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

+ **CM (M) 172/2019 & CM APPL. 4773/2019**

MOHD ZAKIR & ORS.

..... Petitioners

Through: Mr. Jatin Mongia, Mr. Nikhil Bamal
and Mr. I. J. Sharma, Advocates.
(M:9810398799)

versus

CHANDU LAL

..... Respondent

Through: Mr. Jagdev Singh Gulliya, Advocate
with Respondent in person.
(M:8700386647)

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

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13.01.2020

1. The main ground that is being urged in this petition is that the Respondent is one of the co-owners of the tenanted premises and since other co-owners have no objection in the Petitioners/Tenants (*hereinafter* 'Tenants') continuing in the tenanted premises, the eviction petition under Section 14(1)(a) of the Delhi Rent Control Act, 1958 itself is not maintainable. It is further argued that there are several admissions by the Respondent/Landlord (*hereinafter* 'Landlord') himself that the suit for partition is pending between the co-owners of the property and since all the co-owners are not parties in the suit and it is admitted that there are other co-owners, one of whom consents to the Petitioners/Tenants to continue, the application under Order XII Rule 6 CPC ought to have been allowed by the Trial Court. Reliance is placed on the affidavit of Shri Raj Kumar, who is one of the co-owners and the son of Late Shri Bhim Singh that he does not

intend to evict the Tenants from the premises.

2. Ld. counsel for the Tenants submits that the co-owner is, in fact, appearing before the Id. Additional Rent Controller (*'Trial Court'*) and has also deposed in favour of the Tenants. Thus, the petition ought to be dismissed in view of this factual and legal position. He relies upon the judgment of the Supreme Court in ***Mangal Builders & Enterprises Limited & Anr. v. Williamson Magor & Company Ltd. & Anr.***, [SLP Nos.9616-9617/2015, decided on 06th April, 2017] amongst others.

3. On the other hand, Id. counsel for the Landlord submits that this very ground was raised in the application under Order VII Rule 11 CPC. The said application was rejected by the Trial Court. The same has also been upheld by this Court in CM(M) 1060/2018 vide order dated 9th May, 2019. The said order reads as under:

“This petition challenges the order dated 09.08.2018 whereby an application under Order VII Rule 11 CPC filed by the petitioner was dismissed on the ground only the plaint need to be considered for agitating an application under Order VII Rule 11 CPC. There is no illegality in the order dated 09.08.2018 and as such the petition stands dismissed. This order shall not cause any prejudice to the petitioner to pursue his cause qua an application under Order XII rule 6 CPC, if, filed.”

4. After perusing the record and pleadings as well as in view of the affidavit given by Mr. Raj Kumar and the orders passed in the earlier round when the application under Order VII Rule 11 CPC was decided, this Court is of the opinion that the stand of Mr. Raj Kumar would have to be considered by the Trial Court for adjudicating as to whether the Tenant is liable to pay rent to the Landlord. It is informed by Id. counsel for the

Landlord that there are two eviction petitions pending i.e. one petition under Section 14(1)(e) of the Act and another under Section 14(1)(a) of the Act. The first petition was decreed in favour of the Landlord and a revision is pending where an interim order has been granted by this Court. Insofar as this petition is concerned, it is under Section 14(1)(a) of the Act for non-payment of rent and hence, the question as to whether who is the actual owner of the property and to what share, is not the subject matter to be adjudicated in this petition. The application under Order VII Rule 11 CPC was based on similar grounds and has been rejected. The said order has attained finality. The grounds raised in the application under Order XII Rule 6 CPC are also similar and evidence having been led by the parties, the matter is at the final stage of the adjudication. In this view of the matter, it is directed that as part of final adjudication, the question as to the maintainability of the petition shall also be decided by the Trial Court without being affected by the orders passed in the applications under Order VII Rule 11 CPC and Order XII Rule 6 CPC. The said issue of maintainability shall be adjudicated independently on the basis of pleadings and evidence on record and not on the basis of any earlier orders passed in the said application. The Trial Court shall now proceed expeditiously in the matter and decide the petition finally.

5. With these observations, the petition along with the pending application is disposed of. *Dasti.*

PRATHIBA M. SINGH, J.

JANUARY 13, 2020/dk