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

Date of decision : 31.05.2023

+ **RC.REV. 159/2023 and CM Nos.30368/2023 and 30369/2023**
M/S POONAM BACKLIWAL Petitioner

versus

MANGILAL RIKHABCHAND HUF Respondent

For the Petitioners : Mr. Kamlesh K. Bhuchar and Mr.
 Attul Bhuchar, Advocates.

For the Respondent : None.

CORAM:

HON'BLE MS. JUSTICE TARA VITASTA GANJU

[Physical Hearing/Hybrid Hearing (as per request)]

TARA VITASTA GANJU, J.:(ORAL)

1. The present Petition has been filed by the Petitioner/Tenant impugning the Order dated 24.04.2023 passed by the learned Senior Civil Judge-cum-Rent Controller, South East, Saket Courts, New Delhi, in Eviction Petition No. RC/ARC/9/2018 [hereinafter referred to as 'the Impugned Order'].

1.1 By the Impugned Order, the Respondent/Landlord was permitted to withdraw his Eviction Petition filed *qua* the eviction of the Petitioner/Tenant from the premises at Ground Floor, Shop No. 5, Block No. 171, Sunder Nagar Market, New Delhi [hereinafter referred to as 'the demised Premises'].

2. Learned Counsel appearing on behalf of the Petitioner/Tenant submits that prior thereto, the Respondent/Landlord had approached this Court by



way of an earlier Revision Petition, impugning Order dated 13.01.2022, rejecting an amendment Application filed by the Respondent/Landlord before the Trial Court, whereby amendments were sought to be made in Eviction Petition No. RC/ARC/9/2018. [hereinafter referred to as ‘the said Eviction Petition’].

2.1 By its Order dated 19.04.2023, the predecessor Bench of this Court had permitted the Respondent/Landlord to withdraw its Revision Petition, as follows:

- “1. This revision petition has been filed assailing the order dated 13.01.2022 passed by SCJ acting as Rent Controller, South East District, Saket Courts, New Delhi (‘Trial Court’), in RC ARC 9/18, whereby the application filed by the Petitioner under Order 6 Rule 17 of CPC has been dismissed.*
- 2. The learned senior counsel appearing for the Petitioner seeks liberty to withdraw the present revision petition. He states that the Petitioner herein, in addition, also intends to withdraw the eviction petition bearing RC ARC No. 9/18, pending before the Rent Controller.*
- 3. He further seeks liberty to file a fresh eviction petition under Section 14(1)(e) of Delhi Rent Control Act, 1958 (‘DRC Act’).*
- 4. In view of the submissions made by the Petitioner, the present petition is dismissed as withdrawn reserving liberty to the Petitioner to avail his remedies, in accordance with law. Pending applications, if any, stand disposed of.*
- 5. In the event the Petitioner files a fresh eviction petition under Section 14(1)(e) of the DRC Act, the same shall be decided, in accordance with law.”*

3. Learned Counsel appearing on behalf of the Petitioner/Tenant, Mr. K.K. Bhuchar, submits that, thereafter, by the Impugned Order the said Eviction Petition was withdrawn by the Respondent/Landlord.

3.1 Mr. Bhuchar submits that by the Impugned Order, the Trial Court has directed disposal of the said Eviction Petition in view of the statement of learned Counsel for the Respondent/Landlord, *albeit*, with liberty to the



Respondent/Landlord to file a fresh Eviction Petition in accordance with law as follows:

“I am counsel for the petitioner in the present petition. On instructions of the petitioner, I wish to withdraw the present petition as all facts are not brought on record in this case and hence, liberty may also be granted to file afresh in accordance with law. It is, therefore, requested to kindly dispose off the present petition as withdrawn.”

[emphasis supplied]

4. Mr. Bhuchar submits that this withdrawal of the said Eviction Petition was not a withdrawal simpliciter as is envisaged by the provisions of Order 23 Rule 1 of Code of Civil Procedure, 1908 [hereinafter referred to as ‘CPC’], but a withdrawal with the liberty to file a fresh Eviction Petition.

4.1 Mr. Bhuchar further submits that the provisions of Order 23 Rule 1 of CPC provide for an unqualified withdrawal. However, since the withdrawal of the Eviction Petition by the Respondent/Landlord was not a simpliciter withdrawal, the liberty granted under the Impugned Order may come in the way of any objection(s), raised by the Petitioner/Tenant, as and when a fresh Eviction Petition is filed by the Respondent/Landlord.

4.2 Reference is also made to the fact that the Respondent/Landlord had previously attempted to amend the said Eviction petition by introducing several new facts, grounds and prayers. However, these amendments were rejected by the Trial Court by a detailed order dated 13.01.2022. It is, therefore, submitted that the Respondent/Landlord should not be permitted to contravene the order rejecting the amendment and, in this circuitous manner, get to include those facts/grounds/prayers which were previously rejected by the order dated 13.01.2022 of the Trial Court.

4.3 Learned Counsel for the Petitioner/Tenant submits that he would be



satisfied if directions are passed to enable him to take all the aforesaid objections in any fresh Eviction Petition filed by the Respondent/landlord.

5. This Court finds that neither the Impugned Order or order of this Court dated 19.04.2023, creates a bar on the Petitioner/Tenant taking any objection(s).

6 Accordingly, the present Petition is disposed of directing that the Impugned Order should not be construed so as to limit the objections *qua* maintainability and admissibility that the Petitioner/Tenant may have, in the event that a fresh Eviction Petition is filed by the Respondent/Landlord.

7. All rights and contentions of the parties are left open to be adjudicated before the Trial Court.

8. The Petition and the pending Applications filed are closed.

9. Parties will act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

MAY 31, 2023/yg..

[Click here to check corrigendum, if any](#)