

\$~41

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

+ **CM(M) 198/2020**

NEELAM JAIN

..... Petitioner

Through: Mr. Ravi Gupta, Senior Advocate
with Mr. Ankul Jain and Mr. Sachin
Jain, Advocates. (M:9968228310)

versus

VANDANA SACHDEVA

..... Respondent

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

%

18.02.2020

CM APPL. 6577/2020 (exemption)

1. Allowed, subject to all just exceptions. Application is disposed of.

CM(M) 198/2020 & CM APPL. 6576/2020 (stay)

2. There is some discrepancy in the scanned order as the complete copy of the impugned order is not there in the scanned record. Copy of the order has been shown to the Court by the Ld. Counsel.

3. The present petition has been filed challenging the impugned order dated 28th January, 2020, by which the evidence of the Respondent/Respondent No.1 (*hereinafter, "Respondent No.1"*) has been reopened by the Id. RC, subject to payment of Rs.20,000/- as costs. The operative portion of the impugned order reads as under:

"4. Aggrieved by the order dated 25.01.2019, the applicant herein i.e. Vandana Sachdeva moved the Hon'ble High Court of Delhi by petition titled – Vandana Sachdeva vs. Neelam Jain and others, RC. Rev. No. 451/2019. While disposing off the said

petition by order dated 29.07.2019, the Hon'ble High Court of Delhi required the applicant to first approach this Court seeking the relief of re-opening of her evidence and thereafter adopt further remedies as may be available to her. Hence the present application.

5. The petitioner – Neelam Jain, has averred in the eviction petition that there are two tenants in the premises i.e. Vandana Jain (applicant herein) and Sarabhjeet Kaur. Thus, the applicant herein must have opportunity to put-forth her defence and prove it by adducing evidence to that end. The court had also accorded her leave to defend the petition. Thus interest of justice warrants that she be allowed to lead evidence. But, having perused the record, it is discovered that the applicant had been apparently casual in her approach vis-à-vis the proceedings emanating from the eviction petition.

6. Considering the interest of justice and the conduct of applicant, the order dated 25.01.2019 is set aside and the applicant is accorded an opportunity to lead evidence, subject to cost of Rs.20,000/-. Rs.15,000/- to be deposited with the Prime Minister's Relief Fund and Rs.5,000/- to be paid to the petitioner. Application is accordingly disposed off. The eviction petition be restored to its original number.”

4. The eviction petition was filed by the Petitioner under Section 14(1)(e) of the Delhi Rent Control Act, 1958 against Respondent No.1 - Ms. Vandana Sachdeva and Respondent No.2 - Ms. Sarabjeet Kaur Jass, who were stated to be partners. The petition relates to property bearing Shop No. B-2, Main Market, Vivek Vihar, Delhi-110095 (*hereinafter, “tenanted premises”*).

5. On 27th November, 2018, since Respondent No.1 remained unrepresented, the evidence of Respondent No.1 was closed. On 24th January, 2019 Respondent No.2 had made a statement that he does not wish

to hold any evidence and ld. counsel for Respondent No.2, on instructions, stated that his client would vacate the tenanted premises within six months from 24th January, 2019. Finally, the eviction order was passed on 25th January, 2019 on merits. This order was assailed by Respondent No.1 in R.C. REV 451/2019. In the said petition, a ld. Single Judge of this Court had directed that Respondent No.1 should first approach the ld. ARC with an appropriate application. The operative portion of the said order reads as under:

“6. Counsel contends that the litigation was being pursued by the petitioner’s erstwhile partner that the petitioner was not aware of the proceedings; that, not being aware, the petitioner did not marshall evidence; and the petitioner’s evidence was closed by order dated 27.11.2018 by the ARC. However, no application was moved by the petitioner for re-opening of the evidence.

7. In the circumstances, the present petition is disposed of, leaving the petitioner to first approach the learned ARC with an appropriate application for re-opening of her evidence, and thereafter adopt further remedies as may be available to the petitioner, in accordance with law.”

6. Pursuant to this order, Respondent No.1 moved an application for reopening of her evidence and recall of the eviction order dated 25th January, 2019, which was allowed by the impugned order.

7. Ld. Senior counsel submits that, in effect, the eviction order which was passed on merits has been recalled. Respondent No.1, who did not appear before the rent controller since 2016, has now been given benefit without any basis.

8. After going through the record and the impugned order, since the

Respondent no.1 was given liberty to approach the trial court vide the order passed in the Revision petition, this court is not inclined to interfere. However, considering that the evidence has been reopened and the matter is stated to have been fixed on 24th March, 2020 for Respondent No.1's evidence, it is directed that the evidence of Respondent No.1 shall now be recorded on a daily basis from 24th March, 2020. No adjournment shall be granted to Respondent No.1 for leading evidence. The matter shall thereafter proceed for final arguments and an endeavour shall be made to expeditiously dispose of the eviction petition.

9. With these observations, the petition and all pending applications are disposed of. *Dasti.*

PRATHIBA M. SINGH, J.

FEBRUARY 18, 2020

dj/T