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

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Judgment delivered on: 02.11.2020

+ CM(M) 492/2020

UMA SHANKAR & ANR.

..... Petitioners

versus

CHARANJEET SINGH & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioners: Mr. Rahul Maurya, Advocate.

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For the Respondent: Mr. Satish Kumar, Advocate.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

CM APPL.25029/2020 (exemption)

Exemption is allowed subject to all just exceptions.

CM(M) 492/2020 & CM APPL.25027/2020 (stay), CM APPL.25028/2020 (for condonation of delay)

1. The hearing was conducted through video conferencing.
2. Petitioners impugn order dated 04.02.2020, whereby, the review petition, filed by the petitioners, seeking review of order dated 24.12.2019 has been dismissed.

3. By order dated 24.12.2019, the evidence of the petitioners (respondents before the Trial Court) was closed on the ground that the witness Rakesh Kumar, who was sought to be examined by the petitioners, was not produced despite several opportunities.

4. Subject proceedings arise out of a petition filed under Section 14(1)(e) of Delhi Rent Control Act seeking eviction of the petitioner on the ground of bonafide necessity.

5. The eviction petition was filed on 20.02.2012. The case was fixed for the petitioners (tenants) evidence by order dated 19.09.2017. The affidavit of RW - Rakesh Kumar was filed on 11.01.2018. Additional Rent Controller has recorded that the witness did not appear despite several opportunities and accordingly, closed respondents' evidence.

6. It is pointed out by learned counsel for the petitioners that though the affidavit of RW - Rakesh Kumar was filed on 11.01.2018, the cross-examination of RW1 – the petitioner was completed only on 04.06.2019. Thereafter an objection was raised by the respondent (eviction petitioner) with regard to the relevance of production of Rakesh Kumar as a witness. Said issue was decided by an order dated 11.10.2019 and thereafter the case was adjourned to 05.12.2020, on which date adjournment was sought by the petitioner since Rakesh Kumar was not able to appear due to some personal difficulty.

7. The case was adjourned to 24.12.2019, subject to payment of costs. On 24.12.2019, an application was moved stating that RW - Rakesh Kumar was showing reluctance for appearing in Court. The Trial Court, by the impugned order dated 24.12.2019, held that several opportunities had been granted for production of witness - Rakesh Kumar and since he had not appeared, respondents' evidence was closed.

8. Learned counsel for the respondents does not dispute that cross-examination of RW1 was concluded only on 04.06.2019 and thereafter objection with regard to the relevance of RW - Rakesh Kumar was raised, which was decided only on 11.10.2019.

9. Perusal of the order sheet shows that only two opportunities were taken by the petitioners for production of RW - Rakesh Kumar.

10. Clearly, the Additional Rent Controller has erred in holding that several opportunities had been granted to the petitioners for production of witness - Rakesh Kumar and he had not appeared despite several opportunities.

11. Keeping in view the facts and circumstances of the case, I am of the view that one opportunity should be granted to the petitioners to produce the witness - Rakesh Kumar.

12. It is contended by learned counsel for the petitioners that Rakesh Kumar is required to be summoned and besides Rakesh

Kumar, there are two other witnesses, i.e., Surender Gupta and Ravinder Gupta, who need to be produced on behalf of the petitioners (respondents before the Trial Court).

13. The witnesses Mr. Surender Gupta and Mr. Ravinder Gupta are stated to be neighbours of the petitioners. Since Mr. Surender Gupta, Mr. Ravinder Gupta and Mr. Rakesh Kumar are all private individuals, it was the responsibility of the petitioners to produce them.

14. It is admitted by learned counsel for the petitioners that no affidavit in evidence of Surender Gupta and Ravinder Gupta has been filed before the Trial Court, though they are named in the list of witnesses. Mr. Surender Gupta and Ravinder Gupta are private individuals and stated to be the neighbours of the petitioners, it was obligatory on the part of the petitioners to have filed their affidavits in evidence in case petitioners was seeking to produce them as witnesses. Since petitioners have failed to file the affidavits in evidence of Surender Gupta and Ravinder Gupta, who are private individuals, no opportunity can be granted to the petitioners to either produce them or summon them as witnesses.

15. Insofar as the witness Rakesh Kumar is concerned, since his evidence affidavit has already been filed by the petitioners, it is the responsibility of the petitioners to produce him before the Rent Controller on his own responsibility. No summons are required to be

issued to him since he is a private witness whose affidavit in evidence has been filed by the petitioner.

16. Accordingly, the impugned order is set aside. Petitioner is given one opportunity to produce Rakesh Kumar as a witness before the Trial Court.

17. It is stated that the matter is listed before the Trial Court on 19.11.2020.

18. Since there is a direction by the High Court because of which recording of evidence due to lockdown cannot take place, the Trial Court shall fix an appropriate date on 19.11.2020 for production of Rakesh Kumar by the petitioners as a witness on their own.

19. It is clarified that in case petitioners fail to produce the witness Rakesh Kumar on the date fixed by the Trial Court, no further opportunity shall be granted to the petitioners for producing the said witness and their right shall stand closed.

20. Petition is disposed of in the above terms.

21. Copy of the Judgment be uploaded on the High Court website and be also forwarded to learned counsels through email by the Court Master.

NOVEMBER 02, 2020
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SANJEEV SACHDEVA, J