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

Date of Decision: 15.04.2021

+ CM(M) 332/2021
GEETA RAI DEVI

..... Petitioner

Through: Mr. Shailesh Madiyal, Adv

versus

SHUSHILA DEVI & ANR.

..... Respondents

Through: Ms. Rashmi Verma, Adv. for R-1.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

This petition has been heard through video conferencing.

CM APPL. 14399/2021 & 14400/2021 (Exemptions)

Allowed, subject to all just exceptions

CM(M) 332/2021 & CM APPL. 14398/2021

1. This petition has been filed by the petitioner challenging the order dated 12.03.2021 passed by the learned Additional Civil Judge-South East, Saket Courts, New Delhi in Suit, being CS SCJ 724/2018, dismissing the application of the petitioner herein filed under Order VI Rule 17 of the Code of Civil Procedure, 1908 (CPC) seeking amendment to her written statement.

2. The suit has been filed by the respondent herein seeking possession, arrears of rent and electricity charges/damages, and permanent injunction, claiming therein that the petitioner is a tenant with respect to one room (private room no.1), one kitchen and one

toilet on the ground floor of property no.A-301, Aali Vihar, Sarita Vihar, New Delhi-110024 at a monthly rent of Rs.2,700/- exclusive of electricity and water charges. The said tenancy, as per the respondent was created after completion of the construction of the building on the said plot in the year 2012. The respondent, with respect to the construction of the building, has averred as under in the Plaint:

“2. That the Plaintiff purchased the aforesaid property bearing No. A-301, Aali Vihar, from the previous owner, Shri Sunil Kumar, by way of Agreement to Sell and Purchase, General Power of Attorney, Possession Letter and Receipt all dated 06.11.2007. After purchasing the aforesaid property, which was in a semi constructed state uptill the Ground Floor; towards the end of the year 2011, the Plaintiff and her Husband, namely, Shri Rajgir Pandit got demolished the entire old construction and raised a new construction uptill 3 Floor i.e. the Ground Floor, First Floor and the second Floor. The construction of the Property was completed in April 2012.”

3. The petitioner, in the written statement filed, did not specifically deny the averment of the respondent with respect to the construction of the building in the year 2012, and stated as under:

“2. That the contents of para no. 2 of the suit are wrong, incorrect and hence denied except to the extents which are matter of record. It is a settled position of law that an unregistered agreement to sell and purchase and power of attorney does not confer any title in immovable property. It is further submitted that any illegal

construction is subject to action by the concerned municipal authorities.”

4. The petitioner also did not specifically deny the allegation of the respondent with respect to the tenancy having been created in 2012.

5. The respondent thereafter filed an application under Order XII Rule 6 of the Code.

6. On the other hand, the petitioner herein filed an application seeking amendment in the written statement *inter alia* now wanting to contend that the property in question was constructed prior to 2012 as also that the petitioner has been in possession of the premises since the year 2008.

7. The said application, however, has been dismissed by the learned Trial Court observing as under:

“In the present case, plaintiff has specifically stated that she got the property constructed afresh in April 2012 and thereafter, gave the said property on rent to defendant no. 1. In response to the said contention, the defendants have categorically stated in para 7 of their preliminary submissions of their written statements that they are residing in the suit premises since last 7 years. Again, in para 2 and 3 of their written statement under the heading "parawise reply on merits", the defendants are completely silent on the time of entry in to the property in question. They have made a vague denial of the averments of the para 2 and 3 of the plaint. It may be noted herein that in para 2 and 3 of the plaint there is specific averment of the

plaintiff that the said property was constructed in April 2012 and thereafter giving on rent in May 2012. A bare denial of the same shall mean the defendants does not specifically and categorically dispute the contentions stated in the said paragraphs of the plaint. Simply put, defendants do not contest the said contention of the plaintiff.

Again, the said defendants have also annexed a large number of police complaints inter alia dated 05.07.2016; 09.09.2016; 17.10.2016; 23.10.2016; 28.10.2016; 27.01.2017; 10.03.2017; 12.06.2017; 14.06.2017; 15.07.2017; 17.06.2017; 27.06.2017; 30.06.2017; 04.07.2017; 06.07.2017; 10.07.2017; 11.07.2017; 18.08.2017; 18.12.2017 filed by defendant no. 2 against the plaintiff and her husband wherein her averments clearly show that she and her family including defendant no. 1 came in possession of the property as a tenant in and around 2012 only.

Thus, as per the defendants themselves, they came in possession of the property in question in and around 2012. Now, since the plaintiff has set up a case that she had built the property in April 2012 afresh, only to wriggle out of the said admission (so that benefit of section 3(d) of DRC Act may not become available to the plaintiff), the defendants are trying to seek amendment of their written statement.

It may be noted herein that earlier to the present application another amendment application was preferred by the defendants herein wherein they have not sought to seek amendment qua the time when they entered possession in the property as tenant. In other words, in the earlier application filed on 28.01.2019, the defendants have nowhere stated that they had come in possession of the property as tenant in the year 2008. They withdrew the said application on 31.08.2019

and preferred the second application which is being decided by this order.

The aforesaid fact show that the plea taken by the defendants that they had inadvertently missed out on mentioning of the aforesaid purported fact i.e. they being tenants in the property in question since 2008 is an afterthought taken to wriggle out of a categorical admission made by them. They intend to do so to deny a legal benefit available to the plaintiffs.

In my opinion, the plea being set up by the defendants today is conflicting and contradicting to the admitted facts stated by them and in case, they are allowed to wriggle out the same, the same shall cause grave prejudice to the plaintiff. Nothing has been argued before this court to explain as to why in about 20 police complaints preferred by defendant no. 2 against plaintiff and her family, repeatedly the possession of the property in question as a tenant is claimed to be in and around 2012.”

8. I find no infirmity in the order impugned before this Court in the present petition. The plea with respect to the construction and the possession was important in relation to the jurisdiction of the Court under Section 3(d) of the Delhi Rent Control Act, 1958. The petitioner, in form of the amendment, cannot be allowed to withdraw the concession/admission made in the written statement. The learned Trial Court in its Impugned Order has given cogent reasons for dismissal of the application of the petitioner.

9. Accordingly, the present petition is dismissed. The petitioner shall pay a cost of Rs.5,000/- to be deposited with Delhi High Court Advocates' Welfare Fund within a period of four weeks from today.

NAVIN CHAWLA, J

APRIL 15, 2021/rv/g

