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

% Judgment delivered on: 18.05.2023

+ CM(M) 834/2023 & CM APPLs. 26173-74/2023

TIRTH RAM SHARMA (DECEASED) THROUGH HIS
LEGAL HEIR SUNNY BAKSHI Petitioner

versus

RAJIV BABUTA & ORS. Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Sanjay Rathi Mr. Kapil Kumar Dagar
and Mr. Deepak Khatri, Advocates

For the Respondent : Mr. Ashok Gurnani, Advocate for R-1&2

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

1. The petitioner challenges the order dated 24.03.2023 passed in RCT No.01/2023 titled "*Tirath Ram Sharma (deceased) Through LRs Vs. Rajiv Babuta & Ors*" whereby the learned RCT in an appeal under Section 38 of the Delhi Rent Control Act, 1958 upheld the order dated 11.01.2023 passed by the learned ARC in RC-ARC No. 309/2016 titled "*Rajiv Babutta Vs. Tirth Ram Sharma*" whereby the learned Trial Court had dismissed the application under Order VI Rule 17 CPC, 1908 filed on behalf of petitioner herein.

2. This Court has considered the submission of the parties as also perused the impugned order.

3. According to Mr. Rathi, learned counsel appearing for the petitioner learned Trial Court as well as the First Appellate Court has not considered the application under Section 3 of the Limitation Act, 1963 and had in particular, rejected the submissions in respect to the issue to limitation.

4. Mr. Rathi, learned counsel appearing for the petitioner, while drawing attention of this Court to para 6 sub para (c) of the learned Trial Court's order, submits that by way of the observation in the said sub para, the issue of limitation appears to have been settled.

5. Mr. Rathi submits that so far as other factual facts which were raised in the application under Order VI Rule 17 CPC, 1908 is concerned, the same were facts which were relatable to the question of limitation only and there is no reason, much less cogent reason for the Trial Court as also the First Appellate Court to refuse such liberty.

6. Mr. Rathi also further submits that merely dismissing the application on the basis of delay is not tenable for the reason that it is trite that the delay in filing such application is not relevant and only the issue, if relevant, to the issue in dispute, the said fact or the amendment ought to be ordinarily allowed. Learned counsel also submits that in cases of allowing amendment to written statement is concerned, the amendment ordinarily is to be allowed which are obviously subject matter of trial.

7. On that basis, learned counsel submits that the impugned order including that of the learned ARC are inconsistent with the law and ought to be set aside.

8. *Per contra*, Mr. Gurnani, learned counsel appearing for the

respondent submits that there is an insurmountable delay in filing the said application as also the fact that the issues and alleged facts raised herein are of the period contemporaneous to the filing of the written statement and even prior thereto and the same was very closely scrutinised and appreciated by both learned Trial Court as well as the First Appellate court.

9. Mr. Gurnani, learned counsel appearing for the respondent submits that in any case, the scope of appeal under Section 38 of DRC Act itself is limited only to the issues of law as held by catena of judgments of this Court.

10. Learned counsel submits that further stage of interference under Article 227 of the Constitution of India is obviously more strict and more circumscribed.

11. In view of the submission, learned counsel submits that the petition be dismissed with cost.

12. Mr. Gurnani submits that there is no reason or an answer provided by the petitioner in the application as to why it took 12 years to file the aforesaid application.

13. This Court has considered the rival submission as also the impugned order placed on record.

14. It is beyond cavil that the Civil Courts are under legal obligation to consider the issue of limitation, in any particular proceeding before it, by virtue of the provisions under Section 3 of the Limitation Act, 1963. The obligation is to such an extent that, even if the opposite party does not raise any objection in its pleading, even then the Court is under obligation of its own to consider it and take the decision accordingly.

15. On that basis, this Court concludes that the issue of limitation whether taken earlier or not, it is irrelevant to the matter and it is obligation of the learned ARC to consider the issue of limitation under Section 3 of the Limitation Act, 1963.

16. Thus, to that extent, the order of the learned Trial Court and the impugned order of the First Appellate Court are set aside.

17. The learned Trial Court shall consider the issue of limitation at the time of final arguments.

18. So far as the issues of fact as claimed to have been raised in the application are concerned, once the First Appellate Court, under the exercise of jurisdiction vested on it, under Section 38 of the DRC Act, 1958 has correctly exercised the same, this Court would be loath to interfere with such disposal.

19. In any case this Court has considered the issue on facts and has come to the conclusion that in the facts and circumstance of the present case, no interference is called for and accordingly the petition is dismissed as such.

20. The present petition is dismissed with the aforesaid directions as contained in para 17 in respect of limitation without any order to costs.

21. Pending applications also stand disposed of.

TUSHAR RAO GEDELA, J .

MAY 18, 2023/ms