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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 206/2019**

GOVIND RAM Petitioner

Through: Mr. S.P. Aggarwal, Mr. Sushant
Sagar & Mr. Mohan, Advocates (M-
9811024762)

versus

DELHI PINJRAPOLE SOCIETY (REGD) Respondent

Through: Mr. Gaurav Barathi, Advocate (M-
9810526981)

AND

+ **CM(M) 793/2019**

DELHI PINJRAPOLE SOCIETY (REGD) Petitioner

Through: Mr. Gaurav Barathi, Advocate

versus

GOVIND RAM Respondent

Through: Mr. S.P. Aggarwal, Mr. Sushant
Sagar & Mr. Mohan, Advocates

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **16.01.2020**

CM(M) 206/2019 & CM APPL. 5742/2019

1. These two petitions arise out of an eviction petition under Section 14(1)(b) of the Delhi Rent Control Act, 1958 (*hereinafter*, “DRC Act”). The Delhi Pinjrapole Society (*hereinafter*, “Society”), which is a society registered under the Societies Registration Act, filed a petition against Mr. Govind Ram (*hereinafter*, “Tenant”) seeking eviction on the ground that the tenanted premises had been sublet to one Mr. Onkar.
2. The eviction petition was initially dismissed by the Id. Add. Rent Controller (*hereinafter*, “ARC”) vide order dated 16th February, 2017.

Thereafter, the Society filed an appeal before the Id. Rent Control Tribunal (*hereinafter*, “RCT”) and vide the impugned judgment dated 3rd December, 2018, the RCT has set-aside the ARC’s order of dismissal and remanded the matter for fresh consideration.

3. CM (M) 206/2019 challenges the RCT’s judgment dated 3rd December, 2018. The submission of Mr. S.P. Aggarwal, Id. counsel appearing for the Petitioner, is that the RCT, in paragraph 6 of the impugned judgment, came to the conclusion that there was negligence on behalf of the counsel, on the basis of which, it incorrectly and illegally, remanded the matter. It is his submission that the negligence of a counsel cannot mean that the dismissal of the eviction petition is set-aside by the Tribunal. This would amount to giving benefit for counsel’s negligence. The Tribunal has, thus, incorrectly remanded the matter to the ARC and given a whole new opportunity to the Society to lead fresh evidence. According to him, this order is not sustainable.

4. On the other hand, Mr. Gaurav Barathi, Id. counsel appearing on behalf of the Society, submits that the Tribunal has not just remanded the matter on the ground of negligence of the counsel but on various other grounds. Id. counsel submits that the Tribunal has considered the submissions made by the Society and found that there are genuine issues to be adjudicated and hence, arrived at the conclusion that the matter deserves to be remanded back.

5. The Court has perused the impugned order dated 3rd December, 2018. A perusal of the same shows that the RCT has arrived at the following findings:

- i) that the Society’s registration documents and the rules and

regulations were not placed on record due to the negligence of the counsel;

ii) secondly, that the confusion as to whether the sub-tenant was Mr. Onkar or Mr. Ram Avtar was not material, as in a petition under Section 14(1)(b) of the DRC Act, the landlord is only required to prove that the original tenant is not in possession of the tenanted premises and there is a third person who enjoys possession;

iii) the RCT also comes to the conclusion that the question as to whether the property which is in possession of the Tenant is 9271-S or 9271 could have been ascertained by the ARC by appointing a Local Commissioner.

Since steps were not taken by the ARC to ascertain important facts, the Tribunal came to the conclusion that the matter deserves to be decided afresh. The operative portion of the RCT's order reads as under:

"10. On these grounds, the impugned judgment dated 16.02.2017 is hereby set aside and matter is remanded back with liberty to both the parties to lead evidence afresh; summon record/ witness from the office of Registrar of Societies and they may also pray Ld. ARC for appointment of Local Commission to verify the address of the tenanted premises and the occupants thereof. Parties are directed to appear before concerned Ld. ARC on 20.12.2018. TCR be sent back along with copy of the order."

6. A perusal of the above order shows that the RCT, while setting aside the impugned order of the ARC, has permitted the parties to lead fresh evidence and to summon the records from the Registrar of Societies. The RCT has also directed the appointment of a Local Commissioner in order to verify the exact address of the tenanted premises and who is in possession of

the same. Thus, a reading of the RCT's order clearly shows that several errors were found by the RCT in the ARC's order. When petitions under Section 14(1)(b) of the DRC Act are considered by the ARC, such crucial and important aspects cannot be ignored.

7. The aspects on the basis of which the remand has been ordered appear to be completely justified and do not warrant interference by this Court. The eviction petition was clearly dismissed by the ARC erroneously even without ascertaining crucial facts as to the number of the property. Moreover, the Local Commissioner who was appointed has since filed the report and is stated to have observed that Mr. Onkar and Mr. Ram Avtar are one and the same person. These facts would have to be considered by the ARC afresh. This Court has considered the RCT's order dated 3rd December, 2018 and does not find any error/perversity in the same.

8. Accordingly, the petition and all pending applications are disposed of in the above terms. No orders as to costs.

CM(M) 793/2019 & CM APPL. 24371/2019

9. This petition has been filed challenging the ARC's order dated 3rd April, 2019, passed subsequent to the remand by the RCT.

10. The Society filed two applications, one under Order VI Rule 17 CPC, for amending the eviction petition and one under Order VII Rule 14 CPC, to lead further documentary evidence. The said applications have been rejected by the ARC on the ground that since the Landlord-Tenant relationship has not been denied, the documents are of no relevance. The ARC has further observed that since similar applications have been dismissed earlier by the RCT a second round of applications cannot be entertained.

11. Insofar as the application under Order VI Rule 17 CPC is concerned,

the reason why the Society seeks to amend the petition is to add a pleading to the effect that Mr. Onkar and Mr. Ram Avtar are one and the same person. It is conceded by the ld. counsel for the parties that since the remand, a Local Commissioner has, in fact, been appointed to ascertain the said facts by means of an inspection of the tenanted premises and the report has since been filed. Thus, the findings of the Local Commissioner and the report of the Local Commissioner would be read in evidence under Order 26 Rule 10 CPC and no fresh amendment ought to be permitted at this stage.

12. Insofar as the additional documents are concerned, the RCT had permitted the parties to lead evidence afresh which would include both oral and documentary evidence. Since these documents relate to the site plan of the Society, which was permitted to be summoned, filing of certified copies thereof would lead to expeditious disposal of the petition. Accordingly, the application under Order VII Rule 14 CPC deserves to be allowed. However, the application under Order VI Rule 17 CPC is dismissed. The content of the Local Commissioner's report shall be read in evidence and the fresh evidence, if any, both oral and documentary, led by the parties, shall also be considered.

13. Accordingly, the petition is disposed of in these terms. No orders as to costs. All pending applications are disposed of.

PRATHIBA M. SINGH, J

JANUARY 16, 2020

Rahul/C