

\$-Suppl.-3

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

% **Date of Decision: June 02, 2021**

+ **CM (M) 395/2021**

NUMESH ARORAPetitioner

Through: Mr. Parikshit Mahipal, Advocate

Versus

MS NAYYARAH QAISERRespondent

Through: Mr. S.D. Ansari and Ms. Sana
Ansari, Advocates

CORAM:

HON'BLE MS. JUSTICE ASHA MENON

ORDER

[VIA VIDEO CONFERENCING]

ASHA MENON, J: (Oral)

CM APPLN. 18044/2021 (Exemption)

1. Allowed, subject to all just exceptions.
2. The application stands disposed of.

**CM (M) 395/2021, CM APPLN. 18043/2021 (by the petitioner u/S 151
CPC for stay)**

1. This petition has been filed by the respondent before the learned Rent Controller, Tis Hazari Courts, Delhi, being aggrieved by the rejection of his appeal filed under Section 38 of the Delhi Rent Control Act 1958, by the learned Principal District & Sessions Judge/Rent Control Tribunal, vide orders dated 15th April, 2021 in RCT No. 72/2019.

2. The respondent herein had filed an eviction petition under Section 14(1)(d) of the Delhi Rent Control Act and had alleged that the premises had been let out for residential purpose but that the present petitioner was not residing therein. In the written statement filed by the present petitioner, it was submitted that there was no relationship of landlord and tenant and the premises were commercial in nature. An amendment application was moved by the present petitioner under Order VI Rule 17 CPC with a prayer to incorporate therein a plea of adverse possession. It was claimed that the petitioner had obtained the premises from the Custodian and a sum of Rs.4/- per month had been paid to the Custodian.

3. The amendment application was dismissed by the learned Additional Rent Controller on the ground that the facts sought to be incorporated in the written statement were very much in the knowledge of the present petitioner at the time of filing of the written statement and there has been no explanation advanced why these were not taken at the initial stage itself. It was also observed that the amendment was neither necessary nor relevant for the disposal of the eviction petition.

4. Aggrieved therefrom, the petitioner approached the learned Rent Control Tribunal, which upheld this order of the learned Additional Rental Controller, observing that admittedly the chief examination of the first witness of the eviction petitioner had been recorded by the time the petitioner herein had filed the amendment application and therefore the trial had commenced. Further, it was observed that it was nobody's case that in spite of due diligence the appellant could not have been pleaded ownership by adverse possession in the written statement prior to the

commencement of the trial. It also observed that by claiming ownership by way of adverse possession, the petitioner was now trying to withdraw the admission of his status as a tenant which could not be permitted by way of an amendment.

5. Aggrieved by these conclusions of the learned Principal District & Sessions Judge/Rent Control Tribunal, the present petition has been filed. Mr. Parikshit Mahipal, learned counsel for the petitioner submitted that the learned Rent Control Tribunal had failed to follow the judgment of the Supreme Court in ***Mohinder Kumar Mehra vs. Roop Rani Mehra & Ors.*** (2018) 2 SCC 132, inasmuch as the amendment sought was crucial for the determination of the controversy between the parties.

6. The courts below had declined to allow the amendment primarily on account of the fact that the facts sought to be incorporated were those already known to the petitioner when the written statement was filed. No explanation to meet these observations of the courts below is forthcoming. If the claim of the petitioner is that the petitioner was paying rent to the Custodian, then that fact would have been known even at the time when the written statement was filed. There is an absence of diligence in filing the written statement with all the available pleas.

7. Learned counsel further submits that there are admissions made by the respondent herein, who filed the eviction petition on the basis of which the present amendment is being sought. If that be so and there are any such admissions that enure to the petitioner, those would be available even without the need to amend the written statement. Learned counsel

further submitted that long possession of the petitioner is admitted and therefore raising a plea of adverse possession was compatible with that plea, though he concedes that the two concepts are not the same.

8. With regard to the submission of the learned counsel for the petitioner that the amendment sought was crucial to the determination of the real controversy between the parties, suffice it to note that the question of ownership and title is beyond the jurisdiction of the Rent Controller.

9. Even in ***Mohinder Kumar Mehra*** (*supra*), filing of an amendment application after the commencement of recording of evidence has been deprecated. The learned Rent Control Tribunal has followed that judgment and there is no error or perversity in the judgment of the learned Rent Control Tribunal in this regard.

10. In the circumstances, there is no cause shown for interfering with the judgment of the learned Rent Control Tribunal. Accordingly, the present petition which lacks in merit is dismissed *in limine*. The petition as well as pending application are disposed of.

11. The order be uploaded on the website forthwith.

(ASHA MENON)
JUDGE

JUNE 02, 2021
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