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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM (M) 579/2019, CM APPLs. 17001/2019 & 17003/2019**

VINAY KUMAR SONI Petitioner

Through: Ms. Gita Dhingra and Ms. Gayatri
Aggarwal, Advocates.
(M:9810324978)

versus

VIJAY KUMAR Respondent

Through: Mr. Rajat Aneja and Ms. Chandrika
Gupta, Advocates. (M:9910122455)

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **30.01.2020**

1. The present petition challenges the impugned order dated 29th November, 2018 by which the eviction petition filed by the Respondent has been revived.

2. The brief background is that the Respondent – Mr. Vijay Kumar filed an eviction petition under Section 14(1)(e) of the Delhi Rent Control Act, 1958 against the various tenants in respect of property - Flat No.36 (private), First Floor, Municipal No.1863, Wazir Singh Street, Chuna Mandi, Paharganj, New Delhi. In the said premises, the Petitioner herein- Mr. Vikas Kumar Soni, who is Respondent No.1 in the eviction petition, was the tenant. An order dated 4th July, 2013 was passed on the objection taken by Respondent No.1 that the property vests with the Custodian of Enemy Property (hereinafter ‘Custodian’). Vide the said order, the Additional Rent Controller (‘ARC’) had adjourned the eviction petition as *sine die*. The ARC’s order reads:

“ *During arguments Ld. counsel for the respondent*

also pointed out that the petitioner has also filed civil suit in the Hon'ble High Court for declaration of certificate/notification/office orders/rent receipt issued by custodian of enemy property as null and void and for injunction restraining the defendants from taking the control, management and supervision of the disputed property.

The writ petition and civil suit filed by the petitioner against Union of India and custodian of Enemy Property in respect of the tenanted premises is not in dispute. Furthermore, it has also not been disputed that custodian of Enemy Property has issued letter/allotment certificate of tenanted premises in favour of the respondent no.1. On the other hand, the petitioner is claiming ownership of tenanted premises on the basis of registered sale deed and oral will. It is also not in dispute that the respondent has challenged the sale deed of petitioner by way of separate suit which is also stated to be pending in the Hon'ble High Court. One of the important ingredients required for claiming eviction of tenant U/s 14(1)(e) DRC Act is the ownership of petitioner over tenanted premises. The aforesaid proceedings pending in the Hon'ble High Court make it quite clear that the ownership of petitioner has been seriously challenged by the respondent as well as the custodian of Enemy Property. At the same time, this court is not competent to give any conclusive finding about ownership of the petitioner. The respondent shall suffer irreparably if eviction order is passed on merits and subsequently High Court gives conflicting finding that petitioner is not the owner of the property. In such circumstances, I do not deem it appropriate to proceed further with this case to give verdict without the decision of Hon'ble High Court of Delhi in respect of the ownership of the tenanted premises; Accordingly this application is allowed. This case is adjourned sine-die and any of the

parties would be at liberty to get this eviction petition revived after decision of Hon'ble High Court of Delhi on the issue of ownership of tenanted premises. Till then, file be consigned to record, room.”

3. In the meantime, the Respondent had filed a suit against the Union of India/the custodian and had also therein impleaded another tenant namely Mr. Virindra Kapoor. In the said suit, a declaration was sought against the custodian as well as a permanent injunction. The said suit came to be decreed under Order XII Rule 6 CPC vide the order dated 28th March, 2018. In the said order while the Court refused to grant any declaration as to ownership, on the basis of admissions made by the UOI and the Custodian, the following decree was granted in the said suit.

“27. Accordingly, application under Order XII Rule 6 CPC is partly allowed and the Certificate/ Notification/ Office Orders / Rent Receipts and Letters issued to occupants by defendant No.1 to 3 under Enemy Property Act are declared null and void and defendant No.1 to 3 are restrained from controlling, managing or supervening the suit property as Enemy Property. It is also declared that the suit property do not vest in Defendant No.1 to Defendant No.3 being enemy property under unamended Enemy Property Act, 1968”

4. On the strength of this judgement/decreed dated 28th March, 2018, an application was moved by the Respondent in his eviction petition, seeking revival of the petition. The said application was considered by the ARC, who vide the impugned order dated 29th November, 2018, directed the revival of the said petition.

5. The submission of Ms. Gita Dhingra, ld. counsel for the Petitioner is that since in the suit for declaration filed against the UOI/Custodian, the

declaration of ownership has not been granted, the petition under Section 14(1)(e) of the DRC Act was wrongly revived by the ARC. She further relies upon the fact that the UOI has challenged the decree dated 28th March, 2018 in RFA No.234/2019 and the same is pending. It is submitted that if the said RFA is allowed, then the decree which has been passed in favour of the Respondent, would itself be set aside and hence the petition under Section 14(1)(e) ought not to be proceeded. She further submits that the observations of the Civil Court that no declaration of ownership can be granted in favour of the Respondent, having not been challenged by the Respondent, the eviction petition itself is not liable to be maintained any further.

6. On the other hand, Mr. Rajat Aneja, Id. counsel appearing for the Respondent submits that the Respondent had taken action against various tenants and had accordingly filed WP(C) No.6461/2018 wherein vide order dated 10th September, 2018, a Id. Single Judge of this Court exercising writ jurisdiction has directed that the eviction proceedings can continue against the tenants.

7. After having perused the record and having heard the Id. counsel for the parties, it is clear that passing of the decree dated 28th March, 2018 is not in dispute. The declaration granted by the Civil Court in favour of the Respondent against the UOI/Custodian is also not in dispute. The true purport and effect of the said declaratory decree and the injunction order would have to be adjudicated in the eviction petition which has now been revived. The non-declaration of ownership which according to the Petitioner, would make the eviction petition not maintainable, is an issue which is to be considered by the ARC and cannot be pre-judged by this

Court in this petition. Vide order dated 29th November, 2018, the ARC has merely revived the petition under Section 14(1)(e) and nothing more. The adjudication of the said petition wherein the Respondent would be entitled to rely upon the decree dated 28th March 2018, is yet to be undertaken. At this stage, it cannot be said that the eviction petition cannot be revived inasmuch as the suit against UOI/Custodian filed by the Respondent has been partly decided in favour of the Respondent. Further, in view of the order dated 10th September, 2018 passed in WP(C) 6461/2018 the proceedings for eviction can continue in terms of the said order. The relevant portion of the order reads as under:

“3. The respondents have filed the present application stating that there is urgency in the matter as tenants inducted in the said property are being evicted by the petitioner and therefore, status quo be directed to be maintained. It is common knowledge that it takes long time to evict tenants that have statutory protection. This Court is also at a loss to understand the anxiety of the respondents to ensure that the tenants continue to occupy the said property. In the event, the petitioner does not prevail in the present petition and the property is found to be enemy property, the Custodian would be at liberty to deal with it in any manner permissible including inducting tenants if the Custodian so desires. However, at this stage, the petitioner cannot be prevented from continuing with the proceedings to evict the tenants, which this Court is informed commenced several years earlier.

4. Having stated the above, this Court also considers it apposite to restrain the petitioner from creating any third party interest, except with the permission of the court, till the next date of hearing. It is so directed.”

8. In view of the abovementioned findings and observations, it is

directed that the eviction petition shall be adjudicated on its own merits after perusing the decree dated 28th March, 2018. However, the pendency of the RFA shall not come in the way of the ARC proceeding with the final adjudication of the eviction proceedings. Any orders passed in the eviction petition or further proceedings pursuant thereto, shall finally be subject to the outcome of the RFA, which is yet to be decided by this Court.

9. The present petition is dismissed. All pending applications stand disposed of.

PRATHIBA M. SINGH, J.

JANUARY 30, 2020/dk/A.S