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

Date of decision: 23rd August, 2019

+ **CM(M) 1229/2019 and CM Appl. 37697/2019**

BHAGWAN DASS

..... Petitioner

Through: Mr. Deepak Sharma, Advocate (M:
9868955967).

versus

USHA TYAGI

..... Respondent

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

CM Appl. 37698/2019 (exemption)

1. Exemption allowed, subject to all just exceptions. Application is disposed of.

CM(M) 1229/2019 And CM Appl. 37697/2019

2. The present petition has been filed challenging the order passed by the District and Sessions Judge in an appeal under Section 38 of the Delhi Rent Control Act, 1958 wherein leave to amend the written statement by the Petitioner-Tenant was rejected.

3. The background is that a petition under Section 14D came to be filed by Smt. Usha Tyagi before the Rent Control Tribunal. The property in question is property bearing No. WZ-41, Basai Dara Pur New Delhi-110015. Ld. counsel submits that the Petitioner herein was given leave to defend in

June, 2006. In January, 2007 one of the tenants who was in occupation of one portion of the property had vacated the property and the possession of the said portion was received by the landlady. He therefore wished to bring said facts on record by moving an application for amendment of written statement. In the said application for amendment, the following order dated 13th September, 2007 was passed by the Trial Court:-

“Ld. Counsel for the petitioner states that he has no objection if the application is allowed as prayed, therefore in my view, the aforesaid fact being a subsequent event can be taken on record as such without amending the written statement the respondent may incorporate the same in his evidence as subsequent event. The application under Order 6 Rule 17 CPC is disposed of accordingly. Let affidavit of PWs be filed within 30 days after supplying advance copy to respondent. Adjourned for cross of PWs to 01.12.2007.”

4. A perusal of the above order reveals that the view of the Trial Court was that the subsequent vacation of some portion of the property by the other tenant, being a subsequent event, the amendment of the written statement would not be required and that the same could be incorporated in the evidence by way of affidavit. However, the issue did not end there. The tenant again moved an application for amendment, when three further rooms of the property were vacated. The second application was considered by the Trial Court, and was dismissed on the ground that the earlier amended written statement was not filed. The said order dated 29th August, 2012 records as under:-

“Arguments on application under Order 6 Rule 17 heard. It is submitted by Counsel for respondent that

the petitioner has filed this petition for bonafide requirement under Section 14 D of DRC Act and leave to defend has already been granted to the respondent on 11.09.2006. It is further submitted that during the pendency of this petition the other tenants namely Sh. Hakim Singh has vacated two rooms in the month of January 2007 and amendment was allowed by this Court to this effect on 13.09.2007, but no order was passed to file amended written statement. It is further submitted that now other tenant namely Sh. Shyam Lal has vacated one room in the month of January 2011 and other tenant namely Sh. Gurdiyal Singh has also vacated two rooms in the month of May 2011. It is further submitted that even the petitioner has demolished the structure of two rooms and has raised new structure there. It is further submitted that now the respondent wants to amend his written statement thereby bringing these subsequent facts on record and same be allowed.

On the other hand, the petitioner has opposed the submissions and has submitted that the respondent is just delaying this case by moving applications one after other. It is further submitted that the room in occupation of Sh. Shyam Lal was being used for commercial purposes and has been demolished being dilapidated condition. It is further submitted that the portion vacated by Sh. Gurdiyal Singh was also commercial and same is not suitable for residence and case is already pending against the same. It is denied that now the petitioner has availability of five rooms. It is further submitted that this application is just a delay tactic and the same is liable to be dismissed.

I have heard the arguments and perused the record. The respondent wants to bring some subsequent facts on merit by this application which have taken place during the pendency of this petition. However, the conduct of the respondent clearly suggest that he is just delaying this case on the one ground or other. It is

further revealed that earlier a similar amendment was allowed by this court in the year 2007 itself, but no such amended WS was filed on behalf of the respondent. Respondent has pleaded that no such directions were given by this Court to file amended WS, due to it was not filed. It appears that the respondent has not kept in his mind about the provision under Order 6 Rule 18 CPC as per which amended plaint was to be filed within the period of 14 days, if no specific direction had been given by the court to file amended plaint. The respondent was ought to file amended WS within the above said period, but no such WS was filed, due to the earlier amendment could not take place. In this application, the respondent has alleged that two premises have been vacated during the pendency of this petition by tenants namely Sh. Hakim Singh, Sh. Shyam Lal and Sh. Gurdiyal Singh. The petitioner has explained that an amendment regarding vacating of the premises by Sh. Hakim Singh had already been allowed earlier, but could not take place and the remaining portion in possession of Sh. Shyam Lal has already been demolished and portion vacated by Sh. Gurdiyal Singh is commercial one, due to it cannot be said that these portions have become available to the petitioner. In fact, the respondent is just delaying this case after seeking the leave to defend and no effective progress has taken place in this case even after a period of more than six years after granting leave to defend to the respondent. I found no ground to allow this frivolous application, hence dismissed with cost of Rs. 10,000/-, out of which, 50 % to be deposited with Legal Aid for causing delay in this case.”

5. A review petition was filed seeking review of the said order which was again rejected on 28th October, 2014. Challenging these two orders, the tenant filed an appeal under Section 38 of the Delhi Rent Control Act to the

Rent Control Tribunal. The Tribunal, dismissed the appeal vide order dated 22nd March, 2019. The reasoning given by the Tribunal was as under:-

“9. I have given my thoughtful consideration to the arguments / submissions made by learned counsel for both the parties. Perusal of the record reveals that the main case before the Trial Court was at the stage of petitioner's evidence. The appellant-herein sought modification, of the order dt. 29.08.2012 for allowing to bring on record other facts i.e. alternative portion in the property in question and amended written statement, vide the application dt.20.09.2012 u/s 40 of DRC Act r/w/s 152 and 151 of CPC and the said application was also dismissed vide order dt. 28.10.2014 by the Ld. Trial Court. The amendment was already directed to be made but no such amended written statement was filed, which was required under the provisions of Order VI Rule 18 CPC. Moreover, no such steps were taken by the appellant for granting / extending time for filing of the amended, written statement. I do not find any infirmity or illegality in the impugned orders passed by the Ld. Trial Court. Accordingly, this appeal is dismissed. Trial Court record along with copy of this Judgment be sent back to the Trial Court. The parties are directed to appear before the Ld. Trial Court on 01.04.2019. File of appeal be consigned to Record Room.”

6. Ld. counsel for the Petitioner submits that both the Trial Court and Tribunal have completely misinterpreted the original order dated 13th September, 2007. It is his submission that as per the said order, no amended written statement was, in fact, to be filed by the tenant, and only the facts had to be incorporated into the evidence by way of affidavit. Thus, the reasoning given by the Trial Court and the Tribunal for not allowing the amendment in the written statement is not tenable.

7. The Court has perused the records and seen that since 2006, when leave to defend was granted to the tenant, no progress has been made in the main matter itself. On a query by this Court as to what is the stage of the proceedings in the main matter, ld. counsel for the Petitioner submits that case is listed for Petitioner's evidence on 27th August, 2019. More than 13 years have passed since the leave to defend was granted, and it appears that the adjudication of the main petition has been delayed, on one ground or the other.

8. The initial order dated 13th September, 2007 was very clear. It allowed the tenant to incorporate subsequent events in the evidence by way of affidavit. The Court has clearly clarified that no amendment would be required in the written statement. This order did not brook any ambiguity. There was no need for the tenant to file subsequent applications for amendment of the written statement and review and thereafter an appeal. The filing of these applications, review and appeal shows that that substantial delays have been caused and such a course of action would not be permissible especially under the Rent Control Act where summary proceedings are being provided for. Under these circumstances, this Court, while agreeing with the counsel that the reasoning given by the Trial Court was a misinterpretation of the order dated 13th September, 2007, is of the opinion that the present petition does not deserve to be entertained.

9. It is, however, made clear that if the tenant wishes to incorporate any subsequent events, the same may be done in terms of the order dated 13th September, 2007 in the evidence to be filed by the tenant by way of affidavit. No further applications for amending the written statement ought to be entertained by the Trial Court. The case is stated to be listed for

Petitioner's evidence dated 27th August, 2019. The Trial Court shall ensure that the Trial in the petition is concluded and the judgment be rendered within a period of nine months. Considering the age of the tenant, the costs are reduced to Rs. 8,000/-. The same shall be paid before the next date.

10. The petition is disposed of.

11. *Dasti.*

PRATHIBA M. SINGH
JUDGE

AUGUST 23, 2019
MR

