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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 64/2019 & CM APPL. 1808-1810/2019
RAKESH CHAND KAPOOR Petitioner
Through: Mr. Subodh Kumar, Adv.

versus

INDIRA GUPTA Respondent
Through:

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

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16.01.2019

CM APPL. 1809-1810/2019 (Exemptions)

Exemptions allowed, subject to just exceptions.

CM(M) 64/2019 & CM APPL. 1808/2019

Submissions have been made on behalf of the petitioner assailing the impugned order dated 11.10.2018 of the learned trial Court of the Civil Judge-01, THC in CS SCJ No.610889/2016 vide which an application under Order 7 Rule 11 of the CPC filed by the applicant herein as the defendant of the said suit seeking the rejection of the plaint, - was declined with it having been observed to the effect that it was an admitted position between the parties that there was a landlord tenant relationship between them and rent was also being paid by the defendant i.e. the petitioner herein to the plaintiff i.e. the respondent to the present petition and that in terms of Section 116 of the Indian Evidence Act, 1872 which provides to the effect:

“Estoppel of tenant; and of licensee of person in possession.-

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No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such licence was given.”

the defendant i.e. the tenant was estopped from denying the landlordship of the plaintiff. As has also been observed vide the impugned order that even if the plaintiff was not the owner of the suit property that was an aspect between the plaintiff and the owner of the suit premises and that if the defendant in terms of Section 116 of the Indian Evidence Act, 1872 was under an embargo not to dispute the title of the landlord.

A perusal of the plaint of the suit in question, copy of which is placed on record indicates that the suit filed by the plaintiff i.e. the respondent herein is on the premise and contention that she was and is the landlord in respect of the suit premises and has thus sought the recovery of possession, permanent injunction, recovery of arrears of rent & damages and mesne profits in relation to the tenanted premises of which the rate of rent admittedly is Rs.4831/- per month apart from electricity and other charges as averred in para-5 of the plaint.

Apparently, there is no infirmity in the impugned order despite the contention raised on behalf of the petitioner that through the application under Order 7 Rule 14 of the CPC that was

filed by the plaintiff to place on record a will dated 13.02.2002 in favour of Mr. Anupam Gupta executed by late Ramesh Chander Gupta original owner of suit property, it was stated that the owner of the suit property was Shri Anupam Gupta, the same however does not detract from the veracity of the averments made by the plaintiff of the suit in relation to her being the landlord of the suit property and defendant being a tenant under the plaintiff admittedly.

The petition and the accompanying application are declined.

However, nothing stated hereinabove shall amount to any expression on the merits or demerits of the suit and contentions that may be raised therein.

ANU MALHOTRA, J

JANUARY 16, 2019

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