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

Date of Decision: 28th November, 2022

+ **W.P.(C) 16303/2022 & CM APPLs. 51015/2022, 51016/2022, 51017/2022**

MRS ILASHREE NATH GUPTA Petitioner
Through: Mr. Atul Agarwal, SPA of the
Petitioner.

versus
SMT KAMLA GUPTA Respondent
Through: Mr. Naresh Gupta & Mr. Rajesh
Sachdeva, Advocates (M-
9810236228)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present petition has been filed challenging the impugned order dated 3rd November, 2022 passed by the Id. ARC (Central), Tis Hazari Courts, Delhi in **RC ARC No.584/2017** titled "**Kamla Gupta v. Nirmala Nath@Gupta**", and seeks setting aside of the proceedings in the said eviction case, being **RC ARC No.584/2017**. By the impugned order, the Id. ARC has dismissed the Petitioner's application seeking permission to file fresh leave to defend under Section 14(1)(e) of the Delhi Rent Control Act, 1958 (hereinafter, "**DRC Act**").
3. The prayer in the present petition reads as under:

"(a) Issue writ of certiorari and / or any other appropriate writ / order(s) / direction(s) to quash / set aside the proceedings in Eviction Case No. 584 of 2017 pending final adjudication before Learned JSSC- CCJ- ARC (Pilot Court), (Central), Tis Hazari Courts, Delhi

in view of the grave inherent jurisdiction defects that have crept into the said case;

(b) Pass such further order(s) / direction(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case in the interest of justice."

4. The background of the present case is that an eviction petition was filed by the Respondent herein - Smt. Kamla Gupta against the mother of the Petitioner herein - Smt. Nirmala Devi (hereinafter, "*Original Tenant*") in respect of property bearing Municipal No.4911, Plot No.98, Block R, Ward No.11, Darya Ganj, New Delhi. The said petition has been filed seeking eviction of the Original Tenant. Vide order dated 6th July, 2017, summons were issued in the said eviction petition. Thereafter, an application was filed on behalf of the Original Tenant seeking leave to defend. The said leave to defend application was considered by the Court, and upon leave being granted, the written statement has also been filed by the Original Tenant. Evidence has also been concluded on behalf of the parties. At that stage, the Original Tenant passed away on 8th February, 2021. Accordingly, the daughter of the Original Tenant and the Petitioner herein - Smt. Ilashree Nath Gupta was impleaded as the legal heir of the Original Tenant.

5. Thereafter, the newly impleaded legal heir of the Original Tenant moved an application under Section 151 CPC, seeking permission to file leave to defend under Section 14(1)(e) of the DRC. The said application has been rejected by the Id. ARC, vide impugned order dated 3rd November, 2022, which reads as under:

"Matter is fixed for orders on the application u/s 151 of CPC moved on behalf of LR Illashree Nath Gupta on 21.09.2021 seeking direction to file leave to defend

u/s 14(1)(e) of DRC Act. It is stated in the application that vide order dated 27.07.2022, Sh. Illashree Nath Gupta was arrayed as the LR of deceased respondent and after arraignment as a LR, she realize that adjudication of the present case shall not be legally binding due to serious defect in the present case since the deceased respondent never filed leave to defend application and summons were never issued u/s 14(1)(e) of DRC Act to the deceased respondent. Therefore, in order to give legitimacy to the proceeding, LR Illashree Nath Gupta be permitted to file leave to defend application mandate of 14(1)(e) of DRC Act. It is further stated that no prejudice will be caused to the opposite party and filing of leave to defend application will assist the Court in adjudication of the present case.

The application was highly opposed by the Ld. Counsel for petitioner on the ground that LR Illashree Nath Gupta has stepped into the shoes of original party i.e. respondent Nirmala Nath Gupta (now deceased) but that does not entitle her to file fresh leave to defend application.

Heard. Record . perused.

Perusal of record reveals that eviction petition was filed by the petitioner against the respondents on 06.07.2017 u/s 14(1)(d) r/w section 25B of DRC Act. The summons were issued to the respondent u/s 25B(2) of the DRC Act and after appearance of respondent, opportunity was given to file leave to defend application.

On 25.09.20 17, on an application moved by the petitioner u/s 151 of CPC for rectification of typographical error in the petition was moved. The petitioner was permitted to rectify the eviction petition as he had mentioned section 14(1)(d) instead of section 14(1)(e) of DRC Act. It was clarified by the, Court that in the eviction petition, instead of section 14(1)(d), section 14(1) (e) of DRC Act shall be read as

and treated.

Thereafter, arguments were heard on the leave to defend application and the same was allowed by the Court vide order dated 19.03.2018.

In the present case, the matter was at the stage of final arguments when the petitioner moved an application u/o 22 Rule 4 r/w section 151 of CPC for impleadment of LR of deceased respondent. The respondent expired on 08.02.2021.

Vide order dated 27.07.2022, the application for impleadment of LR Ms. Illashree Nath Gupta was allowed as per the mandate of order 22 Rule 4 of CPC and an opportunity was given to her to file written statements/objections in pursuant to order 22 Rule 4 (2) of CPC.

By virtue of present application, Ms. Illashree Nath Gupta is seeking permission to file leave to defend application. Pertinently, order 22 Rule 4 provides that any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant. Thus, restriction is imposed upon the legal heirs by the said provision to take up a defence limited to the character as legal representative. The same does not permit the legal representative to take up defences inconsistent or independent with the original respondents defence. As noted above, leave to defend application was moved by the original respondent. After conclusion of evidence led by both the sides, the respondent passed away. LR Ms. Illashree Nath Gupta has merely stepped into the shoes of original respondent. She cannot be permitted to file fresh leave to defend application.

In view of the above discussion, the present application is bereft of merits and the same is disposed off as dismissed.

WS has already been filed by LR Ms. Illashree Nath Gupta in pursuant to order dated 27.07.2022.

*Put up for filing of replication, if any/ final arguments
on 26.11.2022 at 12:00 PM.”*

6. Mr. Atul Aggarwal, the Special Power of Attorney holder of the Petitioner, who is also a lawyer by profession, has appeared in person, and submits that the petition has been filed under Section 14(1)(D) of DRC Act, and the leave to defend was directed to be filed by the Id. ARC under Section 14(1)(d). However, the said provision does not exist in the DRC and the legal heir ought to be permitted to file the application seeking leave to defend under Section 14(1)(e) of DRC Act.

7. On the other hand, Mr. Naresh Gupta, Id. Counsel appearing for the Respondent submits that the said impugned order has already been appealed against by the Petitioner.

8. Heard Id. Counsel for the parties. Admittedly, the Original Tenant has defended herself completely in the proceedings before the Id. ARC, and has even led evidence in the matter. The eviction petition is listed for final hearing on 5th December, 2022. Thus, in the opinion of this Court, the filing of the present petition before this Court seeking a writ in the nature of *certiorari* is a complete and gross abuse of process. It is also not disputed that the impugned order has been challenged by the Petitioner before the Ld. ADJ. Further, in the said appeal, vide order dated 18th November, 2022, the prayer for stay of the trial court proceedings has been rejected. Two challenges cannot be mounted against the same impugned order. Moreover, the Petitioner who is impleaded as LR to the Original Tenant is attempting to reopen the entire proceedings after conclusion of evidence by raising a trivial issue and trying to take advantage of a typographical error in the title of the eviction petition. Moreover, a writ of *certiorari* cannot be issued in

such proceedings. The present writ petition lacks any basis.

9. Under these circumstances, the present writ petition is not liable to be entertained and the same is dismissed, with costs of Rs.20,000/- to be paid to the Respondent, within two weeks.

10. It is made clear that the Id. ARC shall proceed with and expedite the final hearing of the eviction petition being **RC ARC No.584/2017**.

PRATHIBA M. SINGH
JUDGE

NOVEMBER 28, 2022

Rahul/AD

