no. 60/2004 by his son Amit Diwan titled as "Amit Diwan Vs. Rameshwar Gopal, Chitra Diwan & Anit Atri" in respect of suit premises. In that suit, petitioner fabricated some rent receipts w.e.f 01/03/1996 to 01/12/2002 in favour of his own son Amit Diwan. Respondent also stated that he also filed one Civil Suit bearing no. 46/2004 titled as "Ramesh Sikri Vs. Rameshwar Gopal" against petitioner. In that suit petitioner filed his Written Statement and stated that he is not the owner of the suit premises and the owners are Smt. Shobha Gopal, Mrs. Chitra Diwan and Sh. Amit Diwan. Respondent also stated that in the year 2000 also, petitioner filed one eviction petition in respect of suit premises titled as "Ramesh Gopal Vs.

Ramesh Sikri, Mukesh on the ground of sub-letting. During pendency of that petition, the petitioner executed a rent agreement dated 19/01/2005 in which he made endorsement in his own handwriting that respondent shall not be evicted from the suit premises in his life-time.

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11. It will also be not out of place to mention here the conduct of the petitioner who has not approached the court with clean hands. Admittedly, respondent herein filed one civil suit bearing no. 46/04, titled as **Ramesh Sikri Vs. Rameshwar Gopal**. In that suit petitioner herein filed the written statement stating that his wife and children are owner of the suit property. Admittedly, petitioner also got filed one suit bearing no. 60/04 titled as Amit Diwan Vs. Rameshwar Gopal, Chitra Diwan and Anil Atri in which he showed his son Amit Dhawan as tenant in respect of tenanted premises in which respondent herein is in occupation. The petitioner nowhere has disputed these facts as alleged by the respondent in leave to defend application. Respondent also stated that petitioner filed one eviction petition against respondent herein titled as Ramesh Gopal Vs. Ramesh Sikri on the ground of sub-letting and in that suit petitioner entered into the agreement with respondent that he will never evict the respondent from the suit property in his life time. Petitioner has not disputed this fact also, hence, this is also triable issue, what is the effect of that settlement."

9. The only question is whether the notations made would bar the filing of an eviction petition under Section 14(1)(e) of the Delhi Rent Control Act, 1958. The complete purport and intent of the notations made is yet to be considered. A perusal of the agreement/deed dated 19th January, 2005, shows that the hand-written notation is vague and ambiguous. It would require oral evidence to be led by the parties as to the effect of the notation,

which merely states “*during the lifetime of the second party*”. The further submission of the Id. counsel for the Tenant as to the finality attached to this agreement/deed may not be correct, inasmuch as the Landlord may not completely lose his right to evict the Tenant. This factual and legal issue would have to be adjudicated by the Id. Trial Court after oral evidence is led between the parties as to the effect of the said settlement deed, the circumstances under which it was executed and the intention of the parties – especially the meaning of the handwritten notation. At this stage, it cannot be stated that the Landlord has lost his right to evict the Tenant during the lifetime of the Tenant.

10. Accordingly, it is directed that the Tenant shall lead his evidence in the matter. The Id. ARC, at the time of final adjudication, shall consider the document i.e., the settlement agreement/ deed dated 19th January 2005, the oral evidence in support thereof, as also the pleadings/documents on record. The notations made by the Landlord, as well as the interpretation of the agreement/deed and its true purport shall be considered as part of the final adjudication.

11. Insofar as the judgments cited by the Id. counsel for the Tenant are concerned, there is no doubt that if there is a settlement in the matter, the said settlement would be final and binding on the parties. However, the present case would not be affected by these judgments, as the description of the agreement is ‘Rent Agreement/Compromise Deed’ which itself shows that the tenant continues to be a tenant. There are questions as to whether a landlord can even his waive his rights to seek eviction so long as the tenant is alive, as per law. The hand-written notation would have to be interpreted by the Id. ARC. Accordingly, at this stage, the eviction petition could not be

dismissed on this ground. If the disputes between the parties had been settled, the eviction petition would not have been allowed to be pending since 2011. At the fag end of the proceedings in the eviction petition, the application under Order XXIII CPC would not be maintainable.

12. The petition and all pending applications are dismissed in the above terms.

PRATHIBA M. SINGH
JUDGE

DECEMBER 09, 2019/dk

