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

Date of Decision: 26th February, 2020

+ **CM (M) 112/2020, CM APPLs. 3714/2020 & 3715/2020**

KUSUM LATA JAIN

..... Petitioner

Through: Mr. Aseem Mehrotra, Mr. Alok Pandey and Mr. A. Jain, Advocates.
(M:9811062351)

versus

NORTH DELHI MUNICIPAL CORPORATION Respondent

Through: Ms. Mini Pushkarna, Standing Counsel with Ms. Khushboo, Ms. Latika Malhotra and Ms. Swagata Bhuyan, Advocates with Ms. Bimla Bharti, Assistant Director and Mr. Neeraj Malhotra, Principal, Education
(M-9810674872)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. The present petition challenges the impugned order dated 16th September, 2019 by which the amendment to the written statement moved on behalf of the Nr. DMC has been allowed. The Petitioner/Landlord (*hereinafter, "Landlady"*) filed an eviction petition under Section 14(1)(a) of the Delhi Rent Control Act on the ground of second default. The Nr.DMC is in occupation of first and second floor of the property. The Corporation is stated to be running a primary school in the premises. The eviction petition was filed on 5th February, 2018 and is pending. The Nr.DMC, which had originally filed a written statement, filed an application

under Order VI Rule 17 CPC seeking to amend the written statement. The said application was moved on the premise that the signatures of the Landlady have been forged in the eviction petition, and that her son, who is conducting this matter on behalf of his mother, has impersonated the mother. It is also alleged that the counsel appearing for the Landlady was never engaged by Ms. Kusum Lata Jain, and that the eviction petition is not signed or verified by Ms. Kusum Lata Jain. All these averments were sought to be added by way of an application under Order VI Rule 17 CPC.

2. The same was opposed by the Landlady, and the plea was that the entire attempt is only to delay the disposal of the Order XII Rule 6 application. The reply also avers that the Landlady had engaged Mr. P.K. Rawal, Advocate, who had in fact represented her even in the past, when a petition in respect of a Will was pending before this Court. The Landlady also took a plea that the officer of the Nr.DMC, who has made such allegations in the application for amendment, is liable to be prosecuted under Section 340 Cr.PC.

3. The impugned order has allowed the amendment application by giving a finding that the signatures of the Petitioner are different in various documents. The legal notice dated 10th August, 2016 has also been doubted. On the premise that trial in the petition is yet to begin, the amendment has been allowed by holding that it is essential for determining the real question in controversy.

4. Ld. counsel for the Landlady submits that the petition is being prosecuted by Ms. Kusum Lata Jain. The property originally belonged to Late Shri Dhanander Kumar Jain, the husband of Ms. Kusum Lata Jain. She is more than 80 years of age. She has issued a General Power of Attorney in

favour of her son, Mr. Sunil Kumar Jain. The said GPA dated 23rd April, 2015 is also a registered GPA. A copy of the GPA has been placed on record. It is submitted that owing to the old age of the Landlady, she cannot regularly appear in Court and sign pleadings, and has authorised her son to take action on her behalf. The allegations of forgery are denied. It is submitted that recently due to ill-health she is in ICU in Ambala and her son is with her.

5. On behalf of the Respondent-Corporation, when arguments commenced, it was noticed that one Mr. Suraj Prakash Saxena, Advocate was appearing on the side of the Respondents. Ms. Mini Pushkana, Id. counsel appearing for the Corporation stated that he had was attempting to assist her in the matter, though she was appearing for the Corporation in her own right. When Mr. Saxena was queried as to what is his interest in the present ligation it was, revealed that Mr. Saxena, Advocate is appearing for other tenants in the same property. On further query it is revealed that he also claims to be a tenant in the property, from where he is running his office. The allegation of impersonation being extremely serious, Id. counsel appearing for the Corporation was asked to take instructions as to the basis on which such strong allegations have been made against the Landlady, who is a senior citizen. Under instructions from officers of the Corporation, Ms. Mini Pushkarna, Id. counsel submits that the application was moved on the basis of information received from the other tenants. Attention of the Court is drawn to paragraph 6 of the application.

6. The Court has perused the records which have been filed, and has heard Id. counsels for the parties as also Mr. Saxena. The clear feeling that the Court gets is that there are several tenants in this property, which is a

prime property in a busy commercial area. The Landlady has filed multiple petitions for eviction against various tenants and there have been different rounds of litigations even with the Nr.DMC. The rent admittedly paid is extremely low i.e. less than Rs. 300/- per month by all these tenants, if at all. The application for amendment states that the application was moved on the basis of information received from the tenants.

7. Paragraph 6 of the application reads as under:

“6. That on 20.03.2019, the Respondent has now learnt from the five tenants on the ground floor of the said Building certain facts of the foul play by the family members of Kusum Lata vis-a-vis tenants, including the Respondent, to cause their ouster/eviction from their respective tenanted premises, and also to sell the said Building without consent/knowledge/approval of Kusum Lata, the owner of the said Building.”

8. Thus, clearly, officials of the Corporation who were conducting the matter on behalf of the Corporation, had obtained this information from the tenants and had made such strong allegations against the Landlady without any basis or foundation.

9. The Petitioner being a senior citizen, it is nigh possible that her signatures do not match in various documents, but before making any allegations of forgery and impersonation, there has to be some basis. Such wild allegations cannot be made simply on the basis of information received, especially by a Government Municipal Corporation. The Landlady and her family have been required to institute multiple eviction proceedings to seek eviction of the tenants. The GPA, which is on record shows that the Landlady's son has been authorised by her. Moreover, Mrs. Jain has never approached the court and made any allegation that her son or counsel are

forging her signatures. The manner in which submissions were made by Mr. Saxena also leave no doubt in this Court's mind that all the tenants are completely colluding with each other in order to defeat the rights of the Landlord and have also roped in the Corporation to further their own vested interests. The counsel Mr. Saxena, who had no locus in the present petition, has in fact used inappropriate language in court and has interfered in the proceedings by trying to assist the counsel for the corporation. Ld. Counsel for the Petitioner has pointed out that Mr. Saxena is also appearing with other counsels for tenants including during the conduct of cross examination. The filing of the amendment application by the Nr.DMC, and making of such allegations is a completely unfortunate situation, which ought not to have arisen. The application under Order 6 Rule 17 being based completely on hearsay, and without any foundation or basis, is liable to be dismissed with costs of Rs.25,000/-. The impugned order is accordingly set aside. The costs shall be paid within four weeks.

10. The following other cases, are stated to be pending:

- (i) ARC/478742/2016 - *Kusum Lata Jain v Lalit Kishore Sharma*,
- (ii) ARC/478804/2016 - *Kusum Lata Jain v Sanjay Bansal*,
- (iii) ARC/478805/2016 - *Kusum Lata Jain v Anil Jain*
- (iv) ARC /268/2018 - *Kusum Lata Jain v Kamal Prakash Saxena*
- (v) ARC/ 269/2018 - *Kusum Lata Jain v Rawat Mal Nahata*
- (vi) ARC/174/2018 - *Kusum Lata Jain v Nr. DMC*

The District Court (Central) is directed to mark all these cases to one Judicial Officer who, if it deems appropriate, may record the statement of Ms. Kusum Lata Jain and her son in order to ascertain the factum of filing of the petition, the various pleadings in this matter as also the legal notices

issued. If the Landlady is not keeping good health, the Court before whom the matters are to be listed by the Id. District Judge is permitted to record the statement of Ms. Kusum Lata Jain through any other electronic mode. The same shall be adjudicated before one Court, so that it can be ensured that contradictory orders are not passed and multiplicity of litigation is also avoided.

11. The officers of the Nr.DMC, who were present in Court have tendered their unconditional apology which this Court accepts. The Landlady is permitted to move an application before the Trial Court for payment of rent at the prevalent rates inasmuch as if the Corporation does not dispute the ownership of the Petitioner, the Petitioner, who is a senior citizen ought not to be both deprived of the property due to the pendency of the eviction petition, for a long period and also not be able to enjoy any rent in respect thereof. Such an application, if moved by the Landlady, shall be considered expeditiously, in accordance with law.

12. With these observations the petition and all pending applications are disposed of.

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**PRATHIBA M. SINGH
JUDGE**

FEBRUARY 26, 2020
dj / RG