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

+ CM(M) 375/2022 and CM 19744/2022 (exemption)

ASHOK JAIN AND BROTHERS Petitioner
Through: Mr. Mayank Jain, Adv.

versus

MANISHA JAIN Respondent
Through:

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT(ORAL)

% **25.04.2022**

1. This petition under Article 227 of the Constitution of India impugns the judgment dated 23rd September, 2021, passed by the learned Principal District and Sessions Judge (“learned RCT”) in RCT 3/2020.

2. The proceedings emanate from an eviction petition filed by Manisha Jain, the respondent, against Ashok Jain, who, she claims, was a tenant in the property owned by her. Manisha Jain claims to be the landlady of the premises.

3. The petitioner M/s Ashok Jain & Brothers moved an application under Order I Rule 3(a) of the Code of Civil Procedure, 1908 (CPC), whereby Dinesh Jain, Pradeep Jain, Arvind Jain and Praveen Jain were sought to be impleaded as additional respondents in the eviction petition. The application was rejected by the learned Additional Rent Controller (“learned ARC”). An appeal, preferred thereagainst by the CM(M) 375/2022



petitioner, under Section 38 of the Delhi Rent Control Act, 1958, also stands dismissed by the learned RCT, *vide* the impugned judgment dated 23rd September, 2021. “Ashok Jain & Brothers” has assailed the said order by way of the present petition, preferred under Article 227 of the Constitution of India.

4. In the application preferred under Order I Rule 3(a) of the CPC, the petitioner sought to aver that the previous owner of the suit property had been issuing the rent receipt in the name of “M/s. Ashok Jain and Brothers” and that the respondent Manisha Jain had, consequent to her purchasing the property from the previous owner on 7th May, 2015, commenced issuing rent receipts personally in the name of Ashok Jain. It was further averred, in the application, that the request by other co-tenants, i.e. Dinesh Jain, Pradeep Jain, Arvind Jain and Praveen Jain, to Manisha Jain, to issue the rent receipt in the name of M/s. Ashok Jain and Brothers, fell on deaf ears.

5. The learned RCT has, in the impugned appellate order, noted the fact that no earlier rent receipt, issued in the name of “M/s. Ashok Jain and Brothers”, had been placed by the petitioner on record. Though one such rent receipt dated 1st August, 2015 had been filed with the appeal before the learned RCT, it was observed that this document was not filed before the learned ARC and that there was, in fact, no averment, regarding the said document, in the application under Order I Rule 3(a) of the CPC. It was also observed that the respondent Manisha Jain had, in her eviction petition, categorically averred that the property was commercial in nature, and that, without



traversing this averment in its application under Order I Rule 3(a) of the CPC, the petitioner had failed to explain the capacity in which the four brothers Dinesh Jain, Arvind Jain, Pradeep Jain and Praveen Jain were co-tenants in the premises. It was also noted that the application before the learned ARC was silent regarding the status of the entity “M/s. Ashok Jain and Brothers”. It was not indicated as to whether this was a proprietorship firm and partnership firm. There was no averment that the four brothers were partners in M/s. Ashok Jain and Brothers. Though it was sought to be pleaded that the four brothers, Dinesh Jain, Arvind Jain, Pradeep Jain and Praveen Jain had been co-tenants in the suit property for 30 years, not a single document evidencing such co-tenancy had been placed on record.

6. In these circumstances, the learned RCT found no infirmity in the decision of the learned ARC to reject the petitioner’s application under Order I Rule 3(a) of the CPC.

7. While exercising jurisdiction under Article 227 of the Constitution of India, this Court does not sit over in appeal over the findings of the Court below. In the absence of necessary pleadings and any document supporting the stand taken by it, and in the absence of any clear indication even regarding the status of the petitioner M/s. Ashok Jain and Brothers, its constitution, and as to whether it was a partnership or proprietorship, this Court finds no error of jurisdiction in the approach adopted either by the learned ARC or the learned RCT on the application of the petitioner under Order I Rule 3(a) of the CPC.

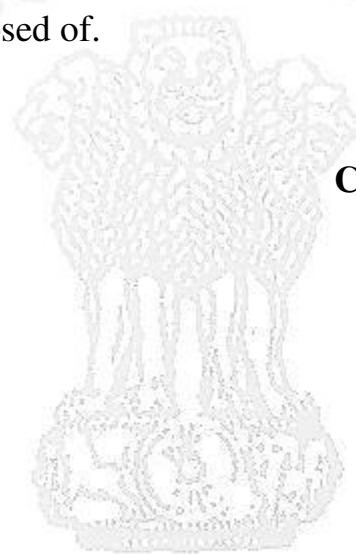


8. Within the limited parameters of the jurisdiction vested in this Court under Article 227 of the Constitution of India as set out by the Supreme Court in *Estrella Rubber v Dass Estate*¹, *Garment Craft v. Prakash Chand Goel*² and *Puri Investment v. Young India*³, this Court does not find any case made out to interfere with the findings of the courts below.

9. The petition is, accordingly, dismissed *in limine*. Miscellaneous application is also disposed of.

C.HARI SHANKAR, J

APRIL 25, 2022
r.bararia



सत्यमेव जयते

¹ (2001) 8 SCC 97

² 2022 SCC OnLine SC 29

³ CIVIL APPEAL NO. 1609 OF 2022