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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 438/2018, CM APPL. 14763/2018, CM APPL. 26844/2018
CM APPL. 53768/2018, CM APPL. 9064/2019

VIJAY KUMAR

..... Petitioner

Through: Mr. Siddharth Aggarwal, Advocate.

versus

VARUN PRAKASH & ORS

..... Respondents

Through: Mr. Rajiv Khosla, Advocate for R-1.
Mr. Jayant Mehta & Ms. Shubhra
Shahi, Advocates for R-2.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER
12.03.2019

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The respondent nos. 3 to 5 are not indicated to have been served with the notice of the petition. However, it is apparent through the submissions that have been made on behalf of either side that they are not the material parties to the present *lis*.

The petitioner is aggrieved by the impugned order dated 07.03.2018 of the learned District & Sessions Judge (South) Saket, New Delhi in CIS RCT 54/2017, vide which an appeal filed by the appellant thereof arrayed as the respondent no.1 to the present petition,- was allowed, vide which the impugned order dated 25.10.2017 of the learned ACJ/CCJ/ARC (South), vide which an

application under Order XVIII Rule 17 of the CPC read with Section 151 of the CPC filed by the respondent no.1 herein seeking leave to re-call PW-1 for his further examination to prove subsequent events brought on record by the petitioner no.1, - was dismissed.

Through the submissions that have been made on behalf of either side, it is brought forth that an application under Order VI Rule 17 of the CPC filed by the petitioners of the Eviction Petition i.e. the respondent nos. 1 & 2 arrayed to the present petition, the amendment to the petition after the cross-examination of PW-1 i.e. the petitioner herein was allowed to bring on record the aspects of the suitability and non-suitability of the premises available to the respondent no.1 and thus, in support of the contentions that were raised by the respondent nos. 1 & 2 qua the aspect of *bona-fide* requirement of the respondents as raised in the eviction petition filed by them in Eviction Petition i.e. RC ARC No.6123/16.

Vide order dated 19.03.2016 in the eviction petition which bore No. E.No. 85/08 initially, an application under Order XVIII Rule 17 of the CPC filed by the petitioners seeking the re-calling of PW-1 for further examination was allowed in view of the amendments in the petition and the prayer clause having been allowed. It has been submitted on behalf of the petitioner herein that however, on 22.03.2017, the evidence of the petitioner was closed and a submission was made by the counsel for the petitioner that there were no other witnesses to be examined and the evidence may be closed and the petitioner's evidence was thus, closed. It has been submitted

on behalf of the petitioner thus, that the permission granted vide the impugned order for re-calling of the witness PW-1 is not in consonance with law, in as much as the order dated 25.10.2017 of the learned ARC, South could not have been set aside vide the impugned judgment of the learned Rent Control, Tribunal, South in as much as there could have been no appeal against the order dated 25.10.2017, in as much as there was no question of law involved.

It has also been submitted on behalf of the petitioner that the avowed contentions of respondent nos. 1 & 2 herein through the proceedings before the learned Rent Control, Tribunal and through the submissions made here, have been that the closure of the evidence of the petitioner before the learned ARC, South was erroneously made by the counsel for the petitioners but despite the same, the application under Order XVIII Rule 17 of the CPC was not allowed vide order dated 25.10.2017, and the appeal before the Rent Control, Tribunal (South) were all filed by the same counsel and that itself was an indication of the deliberate dilatory tactics and gross negligence on behalf of the respondent nos. 1 & 2.

It has also been submitted on behalf of the petitioner that apart from the factum that the affidavit of PW-1 was not filed after the amendment that had been granted under Order VI Rule 17 of the CPC, there were other proceedings conducted in which the respondent nos. 1 & 2 had effectively participated and thus, it cannot be contended on behalf of the respondent nos. 1 & 2 i.e. the petitioners of the eviction petition that there had been any non-intentional lapse

in the non-submission of the affidavit of the PW-1.

On behalf of the respondent nos. 1 & 2, it has been contended all that the impugned judgment dated 07.03.2018 of the learned Rent Control, Tribunal, South has done its rectification of the error as per the record itself and it has thus been submitted that the error on the record having been said to be cured, is itself a question of law in as much as the error on the record had been appropriately allowed to be cured.

Though, the respondent nos. 1 & 2 do not dispute that there was undoubtedly a lapse on the part of the counsel, it has been submitted that it was in the context that the application under Order VI Rule 17 of the CPC seeking amendment of the averments in the petition and the prayer clauses of the eviction petition having been allowed that it was necessary for bringing on record the witness PW-1 for further examination to prove the subsequent events

Reliance has *inter alia* been placed on behalf of the petitioner herein on a catena of verdicts to contend that jurisdiction has been erroneously exercised by the Rent Control, Tribunal, South vide the impugned judgment dated 07.03.2018.

It is essential to observe that vide the impugned judgment, it has been observed to the effect:-

“Having considered the cited judgments and the material placed on the record, it is clear that the present appeal is maintainable against the interlocutory order dated 25.10.2017 as the substantial rights of the appellant have been affected. The appeal is also liable to be allowed for the same reason. The reason is that the Ld. ARC, South

vide order dated 30.11.2015 had allowed the appellant to amend the petition to bring in subsequent events. Subsequently, vide order dated 19.03.2016, the petitioner was allowed by the Ld. ARC, South u/o 7 Rule 14(3) CPC for taking on record the orders passed in the matrimonial and partition decrees and also permitted the petitioner U/o 16 Rule 1 CPC to file the further list of witnesses on the record. The witnesses were summoned and did attend the proceedings but the proceedings then went into further miscellaneous applications including the one filed by the respondents to amend the written statement. The closure of the evidence of the petitioner by the Ld. Counsel is clearly attributable to the fault of the Ld. Counsel of not having been upto date with the proceedings in the case. Clearly, the petitioner who is dependent on his Counsel for the conduct of the case, cannot be penalized for the inadvertent mistake of the Ld. Counsel. In these circumstances, the appeal is allowed. The appellant is granted one opportunity to examine the PW.1 and conclude his evidence. The Ld. ARC, South may give an effective opportunity to the present appellant to conclude his evidence.”

The impugned judgment indicates categorically to the effect that substantial rights of the appellants of the said appeal i.e. the respondent nos. 1 & 2 to the present petition had been effected and that the reason that the learned ARC, South vide order dated 30.11.2015 had allowed the appellant to amend the petition was to bring in subsequent events and that the list of witnesses has also been permitted to be brought on record and that the witnesses were in fact summoned and did not attend the proceedings and the proceedings went into further miscellaneous applications including the one filed

by the respondents to amend the written statement and that the closure of the evidence of the appellants by the counsel for the petitioners before the RCT South was clearly attributed to the fault of the counsel for having not been up to date with the proceedings and that the appellant thus, who was dependent on his counsel for the conduct of the case could not be penalized for the inadvertent mistake of the counsel, one single opportunity was granted to the appellants for examination of PW-1 and for concluding the evidence and the learned ARC, South was thus, directed to give an effective opportunity to the appellants to conclude his evidence.

On a consideration of the submissions that have been made and the factum that undoubtedly, vide order dated 19.03.2016 of the learned ARC, South, the application under Order VI Rule 17 of the CPC was allowed, and PW-1 was allowed to be re-called for examination with it having also been observed by the learned RCT to the effect that the list of witnesses had also been filed, the closure of the evidence by the counsel for the respondent nos. 1 & 2 to the present petition as the petitioners of the eviction petition on 22.03.2017 was apparently erroneous and in the circumstances, it was apparently as rightly contended on behalf of the respondent no.2 to the present petition against the Court record.

In the circumstances, it is not considered appropriate to interfere in the jurisdiction exercised vide the impugned judgment dated 07.03.2018 of the learned Rent Control, Tribunal in CS RCT 54/2017. However, apparently for the conduct of the respondents in

the instant case, the petitioner deserves to be compensated with costs. PW-1 in terms of order dated 07.03.2018 of the learned Rent Control, Tribunal, South is allowed to be examined on submission of the affidavit of the PW-1 which is stated to have not yet been submitted in view of the order dated 17.04.2018 of this Court whereby proceedings before the learned Trial Court was stayed on submission of the said affidavit by the date 18.03.2018 on the records of the learned ARC, South with a copy being supplied to the counsel for the petitioners by the said date with directions to the learned ARC, South to proceed in accordance with order dated 07.03.2018, subject to payment of costs of Rs.40,000/- by the respondent nos. 1 & 2 as a composite cost to the petitioner.

The petition is disposed of accordingly.

ANU MALHOTRA, J

MARCH 12, 2019/NC