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

Date of decision: 30.10.2023

+ **CM(M) 1459/2023**

GARIMA MINDA

..... Petitioner

Through: Mr. Devesh Kumar, Mr. Sohan Singh
Negi and Mr. Sushant Kumar,
Advocates

versus

SMT. RAJNI CHOPRA & ORS.

..... Respondents

Through: Mr. Amit P. Shahi, Advocate
(Through VC)
Mr. Deepak Vohra and Mr. Nishant
Gupta, Advocates (Through VC)

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

CM APPL. 46545/2023 (For Exemption)

Allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

CM(M) 1459/2023 & CM APPL. 46544/2023

1. This petition filed under Article 227 of the Constitution of the India impugns the order dated 14.08.2023 passed by the District Judge (Commercial Court)-01, Shahdara District, Karkardooma Courts, Delhi ('Trial Court') in CS (COMM.) No. 2/2023, titled as '**Rajni Chopra and Ors. v. Garima Minda and Anr.**', whereby the Trial Court dismissed the application dated 12.07.2022 filed by the Petitioner under Section 151 of Code of Civil Procedure, 1908 ('CPC') raising objection to the report dated 23.10.2021 filed by the Local Commissioner in pursuance to the order dated



18.10.2021.

1.1. The Petitioner is the defendant No.1 and the Respondents are the plaintiffs in the suit. The civil suit has been filed for recovery of possession, arrears of rent and mesne profits with respect to ground floor of property No. B-2/7, Krishna Nagar, Delhi ('suit property'). The relationship between the parties is that of landlord and tenant.

2. The learned counsel for the Petitioner states that the subject matter of this petition is only with respect to the objections filed by the Petitioner herein to the report dated 23.10.2021 filed by the Local Commissioner i.e., the 1st LC report.

2.1. He states that the delay (of 8 months) in filing the objections to the 1st report of the Local Commissioner is on account of the fact that the videography in support of the report dated 23.10.2021 was provided to the Petitioner herein for the first time in the month of June, 2022, and not prior to that.

2.2. He states that the Petitioner herein has raised objections with respect to the manner in which the inventory of articles lying in the suit property was done by the Local Commissioner during execution of local commission.

3. In reply, learned counsel for the Respondent states that this petition and the objections to the 1st LC report is an abuse of process of law. He states as it is evident from the record, the same Local Commissioner was subsequently appointed with the consent of the parties on 31.05.2022. He states that however, no objections were raised by the Petitioner herein when the said Local Commissioner was re-appointed. He states that the said 2nd local commission was also executed a 2nd report has been filed on 01.06.2022.

3.1. He states that the application dated 12.07.2022 under Section 151 of



CPC raising objections to report dated 23.10.2021, has been filed belatedly (after 8 months) as an attempt to interfere with the proceedings before the Trial Court. He states that the submissions made by the Petitioner on the issue inventory of the articles lying in the suit property are without any merit and are intended to interfere with the adjudication of the plaint.

3.2. He states that the 1st LC report was duly furnished to the Petitioner herein on 23.10.2021 and the Petitioner had raised no objection to the said report at the relevant time. He states even otherwise objections are without any merit.

3.3. He states that the Petitioner has, in pleading filed before the Trial Court, used derogatory language with respect to the Local Commissioner who is an officer of the Court and in fact the Petitioner's conduct is contemptuous.

4. This Court has considered the submission of the counsel for the parties and perused the record.

5. This Court has perused the impugned order dated 14.08.2023, the relevant portion whereof reads as under:

"11. Perusal of the record further shows that in compliance of the order dated 18.10.2021, the Ld. Local Commissioner submitted a report before the Ld. Predecessor of this court on 23.10.2021 and thereafter, the matter was adjourned for 18.11.2021. Thereafter, on request of the Ld. Counsels for the parties, the matter was adjourned from time to time and on 31.05.2022, the Ld. Local Commissioner Ms. Priya Maurya, Advocate, was re-appointed to visit the property again with the following directions:

xxx

xxx

xxx

12. Perusal of the record further shows that in compliance of the order dated 18.10.2021, the Ld. Local Commissioner submitted her report before the Ld. Predecessor of this court, on 23.10.2021, wherein, she has reported the following facts:

xxx

xxx

xxx

f. That during this process, the defendant namely Garima Minda got prepared list of her articles/apparatus lying there and she requested that some of the material lying inside the subject property i.e. Ground



Floor be handed over to her to which the undersigned denied.

xxx

xxx

xxx

13. Perusal of the record further shows that during the w.e.f. 23.10.2021 till the re-appointment of the Ld. Local Commissioner, vide order dated 31.05.2022, no objection was raised by the applicant/defendant No. 1 and on 31.05.2022, the Ld. Local commissioner was re-appointed only with the consent of the parties, including the applicant/defendant No.1.

14. Perusal of the record further shows that in compliance of the order dated 31.05.2022, the Ld. Local Commissioner submitted her fresh report on 01.06.2022 and even then, no objection was raised by the applicant/ defendant No. 1.

15. From the material on record and submissions of the Ld. Counsels for the parties, it appears that the present application, which has been filed on behalf of the applicant/ defendant No. 1 on 12.07.2022, is only an after-thought and has been filed with malafide intention, solely with the ill-motive of delaying the present proceedings. Therefore, the present application is hereby dismissed being devoid the of any merits, subject to imposition of a cost of Rs. 10,000/- on the applicant/ defendant No. 1.

It is ordered accordingly.

Adjourned for payment of cost by the applicant/ defendant No.1 and for arguments on all the remaining pending miscellaneous applications on 04.09.2023."

(Emphasis Supplied)

6. A perusal of the record evidences that no objections were raised by the Petitioner either with respect to the manner in which the local commission was executed on 18.10.2021 or with respect to the 1st LC report filed by the Local Commissioner on 23.10.2021 or thereafter at any time until 12.07.2022.

7. The satisfaction of the Petitioner with the 1st LC report was also evident from the fact that the Petitioner herein had duly participated in the execution and was duly present at the suit property on 18.10.2021. The Petitioner participated in the preparation of the inventory/list of articles as is evident from paragraph (f) of the report dated 23.10.2021.

The satisfaction of the Petitioner with respect to the Local



Commissioner is also duly reflected from the contents of the order dated 31.05.2022 passed by the Trial Court, which have been referred to in the impugned order.

8. During the course of oral arguments, learned counsel for the Petitioner was unable to point out any material fact which would cast any doubt on the correctness of the 1st LC report, as recorded by the Trial Court in the impugned order. The application has been filed after a change of counsel by the Petitioner and therefore, appears to be a mere strategy to delay the trial and does not stem from any bona fide lack of credibility of the Local Commissioner. The Petitioner herself duly participated in the local commission executed on 18.10.2021 and have full access to legal advice. The Petitioner at the relevant time raised no objections, which shows her satisfaction with the local commission. The raising of these objections at this belated stage belies the credibility. The Local Commissioner is the officer of the Court and the Petitioner cannot cast aspersions on the Local Commissioner flippantly for the sake of prolonging the litigation.

9. This Court therefore concurs with the finding of the Trial Court that the Petitioner has filed this belated application only to delay the adjudication of the suit proceedings on merits. There is no infirmity in the order passed by the Trial Court.

10. Accordingly, in view of the aforesaid, the present petition is dismissed with costs of Rs. 10,000/- payable to the Respondent.

11. It is directed that in case, the Petitioner fails to make payment of costs, the Trial Court shall proceed to strike off the defence of the Petitioner.

MANMEET PRITAM SINGH ARORA, J

OCTOBER 30, 2023/hp/aa

Click here to check corrigendum, if any