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

Date of Decision : 02.12.2020

+ **CM(M) 606/2020**

ARYA KANYA PATHSHALA Petitioner

Through: Mr. Samrat Nigam, Adv.

versus

ABHISHEK BUILDCON PVT LTD & ANR. Respondents

Through: Mr. Sanat Kumar, Sr. Adv. with
Mr. Sanjay Sharma, Adv.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

This hearing has been held by video conferencing.

CM APPL.30896/2020 (Exemption)

Allowed, subject to all just exceptions.

CM APPL.30897/2020 (for urgent hearing)

The petition is listed for hearing today, hence application is rendered infructuous and is disposed of accordingly.

CM (M) 606/2020 & CM No.30895/2020

1. This petition has been filed by the petitioner challenging the order dated 13.05.2020 passed by the learned Rent Control Tribunal, Patiala House Courts, in RCT no. 18/2017, dismissing the appeal filed by the petitioner herein.

2. The petitioner in the appeal had challenged the order dated 03.05.2017 passed by the learned Additional Rent Controller, Patiala House Courts, ordering eviction of the petitioner from the tenanted premises i.e. 1, Doctors Lane, First Floor, Gole Market, New Delhi alternatively known as Plot No.4A, Block No.88, Gole Market, New Delhi, under Section 14 (1)(k) read with Section 14(11) of the Delhi Rent Control Act, 1958 (hereinafter referred to as “Act”) on the petitioner’s failure to comply with the condition of payment of the amount of Rs.74,608/- along with interest at the rate of 12% p.a. to the L&DO within three months of the order dated 29.05.2004 passed by the learned Additional Rent Controller.

3. In brief, the facts giving rise to the present petition are that the erstwhile owner/landlord of the tenanted premises had filed an Eviction Petition under Section 14 (1)(k) of the Act against the petitioner, seeking eviction of the petitioner herein on the ground of misuse of the tenanted property. By an order dated 22.01.2000, the learned Additional Rent Controller had issued a notice under Section 14(11) of the Act to the petitioner and the L&DO for determining the misuser and any charges to be paid for regularizing the same. Based on the report of the L&DO, by an order dated 29.05.2004, the petitioner was directed to pay an amount of Rs.74,608/- within three months to the L&DO alongwith interest at the rate of 12% p.a. The parties were directed to report to the Court about the compliance/non-compliance of the said order. Admittedly, the petitioner did not make the deposit within the time granted by the learned Additional Rent

Controller, and as recorded in the order dated 03.05.2017, the amount of Rs.74,608/- was deposited by the petitioner only on 22.02.2017 *albeit* without interest.

4. The learned counsel for the petitioner submits that the interest amount was deposited after filing of the appeal before the learned Rent Control Tribunal.

5. Based on the default of the petitioner to comply with the order dated 29.05.2004, Eviction Order was passed by the learned Additional Rent Controller, which has been affirmed by the dismissal of the appeal by the order impugned in the present petition.

6. The learned counsel for the petitioner has submitted that the erstwhile owner/landlord of the premises had entered into a Memorandum of Understanding dated 27.07.2003 with the petitioner whereunder he had agreed to pay a sum of Rs.75 lakhs to the petitioner for the purpose of acquiring land and making construction of the building for running of the Girls Primary school. It is for this reason that the order dated 29.05.2004 remained unexecuted till the filing of the second application by the respondent no.1 herein on 03.12.2015. He submits that with the execution of the MOU, the erstwhile owner/landlord and the respondent no.1, who had affirmed the terms of the MOU by letters dated 14.01.2006 and 18.01.2006, were estopped from enforcing the eviction against the petitioner without complying with the terms of the MOU.

7. The learned counsel for the petitioner further submits that even otherwise, a second application under Section 14 (11) of the Act was not maintainable. He submits that the remedy of the respondent no.1 was to seek the execution of the order dated 29.05.2004.

8. He further submits that the second application under Section 14 (11) of the Act would otherwise be also debarred by Law of Limitation and could have been filed only within a period of three years from the expiry of three month period granted by the learned Additional Rent Comptroller to make the deposit vide its order dated 29.05.2004.

9. I have considered the submissions made by the learned counsel for the petitioner, however, I find no merit in the same. The MOU dated 27.07.2003 has been executed between the erstwhile owner/landlord of the tenanted premises and the petitioner prior to the passing of the order dated 29.05.2004 by the learned Additional Rent Controller. The order dated 29.05.2004 was never challenged by the petitioner. The same therefore, attained finality. The affirmation of the terms of the MOU by the respondent no.1 herein would also not allure to the benefit of the petitioner herein. The MOU merely records that the erstwhile owner/landlord/respondent no.1 herein shall pay a sum of Rs.75 lakhs to the petitioner for the purpose of acquiring land and making construction thereon. It is not the case of the petitioner that any parcel of land has been acquired by the petitioner and the respondent no.1 has refused to make payment for the same.

10. As far as the maintainability of the second application under Section 14(11) of the Act is concerned, the operative part of the order dated 29.05.2004 deserves to be noticed and is therefore reproduced hereinunder:

“Considering the above facts, this court order the respondent/ tenant to pay the amount of Rs. 74,608/- within three month to the L&DO along with interests at the rate of 12% .order accordingly. The parties are directed to report to the court about the compliance of non- compliance of the said order since the respondent has not been coming a copy of this order be sent to the counsel for the respondent. File be consigned to record room.”

11. The order directed the parties to report the compliance/non-compliance of the terms thereof by the petitioner herein. The second application filed by the respondent no.1 complained of non-compliance by the petitioner. The same was therefore, maintainable before the learned Additional Rent Controller.

12. As far as the question of limitation is concerned, the learned Rent Control Tribunal has rightly rejected the objection of the petitioner in this regard placing reliance on Article 66 of the Schedule to the Limitation Act, 1963.

13. I therefore, find no merit in the present petition. The same is dismissed.

NAVIN CHAWLA, J

DECEMBER 2, 2020/dy/Arya