

\$~10 & 13

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
 + **CM(M) 105/2019, CM APPL. 3149/2019 & CM APPL. 3151/2019**
SHARMILA BANERJEE LIVINGSTON Petitioner
 Through: Mr. Sanjeev Mahajan, Advocate (M-9811156437)
 versus

MOHAMMAD ABBAS & ORS Respondents
 Through: Mr. M.A. Niyazi & Ms. Nehmat Sethi, Advocates (M-9810413706)

AND

✓ **CM(M) 502/2019 & CM APPL. 14478/2019**
SHARMILA BANERJEE LIVINGSTON Petitioner
 Through: Mr. Sanjeev Mahajan, Advocate

versus

MOHD ABBAS Respondent
 Through: Mr. M.A. Niyazi & Ms. Nehmat Sethi, Advocates

CORAM:
JUSTICE PRATHIBA M. SINGH

ORDER
20.11.2019

%

1. The present two petitions arise out of an eviction petition filed under Section 14(1)(e) of the Delhi Rent Control Act, 1958 in respect of the Ground Floor, C-17, Nizamuddin West, New Delhi. The said eviction petition had been preferred by the Respondents against the Petitioner – Ms. Sharmila Banerjee Livingston. In the said petition, affidavit by way of evidence was filed by the Petitioner and the same has been directed to be taken off the record, and liberty has been granted to file a fresh affidavit in terms of Order XIX Rule 13 CPC. The said order dated 15th March, 2019 is

Signature Not Verified

Digitally Signed

By:AMULYA

CM(M) 105/2019

under challenge in CM(M) 502/ 2019.

2. Insofar as CM(M) 105/2019 is concerned, the stand of the Petitioner is that the Respondents themselves have relied upon an agreement to sell dated 19th October, 1994 in a suit for declaration filed against them by a tenant of the Second Floor and accordingly the Petitioner wishes to rely upon the said document, and amend her pleadings to incorporate the said document.

3. Insofar as the agreement to sell dated 19th October, 1994 is concerned, there is no dispute on behalf of the Respondents that this agreement was produced by the Respondents in a suit for declaration filed by the tenant on the Second Floor. Accordingly, Mr. M.A. Niyazi, Id. counsel submits that he has no objection if the said agreement is exhibited in the present suit, and the said suit record is produced in the present suit as well. The Petitioner's request for amendment of the written statement is accordingly declined with the clarification that the Petitioner is permitted to summon the suit record of the suit for declaration filed by the tenant in ***Rawat Hashmi v. Mrs. Ratna S. Advani & Ors., Suit No.331/2001*** for the purposes of exhibiting any pleadings and documents which form part of the said judicial record. With these observations, CM(M) 105/2019 is disposed of.

4. Insofar as CM(M) 502/2019 is concerned, the Trial Court has already given permission to the Petitioner to file a fresh affidavit by way of evidence. The Petitioner shall accordingly avail of the said liberty granted by the Trial Court, and restrict her affidavit by way of evidence to the pleadings and documents on record. Insofar as pleadings of the judicial record which has been directed to be summoned is concerned, the documents therein/pleadings shall only be exhibited, however, no averments

or arguments shall be made in the affidavit by way of evidence in respect of the same.

5. Since the judicial record of another case is being permitted to be exhibited in the present eviction petition, the evidence of the Respondents having already concluded, in respect of the said judicial record, the Respondents are permitted to lead rebuttal evidence after conclusion of the Petitioner's evidence, if the need so arises, in accordance with the law. With these observations, CM(M) 502/2019 is disposed of. All pending applications are also disposed of.

6. Considering that this matter is quite old, the Trial Court is directed to endeavour to expeditiously dispose of the eviction petition.

Prathiba..
PRATHIBA M. SINGH, J.

✓ NOVEMBER 20, 2019

Rahul