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

% Judgment delivered on: 22.02.2023

+ CM(M) 275/2023

MUKESH KUMAR & ANR. Petitioners

versus

MOHD JAMAL & ORS. Respondents

Advocates who appeared in this case:

For the Petitioners : Mr. Kunal Kalra, Advocate.

For the Respondents : Mr. Saifuddin, Advocate.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

CM APPL. 8599/2023 (for exemption)

1. Exemption is allowed, subject to all just exceptions.
2. The application stands disposed of.

CM(M) 275/2023 & CM APPL. 8598/2023 (for stay)

3. Petitioner challenges the order dated 01.02.2023 passed in RC ARC 80482/2016 titled as “Sh. Mohd. Jamal Ors. vs. Mukesh Kumar”, whereby the learned Trial Court has rejected the application under Order 18 Rule 17 of the Code of Civil Procedure, 1908, filed by the petitioner/tenant on the ground that ample opportunities in the past to lead

evidence had been granted to the petitioner/ tenant which were not availed of.

4. Mr. Kunal Kalra, learned counsel appearing for the petitioner submits that the learned Trial Court has not considered the fact that since 2015 for one reason or the other, the matter were getting adjourned either on the basis of adjudication of an application or due to the absence of the learned Presiding Officer.

5. Learned counsel submits that no doubt that the learned Trial Court had already given an opportunity in exercise of jurisdiction under Order 18 Rule 17 on one occasion before the impugned order dated 07.11.2022 was passed. However, that lapse to examine witness had occurred due to a faulty communication given by the proxy counsel appearing for the counsel for the petitioner/ tenant before the learned Trial Court who informed the Court that original documents which were to be tendered by the witness were not on record.

6. Learned counsel submits that the original documents pertaining to the petitioner/ tenant were filed in the year 2010 itself and the learned Trial Court ought to have considered the same before passing the impugned order.

7. *Per contra*, Mr. Saifuddin, learned counsel appearing for the respondent/ landlord submits that the instant eviction petition was filed in the year 2010 and it has been hanging fire till today.

8. According to learned counsel, the delay from the year 2015 has occasioned due to the delaying tactics of the petitioner/ tenant herein in order to take unfair advantage of the delay in the adjudication of the eviction suit.

9. Learned counsel points out to the various orders filed on record by the petitioner/ tenant to show that the indulgence granted by the learned Court on a numbers of occasions to the petitioner/ tenant were in fact not adhered to and not followed by the petitioner.

10. Learned counsel on that basis submits that the petition is without any substance and this Court ought not to interfere in the supervisory jurisdiction under Article 227 of the Constitution of India.

11. This Court has considered the submissions put across by the learned counsel for the respective parties as also perused the impugned orders and the other orders placed on record by the petitioner.

12. The fact which emerges from a perusal of the record is that there have been occasions when the petitioner/ tenant has not led his evidence in adherence to the orders passed by the learned Trial Court and yet the learned Trial Court had granted indulgence a few times.

13. This Court has also perused the order dated 07.11.2022, whereby the learned Trial Court had allowed the application under Order 18 Rule 17 of the CPC, 1908, filed on behalf of the petitioner/ tenant and permitted the recording of evidence of RW-1 on the same day, however, for the reasons as stated above, that is, of the fact that miscommunication that the original records are not on the Court file, the opportunity to record evidence of RW-1 was denied.

14. It is informed that the eviction petition is listed before the learned Trial Court on 24.02.2023.

15. This Court has also considered the second application under Order 18 Rule 17 CPC filed by the petitioner on the very same date i.e., 07.11.2022 and is satisfied that one occasion for examining RW-1,

namely, Mr. Vijay Kumar Aggarwal can be afforded to the respondent, subject to certain conditions, which are as follows:-

- (i) One opportunity shall be afforded to the petitioner for recording evidence of RW-1, namely, Mr. Vijay Kumar Aggarwal alone.
- (ii) No further adjournments at any cost whatsoever shall be granted by the learned Trial Court.
- (iii) The aforesaid direction will be subject to the cost of Rs. 20,000/- to be paid by the petitioner/ tenant to the respondent/ landlord on or before 24.02.2023, the receipt whereof will be filed with proper index before the learned Trial Court.

16. In view of the aforesaid directions, the petition is disposed of directing the learned Trial Court to proceed in accordance with law after completing the recording of the aforesaid evidence as expeditiously as possible.

17. The learned Trial Court may keep in mind that the eviction petition is being pending since 2010.

18. The petition stands disposed of. The pending application also stands disposed of.

TUSHAR RAO GEDELA, J

FEBRUARY 22, 2023/nd