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

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Judgment delivered on: 26.05.2023

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CM(M) 911/2023 & CM APPL. 28847-48/2023

LIFE INSURANCE CORPORATION OF INDIA Petitioner

Versus

SHRISHTI PROPERTIES PVT LTD Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Ankur Goel, Advocate

For the Respondent : Mr. Ajay Gupta and Mr. Anant Gupta,
Advocates

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 23.02.2023 passed by the learned ARC in RC ARC No.5439/2016 titled *M/s. Shrishti Properties Pvt. Ltd. Vs. Life Insurance Corporation of India* whereby an application under Order XI Rule 12 CPC, 1908 filed on behalf of the respondent/plaintiff was allowed.

2. Mr. Goel, learned counsel appearing for the petitioner submits that there could be no question of the learned Trial Court to enter into a roving and fishing enquiry or for the purposes of gathering evidence of



the respondent / plaintiff by allowing the application under Order XI Rule 12 CPC, 1908.

3. Learned counsel also submits that petition wherefrom the present challenge arises is one filed under Section 14 (1) (n) of the DRC Act in respect of the alternative accommodation and the burden to discharge is squarely on the respondent/plaintiff.

4. Learned counsel submits that by virtue of the impugned order, the learned Trial Court has shifted the burden upon the petitioner, which is impermissible in law, particularly in view of the settled law that the burden of proof would be on the party asserting a fact. On that basis, learned counsel submits that the directions contained in the impugned order are illegal and materially prejudice the case of the petitioner and requests that the same be set aside.

5. On the other hand, Mr. Ajay Gupta, learned counsel for the respondent /plaintiff vehemently opposes the submissions made by the learned counsel for the petitioner and submits that the information as sought by the respondent in its application has a direct relation to the alternate accommodation available to the petitioner/tenant. It would be impossible for the respondent/landlord to obtain any document which would disclose that the petitioner/tenant has or not any other alternate accommodation at all. It was only in that situation that the respondent/landlord was constrained to file an application under Order XI Rule 12 CPC, 1908.

6. Moreover, learned counsel for the respondents submits that the order does not enter in the realm of gathering evidence for the respondent/plaintiff nor is it a roving or fishing enquiry for the reason



that the documents are purely in the custody and possession of petitioner/tenant and by no other means can the respondent/landlord gather such information. The absence of same would be prejudicial to the case of the respondent/plaintiff.

7. Learned counsel for the respondent also relies upon the judgment of the Supreme Court in ***Shri M. L. Sethi Vs. Shri R. P. Kapur (1972) 2 SCC 427*** in particular to para 6. The Supreme Court in the aforesaid judgment of ***Shri M. L. Sethi (Supra)*** has categorically held that the purpose of application under Order XI Rule 12 CPC, 1908 is only to elicit the facts or a truth involved in a *lis* between the parties and in case such information or document which tends to show or throw any light on any aspect of a litigation is available and in possession of the other party, the same cannot be refused. It would be appropriate to extract para 6 of the aforesaid judgment, which is as under:-

“6. We think that the high Court was wrong in holding since the application for discovery did not specify the documents sought to be discovered, the lower Court acted illegally in the exercise of its jurisdiction in ordering discovery. Generally speaking, a party is entitled to inspection of all documents which do not themselves constitute exclusively the other party’s evidence of his case or title. If a party wants inspection of documents in the possession of the opposite party, he cannot inspect them unless the other party produces them. The party wanting inspection must therefore, call upon the opposite party to produce the document. And how can a party do this unless he knows what documents are in the possession or power of the opposite party? In other words, unless the party seeking discovery knows what are the documents in the possession or custody of the opposite party which would throw light upon the question in controversy, how is it possible for him to ask for discovery of specific documents? Order II Rule



12 Provides:

“12. Any party may, without filing any affidavit to the Court for an order directing any other party to any suit to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in question therein. On the hearing of such application the Court may either refuse or adjourn the same, if satisfied that such discovery is not necessary, or not necessary at that stage of the suit, or make such order, either generally or limited to certain classes of documents, as may, in its direction, be though fit: Provided that discovery shall not be ordered when and so far as the Court shall be of opinion that it is no necessary either for disposing fairly of the suit or for saving costs.”

It is clear from the above ratio laid down by the Supreme Court in the aforesaid squarely apply to the present case too.

8. Moreover, this Court has perused the impugned order and para 6 and 7 are the directions which have been passed against the petitioner herein. From perusal thereof, it appears that the learned Trial Court had directed the petitioner to place on record an affidavit containing the information or the documents which are in its possession relating to the properties mentioned in para in 18(a) (iii) of the petition as also the directions in para 7. The directions in para 6 and 7 are extracted hereunder:-

“6. Accordingly, in view of the aforesaid discussion, in the present case respondent can be directed to make discovery on oath of the documents which are or have been in his possession relating to properties mentioned in para 18(a)(iii) of the petition and a general or blanket order against the respondent in this regard can be passed.

7. Respondent is hereby directed to make discovery on oath of the documents which are or have been in his possession relating to properties mentioned in para 18(a)(iii) of the petition within 3 weeks from today.”



9. On an overall conspectus, this Court is of the considered opinion that the petitioner be directed to file an affidavit in terms of para 6 and 7 of the impugned order, as also produce before the Trial Court, the original documents or the photocopies of the properties mentioned in Para 18(a)(iii) of the petition and allow the respondent / landlord to inspect the same.

10. The purpose for which the application was filed by the respondent / landlord would be subserved by the aforesaid directions.

11. After the inspection is completed by the respondent / landlord, the record may be returned to the petitioner / tenant.

12. The affidavit be placed on record on or before 08.08.2023. The documents may be produced on 08.08.2023 for the aforesaid purpose

13. In view of above, the petition is disposed of without interfering in the order in any manner whatsoever without any order as to costs.

TUSHAR RAO GEDELA, J .

MAY 26, 2023/Ms