

\$~65

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 96/2019 & CAV 62/2019, CM APPL. 2813-2815/2019
M/S NATHU SWEETS & ANR Petitioners
Through: Mr. Ashok Chhaparia, Adv.

versus

SARVESH CHAND GUPTA & ORS Respondent
Through: Mr. PK Rawal, Adv. for
respondent/Caveator.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER
% **21.01.2019**
CAV 62/2019

The learned counsel for the caveator has been heard. The caveat stands discharged.

CM APPL. 2814-2815/2019 (Exemptions)

Exemption allowed, subject to just exceptions.

CM(M) 96/2019 & CM APPL. 2813/2019

Submissions have been made on behalf of either side. The petitioner assails the impugned order dated 14.12.2018 of the learned Rent Controller, New Delhi in RC No.5542/2016 vide which an application under Order 16 Rule 6 r/w Section 151 of the CPC filed by the petitioner herein i.e. the respondent to the said eviction petition, - was declined in as much as despite the matter having been observed to have been fixed for the respondent evidence as a last opportunity vide order dated 30.11.2018 with the respondent i.e.

present petitioners evidence having commenced on 13.11.2018 and evidence having been led in the form of testimony of RW-1 on 14.11.2018 with the time having been sought by the respondents to the eviction petition i.e. the present petitioner for examination of other official witnesses in relation to which the respondent to the eviction petition was granted liberty to take appropriate step for service of the witnesses that were sought to be examined in support of the case for 30.11.2018, on which date, 10 days more time was sought to get the affidavit prepared and the matter was renotified for the date 14.12.2018 and the respondent was directed to take steps for summoning of formal witnesses and to supply the copy of the same to the petitioner at least a week prior to the next date of hearing and on the non-production of the witness on the date 14.12.2018 and the submission of the application under Order 16 Rule 6 r/w Section 151 of the CPC seeking summoning of witness for production of certain documents, the prayer seeking summoning of witnesses for the production of documents and the summoning of witness, was declined taking into account the repeated adjournment that had been sought by the respondent to the eviction petition i.e. the present petitioner.

On behalf of the petitioner herein it has been submitted and as averred in the application under consideration before the learned Rent Controller that the representative of the respondent in the eviction petition was unwell and could not put in appearance. On behalf of the respondent to the present petition i.e. the petitioner to the Eviction Petition, the prayer is vehemently opposed submitting to the effect

that dilatory tactics are repeatedly being adopted by the petitioner herein and in fact the petitioner has not even been complying with the requisite directions under Section 15 (1) of the DRC Act in relation to which it has been submitted that the proceedings in the application under Section 15 (7) are pending consideration before the learned trial Court. It is also indicated through the impugned order that the matter is more than 11 years old and the petitioner of the eviction petition is a senior citizen suffering from cancer.

Taking into account the long pendency of the eviction petition and the factum that one of the witnesses of the respondent i.e. the petitioner to the present petition has already been examined, one last and final opportunity is granted to the present petitioner to produce all its witnesses for production of documents as sought through the application under Order 16 Rule 6 of the CPC that is the application dated 13.12.2018 with the summoning of the documents which are as under:

- a. File/documents in respect of payment of rent to NDMC from the year 2007-2008 for property bearing Shop Nos.23-25, Plot No.3, Block No.205 C, Bengali Mal Market, New Delhi-110001.*
- b. File/ documents in respect of re-entry with effect of 27.11.1974, taking of possession and directions for payment of rent in respect of Plot no.3, Block No.205 C, Bengali Mal Market, New Delhi-110001.*
- c. File/ documents on the basis of which Shri Sarvesh Chand Gupta was considered to be a legal heir of Smt. Vidyavati, the original lessee of Plot No.3, Block No.205 C, Bengali Mal Market, New Delhi-110001.*
- d. File/ documents in respect of proceedings under Section 5 of*

the Public Premises Act initiated by the NDMC in respect of Plot No.3, Block No.205 C, Bengali Mal Market, New Delhi-110001.”,

subject to payment of cost of Rs.60,000/- by the petitioner herein to the respondent and requisite steps be taken by the petitioner within time framed scheduled by the Rent Controller, New Delhi.

The petition is disposed of.

Copy of the order be given Dasti, as prayed.

ANU MALHOTRA, J

JANUARY 21, 2019

vm