

\$~60

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 50/2019 & CM APPL. 1420-1421/2019
MOHAN LOHIA Petitioner
Through Mr. Pramod Gupta, Adv.

versus

CHAMELI DEVI Respondent
Through Mr. Siddharth Bambha, Adv. is
present on advance notice.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

% **ORDER**
14.01.2019

Vide the present petition, the petitioner assails the impugned order dated 26.10.2018 of the Trial Court of the learned ADJ-04 (NW), Rohini Courts, Delhi vide which the application under Order 18 Rule 17 CPC filed by the petitioner herein, arrayed as the defendant to the said suit bearing CS No. 575401/16 and another application dated 12.09.2018 under Order 18 Rule 17 CPC filed by the petitioner herein and a third application dated 12.09.2018 filed by the petitioner herein under Section 151 CPC were declined.

The petitioner seeks to submit that the original documents, qua which there has been a mention made in the affidavit of the petitioner, could not be placed on record at the time of submission of the affidavit as they were tagged elsewhere with another file. The contentions further raised on behalf

CM(M) 50/2019

page 1 of 4

of the petitioner are to the effect that the petitioner is a tenant under the respondent at less than Rs.3,500/- per month and thus the provisions of Delhi Rent Control Act, 1958 as amended would be applicable to the demised premises and the suit thus filed by the respondent herein would not be maintainable as observed in para 4 of the impugned order, which reads to the effect : -

“4. It is relevant to note that this is a suit for Ejectment/Recovery of Possession, Damages/ Mesne Profit and Permanent Injunction. The first application was filed on 07.05.2018. On careful examination of the application, it is found that the defendant had already prepared this application on 23.08.2017 as the said date is appearing on the last page of the application. Moreover, the supporting affidavit of this application is also dated 23.08.2017. The defendant has mentioned in the said application that the original documents were not available as the same were tagged in some old files and the applicant tried his best to trace the same but they were not available and in the meantime the file containing the original documents was traced. The application is vague as it is not specified that when the documents were traced. It is further mentioned in the first application that the defendant is also trying to trace some more documents and seeking leave of the court to trace the same. It is relevant to note that DE has already been closed on 29.05.2018. It is also relevant to note that on 17.08.2018, counsel for defendant submitted that he filed an application under Order 7 Rule 14 CPC on 07.05.2018 and subsequently on 12.09.2018, the counsel for defendant submitted that no such application under Order 7 Rule 14 CPC was filed on 07.05.2018 and in fact the application under Order 18 Rule 17 CPC was filed on 07.05.2018. It is further relevant to note that on 10.10.2018, an order was passed according to which the application under Order 26

Rule 9 CPC of the defendant was dismissed. The said application was filed on 08.10.2018. It was observed in the order dated 10.10.2018 that the application under Order 29 Rule 9 CPC bears the date of 24.09.2017 i.e. it was an application prepared more than one year back. It was also observed that the defendant is trying to delay the case. The order dated 17.10.2016 of Hon'ble High Court of Delhi is also relevant and copy of the same is on record. According to the said order, the defendant was given one final opportunity to examine two witnesses. Those witnesses have already been examined.”

The petitioner has also sought to submit vide the second application that had been filed before the learned Trial Court for the summoning of the plaintiff and her son for cross-examination in relation to which it has been observed by the learned Trial Court that the petitioner herein only seeks to fill up the lacuna and tried to delay the case.

The third application dated 12.09.2018 filed on behalf of the petitioner herein is for a prayer seeking appropriate directions against the plaintiff submitting to the effect that it has been discovered during the course of the proceedings before the Court of the learned Senior Civil Judge, Delhi that NDPL has deliberately disclosed the false submissions that there were four connections in the suit premises and that the NDPL had not disclosed that there was another connection in the name of the Pawan Goel i.e. the son of the plaintiff in relation to which it has been observed by the learned Trial Court that all these aspects were related to the evidence and that the parties had exhausted opportunities for leading their respective evidence with the defence of the petitioner herein having been closed

initially on 27.04.2016 after DW1 was further cross-examined and discharged and that the evidence was closed after recording a separate statement of the defendant i.e. the petitioner herein and that the petitioner herein had challenged the said order dated 27.04.2016 before this Court and vide order dated 17.10.2016 only one final opportunity to examine two more witnesses was allowed, which two witnesses have already been examined, cross-examined and finally the defence evidence was closed on 29.05.2018.

A perusal of the order dated 17.10.2016 of this Court in CM(M) 1029/2016, which has been submitted on record on behalf of the respondent by the counsel present, indicates that the same submissions in relation to the aspect of the rent being less than @Rs.3,500/- of the demised premises, were sought to be urged by the petitioner, in relation to which one single final opportunity was granted vide order dated 17.10.2016 in the CM(M) 1029/2016 to the petitioner herein for the examination of the witnesses from the electricity and pollution department, which witnesses have already been examined as reflected vide impugned order dated 26.10.2018 of the Trial Court of the learned ADJ-04 (NW), Rohini Courts, Delhi.

There is apparently no infirmity in the impugned order. The petition is declined.

ANU MALHOTRA, J

JANUARY 14, 2019/MK

CM(M) 50/2019

page 4 of 4