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

*Date of decision: 24.08.2023*

+ CM(M) 1372/2023 & CM APPLs. 43599/2023, 43600/2023

MS. PRATIMA SINGH ..... Petitioner

Through: Mr. Rajiv Kumar Ghawana and Ms.  
Neelaksa Sharma, Advocates.

versus

ALL INDIA BLIND RELIEF SOCIETY ..... Respondent

Through: Mr. Suriya Chandra, Advocate.

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**CORAM:**

**HON'BLE MS. JUSTICE M ANMEET PRITAM SINGH ARORA**

**J U D G M E N T**

**MANMEET PRITAM SINGH ARORA, J (ORAL):**

1. This petition filed under Article 227 of Constitution of India impugns the order dated 11.05.2023 passed by the ADJ-05, South District, Saket Courts, New Delhi ('Trial Court') in CS DJ No. 5574/2016, dismissing the application filed by the Petitioner herein under Order 14 Rule 5 read with Section 151 of the Code of Civil Procedure, 1908 ('CPC').

2. The Petitioner is the original defendant and Respondent is the original plaintiff in the civil suit.

2.1. The civil suit has been filed by the plaintiff for recovery of possession of House No. 3, Ground Floor, Model Eye Hospital, Block – F, Lajpat Nagar – II, New Delhi ('suit property') and *mesne* profits, on 26.07.2012. The relationship between the parties is admittedly that of a landlord-tenant.

2.2. The issues were framed by the Trial Court on 18.12.2014. The parties have thereafter, led their evidence which stood concluded in the year 2019. The matter has since then been pending at the stage of the final arguments.



3. It was at this stage of proceedings on 07.09.2020 that an application was filed by the Petitioner (i.e., the defendant) under Order 14 Rule 5 read with Section 151 of CPC seeking framing of additional issues and recasting of issues.

3.1. The said application remained pending and has been dismissed vide impugned order dated 11.05.2023.

4. Learned counsel for the Petitioner states that the Petitioner has proposed the following three (3) additional issues to be framed and has also proposed the onus of the said issues:

- i. Whether the alleged governing body of the plaintiff society could have passed the resolution dated 15.7.2011 in view of challenge to the membership of the members of the governing body pending in CS No.9914/2016 titled as "*Shri Harveer Singh & Ors. Vs. All India Blind Relief Society & Ors.*" and CS No.208667/2016 titled as "*Vinod Kumar Vs. All India Blind Relief Society & Ors.*"? OPP
- ii. Whether the alleged governing body of the plaintiff society is/was competent and has the authority to file and maintain the present suit against the defendant? OPP
- iii. Whether the suit is barred under section 50 of the Delhi Rent Control Act, 1958? OPD

4.1. He states that though the Trial Court in the impugned order has observed that the issue nos. (i) and (ii) proposed to be framed by the Petitioner are already covered in the existing issue no.(i), the Petitioner is not satisfied with the said finding and prays that a separate and specific issue should be framed in this regard.

4.2. He states that similarly with respect to the proposed issue no. (iii),



though the Trial Court has returned a finding that said issue is a question of law and will be heard and considered at the time of the final arguments, he states that the said issue as well should be framed specifically.

4.3. He, further, states that the issue no. (i) which was framed by the Trial court on 18.12.2014 wrongly casts the onus of proof on the Petitioner herein whereas the onus of the said issue should have been placed on the Respondent.

5. In reply, the learned counsel for the Respondent, who appears on advance service, states that the issues were framed by the Trial Court on 18.12.2014. She states that though on the said date of hearing, the counsel for the defendant had entered appearance subsequent to the order being passed, however, he was duly apprised of the said order on the same date of hearing.

5.1. She states that no objections were raised by the counsel for the defendant either on 18.12.2014 and or at any stage thereafter with respect to the casting of the onus of issue no. (i) framed on the said date or the issues itself.

5.2. She further states that though this application proposing fresh issues was filed in the year 2020, it was not pressed for hearing by the Petitioner and remained pending on the board of the Trial Court until 2023 i.e., when the matter was listed for final arguments.

5.3. She states that the matter is next listed before the Trial Court on 06.09.2023 for final arguments.

5.4. She states that the parties have already led evidence on each of the issues now proposed by the Petitioner and as held by the Trial Court, the contention sought to be raised are duly covered by the existing issue nos. (i) and (ii).

5.5. She states that she has no objection if the legal objection with respect



to the bar of Section 50 of the Delhi Rent Control Act, 1958 ('DRC Act'), is specifically decided by the Trial Court at the time of final adjudication as observed by the said Court in its order dated 11.05.2023.

5.6. She further, states that though the impugned order is dated 11.05.2023, the present petition was filed in the registry on 19.07.2023 and was deliberately kept pending in defects.

5.7. She states that in the meanwhile, the Petitioner herein filed an application under Order 7 Rule 11 CPC before the Trial Court and after the said application was disposed of by the Trial Court on 07.08.2023, steps have been taken to have this petition listed so as to frustrate the final arguments listed on 06.09.2023.

6. This Court has considered the submissions of the parties and perused the record.

7. In the opinion of this Court, the fact that the Petitioner has duly participated in the proceedings before Trial Court from 18.12.2014 to till date, without any objection and led evidence on the issues which were framed on 08.12.2014 is a material fact, which cannot be lost sight of. The fact that the application under Order 14 Rule 5 read with Section 151 of CPC, though filed by the Petitioner on 07.09.2020, was kept pending on the board of the Trial Court until 11.05.2023 also lends credence to the submission of the counsel for the Respondent that the said application was filed only to delay the final adjudication.

7.1. A Coordinate Bench of this Court in ***P.C. Agrawal v. B.N. Chakravorty & Ors., 2022 SCC OnLine Del 4306***, in similar circumstances held that the application under Order 14 Rule 5 of CPC has been filed by the Petitioner therein at the stage of final arguments not only to derail the logical



culmination of the trial but to ensure that the trial is delayed as far it can be without enabling the Court to adjudicate upon the real controversy between the parties.

8. Admittedly, the relationship between the parties is that of a landlord and tenant. The plaintiff i.e., the Respondent, in order to succeed in its claim for the grant of decree of possession would necessarily have to prove the valid termination of the tenancy agreement. Therefore, the issue proposed by the Petitioner as regards the valid termination of the lease agreement is a necessary jurisdictional fact which the Court would have to return while deciding the existing issue no. (ii). In the opinion of this Court, therefore, the Trial Court has rightly observed that the proposed issue no. (i) raised by the Petitioner is duly covered.

9. Similarly, in view of the fact that admittedly the bar of suit under Section 50 of the DRC Act is a question of law and a jurisdictional objection, which the Court is bound to decide. In the facts of this case, the Trial Court has already observed that it would hear arguments on the said objection at the time of the final arguments. Therefore, the issue raised by the Petitioner with respect to the bar of jurisdiction has been duly taken note of and will be decided at the time of final arguments. This Court finds no error in the procedure adopted by the Trial Court to decide the said issue in the final judgment in view of the facts that the matter is at the stage of final arguments.

10. Further, this Court finds no merit in the objection raised by the Petitioner at this belated stage that the onus on issue no. (i) was wrongly cast on defendant on 18.12.2014. It is trite law that after evidence has been led by the parties, the point of onus is not of significance and either party would have to prove the said issue to succeed on the merits of their respective claim or



defence. In this regard, the Supreme Court in ***Kalwa Devadattam & Ors. v. The Union of India & Ors., AIR 1964 SC 880***, has held that once the evidence has been led by the parties on the question in issue, abstract consideration of onus is out of place and the matter should be adjudged on the evidence led by the parties. The relevant extract of the judgment passed in ***Kalwa Devadattam*** (Supra) reads as under:

*“11. .... The question of onus probandi is certainly important in the early stages of a case. It may also assume importance where no evidence at all is led on the question in dispute by either side; in such a contingency the party on whom the onus lies to prove a certain fact must fail. Where however evidence has been led by the contesting parties on the question in issue; abstract considerations of onus are out of place; truth or otherwise of the case must always be adjudged on the evidence led by the parties.”*

(Emphasis Supplied)

10.1. The Petitioner in the proposed issue no. (i) is challenging the validity of the resolution dated 15.07.2011 as void. Since, the said plea is being raised by the Petitioner, all necessary facts for establishing that stand would have to be proved by the Petitioner herein. Since Petitioner has already led evidence on the said stand it will be duly considered by the Trial Court as observed in the impugned order.

11. This Court under Article 227 of the Constitution of India only exercises supervisory jurisdiction and this Court finds no error of law or fact in the impugned order passed by the Trial Court.

12. Accordingly, the present petition is dismissed. Pending applications also stand disposed of.

**MANMEET PRITAM SINGH ARORA, J**

**AUGUST 24, 2023/msh/aa**

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