

\$~21 & 22

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

+ **CM (M) 97/2019 & CM APPL. 2858/2019**

+ **CM (M) 98/2019 & CM APPL. 2860/2019**

VINOD KUMAR

..... Petitioner

Through: Mr. Praveen Suri, Advocate.
(M:9810928188)

versus

SANJEEV KUMAR

..... Respondent

Through: Mr. Jai Gopal Garg and Mr. Vishal,
Advocates. (M:9810382760)

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **06.11.2019**

1. The present petitions have been preferred challenging the impugned orders dated 1st December, 2018 rejecting the applications under Order VI Rule 17 CPC. The short point is that the Petitioner, who is the alleged Tenant, wishes to incorporate an objection, in respect of the maintainability of the Respondent/Landlord's suits in view of the bar under Section 185 of The Delhi Land Reforms Act, 1954 (*the 'DLR Act'*), which has been rejected by the Trial Court.

2. The submission of Id. counsel for the Tenant is that the Tenant had initially raised an objection as to the maintainability of the suits in view of the provisions of the DLR Act. However, the same was rejected by the Trial Court. Thereafter, applications under Order XXXIX Rule 10 CPC were filed by the Landlord, which were dismissed vide orders dated 21st April, 2016. The Landlord had preferred appeals against the said orders, which were withdrawn on 19th December, 2017 in order to file an application under

Order 15 A CPC. The Tenant, during the pendency of the appeal, had moved an application under Order VI Rule 17 CPC seeking to incorporate objections as to maintainability of the suits in view of the bar under the DLR Act. The amendments had been refused by the Trial Court on the ground that they have been moved at a belated stage as the issues had already been framed in the suits on 23rd September, 2015 and trial has commenced.

3. Ld. counsel for the Tenant submits that the issue of non-maintainability of the suits in view of the provisions of the DLR Act is a legal issue and ought to have been permitted by the Trial Court. On the other hand, ld. counsel for the Landlord submits that the premises are shops and the area is also urbanised, so the question as to whether the DLR Act applies or not does not even arise.

4. The Court has perused the applications under Order VI Rule 17 CPC. The paragraph, which are sought to be incorporated in the written statements reads as under:

“2. That the suit of the Plaintiff is not maintainable as the are in question where the suit property falls is a part and parcel of village Gharoli and it has not been urbanized till date and being a rural village, and the suit land exists on agricultural land of village Gharoli and therefore, the civil court has no jurisdiction to entertain and try the present suit as Kiran Singh i.e. father of the Plaintiff is a Bhumidhar and the defendant is a Asami and no suit can be filed for ejectment except under the provisions of Section 185 of the D.L.R. Act and it also debars the jurisdiction of any other court to entertain the present case except by the court of Revenue Assistant / SDM.”

5. The said amendments, which the Tenant sought to incorporate in the written statements, were clearly at a belated stage i.e. after the framing of

issues, after the evidence had already been commenced, the Landlord had filed the affidavit in evidence of three witnesses, and in respect of one witness, cross-examination had already begun. Thus, the amendment of the written statements cannot be permitted at this stage.

6. However, the question as to the bar under the DLR Act, cannot be decided on merits at this stage, while considering the amendment applications. While the amendment is not being permitted, an additional issue is framed to the following effect:

Whether the suit is barred by provisions of the DLR Act? OPD

7. The above issue being a legal issue, no evidence would be required to be led in respect of the above issue. After conclusion of evidence, the Trial Court would decide all the issues framed earlier, including the issue framed hereinabove at the stage of final adjudication of the suits. No amendment in the pleadings is being permitted.

8. This Court has not examined the question as to whether the nature of the properties has been changed or whether the DLR Act even applies. The same ought to be adjudicated at the final stage and the issue is being framed, in order to obviate any challenge to the final judgment in this regard.

9. With these observations, both the petitions and pending applications are disposed of.

Prathiba..
PRATHIBA M. SINGH, J.

NOVEMBER 06, 2019/dk