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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 884/2018, CM APPL. 31162/2018
& CM APPL. 45837/2018
M/S CHHOTAY LAL JAIPAL MAL Petitioner
Through Mr. Mehul Gupta, Adv.

versus

M/S MANI LAL & BROS Respondent
Through Mr. Vinod K. Singh, Adv.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA
ORDER
% **16.01.2019**

Submissions have been made on behalf of either side.

Vide the present petition, the petitioner assails the impugned order dated 06.06.2018 in Eviction Petition No. E-137/17/14, New No. 80475/16 in a petition under Section 14 (1) (e) of the DRC Act as amended of the learned ARC-2, Central, Tis Hazari Court to the extent that the application under Section 151 CPC filed by the applicant / petitioner, arrayed as the respondent to the said eviction petition, seeking to place on record the subsequent event which the respondent to the said eviction petition i.e. the petitioner herein has shown is stated to have learnt of an acquired knowledge in December, 2017 qua other parties owned by the respondent / landlord.

Reply of the respondent to the said petition is placed on record.

On a perusal of the record and the application under Section 151 CPC dated 17.01.2018 that had been filed by the petitioner before the learned ARC seeking to bring forth subsequent events, which are stated to be in the form of acquiring of knowledge of the existence of other properties owned by the respondent / landlord as brought forth through the averments made in the application seeking leave to defend filed by the respondent / landlord in the proceedings in the Eviction Petition No. 480974/16 titled as Lokesh Kumar Gupta Vs. M/s. Mani Lal & Brothers being the respondent to the present petition i.e. the petitioner of the eviction petition in which the impugned order has been passed whereby the application seeking leave to defend of the respondent to the present petition i.e. the landlord of the eviction petition herein in which the impugned order has been passed as tenant in the proceedings in the Eviction Petition No. 480974/16 was dismissed qua shop bearing No. 6, Ground Floor, Chawri Bazari, Delhi – 110 006 on 10.10.2017 which was subsequent to the filing of the leave to defend by the present petitioner on 31.05.2016 of which as per para 5 of the said application, details of the same were to the effect:-

“5. That on perusal of the court record, the Applicant/Respondent came to know that in para no. 18 of leave to defend application filed in the court of Sh. Prashant Sharma, SCJ/RC, the Petitioner herein has admitted to have owned the following properties in addition to the suit property (and the tenanted property at Chawri Bazar Main Road), details of, which are as under:

- a. Property at Plot no. 87, Block-D, Inderlok Colony, Old Rohtak Road.*
- b. Shop no. 3641-42, 2nd floor. Gall Lohe Woli, Jhalani Brothers Market, Delhi.*
- c. Property no. 3618/6, 3618/10, Sudershan Market, Chawri Bazar, Delhi.*
- d. Property no. 3719, Katra Dhoomimal, Churiwalan, Chawri Bazar, Delhi.*
- e. Property no. 3728A, Katra Dhoomimal, Churiwalan, Chawri Bazar, Delhi.*
- f. Property no. 3728B, Kotra Dhoomimal, Churiwalan, Chawri Bazar, Delhi.*
- g. Property no. 7, Mongol Building, Bhogirath Palace, Delhi.*
- h. Property no. 8, First Floor, Chawri Bazar, Delhi.*
- i. Shop no. G5, GF, Nehru Place, Delhi.*
- j. Shop no. 18, Roghushri Market, Delhi.*
- k. Shop no. 3641-42, 2nd Floor, Goli Lohewoli, Jhalani Market, Delhi.*
- l. Plot no. 86, Gujarat Vihar, Preet Vihar, Delhi.*
- m. Plot no. M-217, Greater Kailash-II, New Delhi.”*

Placed on record is also an application for leave to defend filed by the respondent herein as the respondent to the Eviction Petition No. 480974/16 in which there are averments made in para 16 thereof to the effect : -

“16. That the applicant states that the averment of the

petitioner regarding the available accommodation to the respondent is enough to get the eviction is also misplaced as there Is no appropriate available accommodation which can suit the need of the tenancy of the respondent firm. The detailed accommodation is enlisted herein below for the kind perusal of the Hon'ble court. The respondent firm has four partners whose available accommodation as well as the accommodation available to the respondent firm is given below for the kind perusal of the Hon'ble Court.

a. Manilal and Bros:-1. Owned property A. Shop no 3484 (old number) 3670 (new number), Gail Bajrang Bali , Chawri Bazaar, Delhi-6.

Ground floor shop is already tenanted to a tenant to M/s Chotelal Jaipal Mal whose tenancy has been already determined and eviction petition is already pending in the court of Smt. Namita Aggarwal court no 27 and the next date of hearing in the said matter is 16.01.17. The first floor of the shop is in the possession of the respondent firm and one employee of the respondent is residing in the said premises. The entire building is in dilapidated condition and required to be demolished as per the slum clearance order passed in the said matter. The copy of the property tax return receipt issued by the MCD is annexed herewith as Annexure A-3 for the kind perusal of the Hon'ble Court.

B. One property situated at Rohtak road bearing no Plot no 87, Block D, Inderlok Colony, Old Rohtak Road, Delhi however not in possession of the respondent since 45 years. It's exact address/papers is also not known to the partners of the respondent firm.

2. Rented Property:- A:- Office no 3641-42 2nd floor, Gali Lohe Wall, Jhalani brothers Market, Delhi. This property is in highly dilapidated condition and given to one card shop (not associated with the respondent firm) who is utilising the same since 10 years and no rent is paid by him since then. The copy of the rent receipt issued by the landlord is attached herewith as Annexure A-4 for the kind perusal of the Hon'ble court.

B. Property no 3618/6 ,10, Sudershan Market, Chawri Bazaar, Delhi a rented premises utilised as Godown by the respondent firm for its business of the respondent firm. The copy of the rent receipt issued by the landlord and property tax assessment paid receipt issued by the MCD is attached herewith as Annexure A-5 for the kind perusal of the Hon'ble Court.

C. Property no 3719, Katra Dhoomimal, Churiwalan, Chawri Bazaar, Delhi, a rented premises utilised as godown by the respondent firm for its business of the respondent firm. The copy of the rent receipt issued by the landlord is attached

herewith as Annexure A-6 for the kind perusal of the Hon'ble court.

D. Property no 3728A, Katra Dhoomimal, Churiwalan, Chawri Bazaar, Delhi, a rented premises utilised as godown by the respondent firm for its business of the. respondent firm.

E. Property no 3728B, Katra Dhoomimal , Churiwalan, Chawri Bazaar, Delhi, a rented premises utilised as godown by the respondent firm for its business of the respondent firm. The copy of the rent receipt issued by the landlord is attached herewith as Annexure A-7 for the kind perusal of the Hon'ble court. This receipt is issued for the above two property.

F. Property no 7, Mangal Building, Bhagirath palace, 1st floor, Given to Parul Ben Pandya for stay. The respondent firm does not receive any rent from the said premises since given.

b. Property no 8, 1st floor, Gali Khari Kuan, Chawri Bazaar, Delhi taken on rent from its landlord and utilised by a firm namely Mukesh Jayesh and Co having the partnership between Mr Mukesh T Amin, Late Ramaben T Patel (Mother) since died. The said partnership firm has closed its operation on 24.08.2000.and surrendered its RC in original. The original landlord Renu Gupta sold the above property to a third person not known to the respondent firm partner Mr Mukesh T Amin. The copy of the one of the old rent receipt

issued by the previous landlord and the assessment order passed by the concerned department as well as surrendering certificate is attached herewith as Annexure A-8 (9 Pages colly for the kind perusal of the Hon'ble court.

c. Partner Mukesh T. Amin has a separate entity Mukesh T Amin (HUF) who is owning a residential plot bearing no 86, Gujrat Vihar, Preet Vihar, New Delhi.

d. Partner Mukesh T Amin has 50 percent interest in residential unit M-217, GK-2, New ,Delhi. The entire family of Mukesh T Amin is residing in the said unit.

The property no M-21.7 is an inherited ancestral property from his father. One rented property no 3610-12, Loha Bhawan, Chawri Bazaar, Delhi- 6 which is utilised as godown by Mr Jayesh T Patel for his business however rent receipt are issued in the name of Mukesh T Amin, Jayesh T Patel, Thakor Bhai Patel (since died).

e. Partner Jayesh T Patel owned

A. Shop no G-S GF Nehru Place , New Delhi tenanted by some tenant.

B. Shop No 18, Raghushri Market, New Delhi-6 where the partner Jayesh T Patel do its own business independently. It's self owned property.

C. 50 percent stack in the property no M -217, GK-2, New

Delhi where the partner Jayesh T Patel of the respondent firm reside with his family. The

property no M-217 is an inherited ancestral property from his father.

D. The partner Mr Jayesh T Patel has a right in the tenancy of Shop no 3641-42, 2nd Floor. Gall Lohe Wali, Jhalani Market , Delhi. This property is in highly dilapidated condition and given to one card shop (not associated with the respondent firm) who is utilising the same since 10 years and no rent is paid by him since than. The said premises landlord is also not known to the respondent firm or its partner.

E. The partner Mr Jayesh T Patel has 5% stake in M/s Mani Lai Bros.

F. The partner Mr Jayesh T Patel has 5% stake in M/s Chotelal Jaipal Mai tenancy described herein above.

f. Partner Smt Dipika Mamin owned residential plot in Greater Noida Block Eta, measuring 200 sq yard.

g. Partner Nikhil Amin does not own any immovable property either in tenancy or self owned.”

Through the reply that has been submitted on behalf of the respondent to the present petition, it has been stated vide para F, which reads to the effect : -

“However in the eviction proceeding which was filed for getting it's own premises possessed by the tenant, that too

since locked and also suitably available on the same road, respondent has not felt so suitable or to declare as all the properties are either not occupied by different tenants. So the contentions of the petitioner is misplaced and is not having any truths.”

and significantly the said reply is not supported by any affidavit of the respondent qua which it has been submitted on behalf of the respondent by the learned counsel present for the respondent that the respondent can file now an affidavit in relation thereto to the said averment.

A further submission has been made on behalf of the respondent making reference to the averment made in para 5 of the application dated 31.05.2016 filed by the petitioner herein seeking leave to defend which reads to the effect : -

“5. That there are legal defects and flaws in the petition. The petitioner has more than sufficient and surplus accommodations in the same locality rather the same are also not bonafide required by them and is not in need of tenanted premises for bona-fide requirement. It is further submitted that the petitioner is having so many accommodations in Delhi, but the details of which can not be produced before this Hon'ble Court at this stage because the respondent is not interested in the affairs of others and he is a of God fearing person but in case any documentary evidence would be required by this Hon'ble Court, the respondent will prove the ample evidence in this regard.”

submitting to the effect that the petitioner was well aware of the other accommodation available with the respondent but chose not to depict the same and that the petitioner thus cannot contend of having learnt of the said details only pursuant to the order in the Eviction Petition No. 480974/16.

It is essential to observe that the details of the other premises stated to be owned possessed by the respondent are indicated through the application filed by the respondent to the leave to defend in relation to which the order dated 10.10.2017 in the Eviction Petition No. 480974/16 was passed. Even otherwise the matter is still at the stage of the consideration of the application filed by the petitioner herein seeking leave to defend the Eviction Petition No. E-137/17/14, New No. 80475/16 of the learned ARC-2, Central, Tis Hazari Court and no prejudice would be caused to the respondent seeking to bring on record the details of the properties as detailed in para 5 of the application of the petitioner herein under Section 151 CPC dated 17.01.2018 filed before the learned ARC.

In view thereof, the petitioner is allowed to place on record the details of the properties depicted in para 5 of the application under Section 151 CPC dated 17.01.2018 filed by the petitioner before the learned ARC on the records of the Eviction Petition.

To this extent, the petition is allowed.

The learned ARC is requested to expeditiously dispose of the

application filed by the petitioner herein seeking leave to defend within a period of two months form the receipt of this order.

Copy of this order be sent to the learned Trial Court.

ANU MALHOTRA, J

JANUARY 16, 2019/MK