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

Date of Decision: 29.04.2021

+ **CM(M) 354/2021**

+ **CM(M) 355/2021**

CHANDER MOHAN CHOPRA Petitioner
Through Mr.Praveen Suri, Adv.

versus

NAND KISHORE SINCE DECESAED THROUGH LRS
..... Respondent
Through None.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

These petitions have been heard through video conferencing.

CM APPL. 15492/2021 in CM(M) 354/2021 (exemption)
CM APPL. 15494/2021 in CM(M) 355/2021(exemption)

Allowed, subject to all just exceptions.

CM(M) 354/2021 & CM APPL. 15491, 15493/2021
CM(M) 355/2021 & CM 15495/2021

1. CM(M) 354/2021 has been filed by the petitioner challenging the order dated 27.04.2016 passed by the learned Rent Control Tribunal in an Appeal under Section 38 of the Delhi Rent Control Act, 1958, being RCT No. 15/2015, while CM(M) 355/2021 has been filed challenging the order dated 01.04.2021 passed by the learned Rent Control Tribunal in RCT-09/2017. Both the petitions are being disposed of by this common order as they arise out of the same Eviction Petition, being ARC No. 25350/16, and involve the same factual background.
2. As far as CM(M) 354/2021, at the outset, the petitioner is confronted with the delay and latches in filing of the present petition.
3. The petitioner along with the present petition has filed application, being CM No.15491/2020, under Section 14 of the Limitation Act, 1963 contending therein as under: -

"4. That the appeal filed by the respondent under Section 38 of the Delhi Rent Control Act has been allowed by the Court of Ms. Rekha Rani, Ld. District and Sessions Judge / RCT, District West, THC, Delhi vide order and judgment dated 27.04.2016 and thereby set aside the whole order and judgment dated 21.02.2015 passed by the Hon'ble Court of Sh. Naveen Kumar Kashyap, ARC, West, THC, Delhi and sent back the matter to Ld. Trial Court for further proceedings.

The Ld. RCT has set aside the whole order of Ld. ARC which means that finding regard to the fact the petitioner is not the owner of the tenanted premises stands also set aside. The Ld. RCT infact has remanded back the case by giving prima facie findings as if the findings are final then the Ld. RCT is to pass an order under Section 15 (1) of DRC Act and only remanded the matter to the Ld. ARC for granting or not the benefit under Section 14 (2) of DRC Act. The order itself was cryptic and not clear.

5. That thereafter, the petitioner in these circumstances finding that the whole findings against the petitioner stands set aside hence, filed an application under Section 151 CPC for filing additional documents and leading additional evidence on 19.07.2016, whereby the petitioner sought to examine four witnesses i.e. i) Smt. Swaraj Chopra (wife of the petitioner being the owner of the suit premises) ii) Sh. Bhushan Kumar Chopra (one of the attesting witness to the will, agreement to sell, SPA, GPA and receipt dated 03.08.2001, iii) Concerned official from the office of Sub-Registrar-II, opposite Rajdhani College, Basai Darapur, Delhi iv) Dr. Virendra Singh, Forensic Science Laboratory, Govt. of NCT of Delhi, Sector -14, Rohini, Delhi-110055 with respect to FSL Report No. F.S.L. 2012 / D-0441 dated 20.03.2012. The respondent has filed the reply to the application filed by the petitioner.

6. That the Ld. Trial Court after hearing the arguments had pleased to dismiss the application under Section 151 CPC vide order dated 03.05.2017 without appreciating the fact that firstly, the order dated 26.04.2016 is a remand order and not a final order and furthermore, the findings against petitioner was also set aside. Therefore the Ld. ARC should have given an opportunity of leading additional evidence which goes to the root of controversy between the parties.

7. That the petitioner thereafter, challenged the order dated 03.05.2017 passed by the Court of Sh. Jitendra Singh, the then CCJ -cum-ARC, West, THC, Delhi under Section 38 of the DRC Act. The appeal has been filed on 19.05.2017 and the arguments has been heard by the Ld. Appellate Court on 31.03.2021 and the appeal against the order dated 03.05.2017 has been dismissed by the court of Sh. Dharmesh Sharma, District & Sessions Judge / RCT, District: West, Tis Hazari Courts, New Delhi vide order dated 01.04.2021.

8. That thereafter, the petitioner and his wife consulted Sh. Praveen Suri Advocate who is the counsel for Smt. Darshana Gandhi, Smt. Santosh Kumari, Sh. A.C. Dhawan and the petitioner's wife, who advised the petitioner to prefer the present petition as the petitioner had pursued the wrong forum for seeking his redressal of the grievances in respect of the order dated

21.02.2015, 27.04.2016 and 03.05.2017.

9. *That as it is clear and categorical from the above, that as per the legal advice provided to the petitioner by his earlier counsel Sh. Rakesh Malhotra Advocate , petitioner has bonafidely perused the remedy with due diligence in the court of first instance by filing application under Section 15 CPC for leading additional evidence and for filing additional documents on 19.07.2016 and furthermore, on dismissal of this application on 03.05.2017 and appeal was preferred on 19.05.2017 and ultimately the said appeal was also dismissed on 01.04.2021."*

4. A reading of the above explanation would clearly show that the foundation for the application lies in the alleged misinterpretation of the Impugned Order dated 27.04.1996. The petitioner claims that he was advised that as the Impugned Order has set aside the order of the learned Additional Rent Controller (ARC) in full, even with respect to the finding of the learned ARC holding that the petitioner has been unable to prove his claim with respect to the title of the suit property in his wife and to the landlord-tenant relationship between the petitioner and the respondent. The petitioner claims that he was advised that as the entire order of the learned ARC stood set aside and the matter remanded back, all issues were open to be adjudicated afresh by the learned ARC and, therefore, the petitioner had filed an

application seeking leave of the learned ARC to lead additional evidence in the Eviction Petition instead of challenging the order dated 27.04.1996 of the learned RCT. The petitioner claims that it is only after the dismissal of the appeal challenging the order by which such application had been dismissed, that the petitioner was advised that he had been pursuing a wrong remedy and that he should have challenged the order dated 27.04.1996 earlier. The petitioner claims that he had acted bonafide in pursuing a wrong remedy and therefore, there is no delay in filing of the present petition.

5. I am unable to find merit in the above justification.

6. The Impugned Order dated 27.04.1996 in no uncertain manner upholds the finding of the learned ARC rejecting the claim of the petitioner to the title of the suit property in his wife. The relevant findings of the learned RCT in this regard in the Impugned Order are reproduced hereinbelow: -

"10. The respondent had claimed that his wife had purchased the suit property from brother of petitioner namely Kishan Lal, which was vehemently disputed by the petitioner. Even in his replication, the petitioner had vehemently denied that his brother Kishan Lal could or did execute any documents of transfer of interest in the suit property in favour of wife of the respondent. Replication was filed way back on 12.07.2007. Petitioner was examined as PW1 on 26.08.2008 and denied that his brother Kishan Lal

transferred any right, title or interest in the suit property in favour of wife of the respondent. Till date, respondent has not sought any declaration from any Court of law qua title of his wife to the suit property which was disputed by the petitioner in the year 2007. The claim of the respondent that his wife Smt. Swaraj Chopra is the owner of the suit property and not the tenant could have been vindicated by way of filing civil suit and not in the eviction proceedings (Ram Chander vs. Smt. Ram Pyari, 2004 (72) DRJ 545).

11. Respondent claims to have come in possession of the suit property pursuant to execution of “ownership documents” dated 03.08.2001. As discussed above, Ld. ARC (West) discarded the defence of the respondent qua purchase of suit property from brother of the petitioner on 03.08.2001. Story of the respondent that he came in possession of the suit property pursuant to purchase of the same by his wife from Kishan Lal on 03.08.2001 was rightly not believed by Ld. ARC. The alleged documents of ownership Ex.RW1/9, Ex.RW1/10, Ex.RW1/11 and Ex.RW1/12 are not even properly proved. Neither wife of the respondent, the alleged purchaser of the suit property nor Kishan Lal, alleged vendor of the suit property nor any attesting witness to the said documents was examined. In absence of these documents, the respondent has failed to prove as to

how, when & who inducted him in the suit property."

7. Reliance of the petitioner on the remand of the Eviction Petition by the Impugned Order is also unfounded. The learned Additional Rent Controller by its order dated 21.12.2015 had dismissed the Eviction Petition filed by the respondent under Section 14(1)(a) of the Act, observing that the respondent has failed to prove the relationship of landlord and tenant between the parties. This finding of the learned ARC was set aside in appeal by the Impugned Order and therefore, the petition was remanded back to be proceeded in accordance with law with the said finding. The Impugned Order did not leave the issue of the claim of the petitioner to the ownership of the subject property through his wife, and/or the existence of landlord-tenant relationship between the parties, open to be re-adjudicated by the learned ARC.

8. Section 14 of the Limitation Act, 1963 reads as under:

"14 Exclusion of time of proceeding bona fide in court without jurisdiction.

(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from

defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in Rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under Rule 1 of that Order where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature.

Explanation.— For the purposes of this section,—

(a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;

(b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;

(c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.”

9. For claiming benefit Section 14 of the Limitation Act, the party must show that it was prosecuting the other proceedings with due diligence and in good faith. In the present case, I find both the ingredients missing as far as the petitioner is concerned.

10. The petitioner inspite of categorical findings of the learned RCT in appeal – RCT No. 15/15, instead of challenging the said order, sought to reopen the issues already adjudicated upon by way of an application seeking permission to lead additional evidence. The intent of the petitioner was merely to delay the adjudication of the Eviction Petition having already got adverse finding of fact from the learned ARC and the learned RCT on the evidence already led by him. The application cannot therefore, be said to have been filed or pursued by the petitioner in good faith.

11. CM(M) 354/2021 alongwith the applications is, therefore, dismissed as being hit by delay and latches.

12. As far as CM(M) 355/2021 is concerned, by the impugned order, the learned RCT has rightly observed in the view of the decisive finding of the learned RCT in its order dated 27.04.1996 (which had not been challenged till the passing of the impugned order dated 01.04.2021), it was not open to the learned ARC to reopen the evidence by allowing the application of the petitioner to lead

additional evidence. I find no infirmity in the impugned order. Consequently, CM(M) 355/2021 is also dismissed.

13. There shall be no order as to costs.

NAVIN CHAWLA, J

APRIL 29, 2021
RN/US

