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

Date of Decision: 12.03.2021

+ **CM(M) 575/2020 & CM 29326/2020**

RENU MALHOTRA alias SEEMA
MALHOTRA

.....Petitioner

Through Ms.Shriya Maini, Mr.Rajive
Maini, Mr.Rohan Bhambri,
Ms.Ritika Manchanda, Advs.
with petitioner's son in person.

versus

RAKESH NAGPAL AND ANR.

..... Respondents

Through Ms.Indu Kaul, Adv.
(M-9899064376)

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

1. This petition has been filed by the petitioner challenging the order dated 11.09.2019 passed by the learned Additional District Judge-04 in Suit, being CS No.55588 of 2016 titled ***Rakesh Nagpal vs. Usha Rani***, dismissing the application of the petitioner herein filed under Order I Rule 10 of the Code of Civil Procedure (hereinafter referred to as 'the Code') seeking her impleadment in the Suit. The petition also challenges the order dated 06.02.2020 by which the learned Trial Court has dismissed the application of the petitioner seeking review of the order dated 11.09.2019.

2. The Suit has been filed by the respondent no.1 herein against the respondent no.2 seeking possession of the suit premises, being Flat No.1403, first floor, Sector D-1, Pocket I, Vasant Kunj, New Delhi-110070. In the Suit, the respondent no.1 claims that the respondent no.2 had been inducted as a tenant in the suit property by virtue of a Lease Agreement dated 17.12.2011. The plaint further asserts that the respondent no.2 has failed to pay the entire rent and has also sublet the suit premises to the petitioner herein and her husband.

3. In the Suit, the respondent no.2 has been proceeded *ex parte*. The petitioner herein, who is the daughter of the respondent no.2, filed an application under Order I Rule 10 of the Code seeking her impleadment in the Suit, which has been dismissed by the orders impugned in this petition.

4. At the outset, it has been put to the learned counsel for the petitioner as to whether she claims her possession under the respondent no.2 or in her own independent right.

5. The learned counsel for the petitioner maintains that the petitioner is claiming the right to possession of the suit flat in her own independent right.

6. After some hearing, the learned counsel for the petitioner prays that she be permitted to withdraw the present petition with liberty to institute a Suit claiming such independent right.

7. The learned counsel for the petitioner further submits that the petitioner is presently in judicial custody and she would require sometime to initiate such independent proceedings.

8. The learned counsel for the respondent opposes the prayer made.

9. As far as the leave to institute an independent proceeding is concerned, the same deserves to be granted, making it clear that this court has not expressed any opinion on the merit of the claim made by the petitioner or on the merit/maintainability of such independent proceedings.

10. On the prayer for time, in the present case, the Suit of the respondent no.1 is at the stage of final hearing since 2017. In my opinion, the prayer made by the petitioner can be granted by directing that though the Suit filed by the respondent no.1 may proceed, nevertheless, any decree passed in favour of the respondent no.1 shall not be implemented for the period of four weeks from today.

11. Accordingly, the present petition is dismissed as withdrawn in the above terms.

NAVIN CHAWLA, J

MARCH 12, 2021
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