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

Date of decision: 11.10.2023

+ CM(M) 1539/2023 & CM APPL. 48605/2023

KALI CHARAN SAINI

..... Petitioner

Through: Mr. R.K. Saini and Ms. Neelam Saini,
Advocate

versus

SEEMA DEVI KHANDELWAL

..... Respondent

Through: Mr. H.S. Dhawan, Advocate

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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):

1. This petition filed under Article 227 of Constitution of India impugns the order dated 08.08.2023 passed by the ARC-01, Central District, Tis Hazari Courts, Delhi ('Rent Controller') in RC ARC No. 397/2021, titled as '**Seema Devi Khandelwal v. Kali Charan Saini**', whereby the Trial Court dismissed the application filed by the Petitioner herein under Order VIII Rule 1A(3) of Code of Civil Procedure, 1908 ('CPC') for placing on record additional documents in support of the defences raised in the application seeking leave to defend.

1.1. The Petitioner is the tenant and the Respondent is the landlady. An eviction petition was filed by the Respondent herein under Section 14(1)(e) of the Delhi Rent Control Act, 1958, seeking eviction of the Petitioner from



Shop No. 10454, Bagichi Allaudin, Desh Raj Bhatia Marg, Motia Khan, Pharaganj, New Delhi ('subject premises') on the ground that the subject premises is required by the Petitioner for her bona fide need of running a boutique business.

1.2. The Petitioner filed his application seeking leave to defend to the eviction petition, *inter alia*, raising the issue that Shop No. 10452, which is alleged by the Respondent herein to being used by her husband under the name and style of SS & Company, is actually under the occupation of one Sh. Chetan, who is running a mobile shop under the name and style of 'Vivo Mobile Shop'. It is stated that the said Shop has been let out to Sh. Chetan, two (2) months prior to filing of eviction petition.

2. Learned counsel for the Petitioner states that by way of this application under Order VIII Rule 1A(3) of CPC, the Petitioner is seeking to bring on record the following two (2) documents, to substantiate his stance in the leave to defend:

- i. The deed of partnership dated 01.10.2019 ('Partnership Deed') executed between one Sh. Manoj Kumar Sharma s/o Sh. Chote Lal Sharma and one Sh. Manoj Kumar s/o Sh. Dhiraj Kumar, for carrying on business of mobile phones and its accessories in the name and style of M/s Aman Enterprises; and
- ii. photographs of shop No. 10452, Gali No.2, Bagichi Allauding, Motia Khan, Pahar Ganj, New Delhi ('Shop No. 10452'), which show that one Sh. Chetan is running a mobile shop therein and he is the proprietor.

2.1. Learned counsel for the Petitioner states that the copy of the Partnership Deed was provided to the Petitioner by Mr. Chetan. He states



that the said partnership firm namely M/s Aman Enterprises vacated the shop No. 10452 at least two (2) months prior to the filing of the eviction petition. He fairly states that no averment with respect to occupation of shop No. 10452 by M/s Aman Enterprises was raised in the leave to defend.

2.2. He states that the photographs sought to be placed on record shows that Mr. Chetan is the proprietor in shop No. 10452, and in one of the photographs, Mr. Chetan can be seen vending from the shop.

3. In reply, learned counsel for the Respondent, landlady, states on instructions that in view of the fact that there was no averment raised with respect to M/s Aman Enterprises, no document can now be placed on record. He states that even otherwise M/s Aman Enterprises was never in occupation of shop No. 10452.

3.1. With respect to the photographs, he states that in three (3) of the said photographs a sign board is partially visible with 'VIV' written over it and right underneath it, there is an alleged plastic strip pasted on the hoarding, mentioning the name of the proprietor as Sh. Chetan. He states that, however, the said photographs are forged and fabricated. He states that there is no such plastic pasting on the sign board and *ex facie* the photographs appear to be tampered with. He states that the tampering is also evident on a comparison of the photographs already filed on record by the Petitioner with the application seeking leave to defend.

3.2. He states that the photograph wherein Mr. Chetan can be seen vending from the shop is of no consequence. He states that Mr. Chetan is an employee of the Respondent's husband and is present in the shop in this capacity. He states that this has been explained in the reply to the application seeking leave to defend. He states that therefore, his presence is duly



explained.

3.3. He states that the persons seen in the red T-shirt in one of the said photographs is not known to the Respondent. He states that the stand of the Petitioner that Mr. Chetan is operating the shop is already raised in the ground 'A' of the application seeking leave to defend and will be adjudicated by the Rent Controller at the time of adjudication of the application to leave to defend.

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

5. This Court is of the opinion that no grounds have been made out by the Petitioners herein for bringing on record the photocopy of the partnership deed dated 01.10.2019.

5.1. The Petitioner states that the copy of the partnership deed was provided by Mr. Chetan. The said Mr. Chetan has no concern with the said partnership firm M/s Aman Enterprises and therefore, it is unexplained on what basis Mr. Chetan has custody of the said document. Even otherwise, there is nothing on record to substantiate the plea that Mr. Chetan provided the said document.

5.2. Further, a perusal of the application seeking leave to defend shows admittedly there was no plea raised in the leave to defend with respect to any occupation by M/s Aman Enterprises and even otherwise since it is an admitted stand that M/s Aman Enterprises had vacated the shop premises even prior to the filing of the eviction petition, the said fact has no bearing on the eviction petition.

6. With respect to the presence of Mr. Chetan in the Shop No. 10452, the Respondent in reply to the leave to defend has duly admitted to the fact that



Mr. Chetan is involved in the business carried out by the husband of the Respondent herein. The SS & Company which carries on business in the said shop is being run by the husband of the Respondent.

6.1. A bare perusal of the photograph at page no. '88' of this petition shows a hoarding of 'VIVO'. Peculiarly, it has a plastic strip pasted on the hoarding, which declares one 'Mr. Cheatan' as the proprietor. The pasting of the plastic strip appears to be unusual and not a common practice. Further, the spelling of the alleged Sh. Chetan is also misspelt in this plastic sheet to read as 'Cheatan'. It appears improbable a proprietor would misspell his name on the sign board. In these facts, it seems evident to this Court that the plastic strip may have been pasted temporarily to take photographs filed with this petition.

6.2. The aforesaid observation of this Court is strengthened on a comparison with the photographs of the hoarding for the said shop, which were initially filed with application seeking leave to defend.

6.3. Learned counsel for the Petitioner states that in the photographs filed by the Petitioner herein along with his leave to defend he had annexed photographs of shop No. 10452 which clearly show the hoarding of VIVO, however it does not show any such sticker bearing the name proprietor 'Chetan'. The said photographs form part of the Rent Controller record and have not been filed on record by the Petitioner. A copy of said photographs have been shown to this Court.

6.4. A comparison of the photograph of the hoardings now sought to be placed on record with application under Order VIII Rule 1A(3) of CPC and the photographs, which are already on record, do not match or appear to be genuine.



7. In these circumstances, bringing on record the photographs which ex facie appears to be dubious, this Court finds that the rejection of the said document on the ground set out in the impugned order of the Rent Controller is correct and it does not require any interference.

8. The Petitioner's contention that Mr. Chetan carries on business in his independent capacity from the said shop and not as an employee of the Respondent's husband, will be decided by the Trial Court while deciding the application for leave to defend on its own merits.

9. Accordingly, the present petition is without any merits and is dismissed. Pending application stands disposed of.

MANMEET PRITAM SINGH ARORA, J

OCTOBER 11, 2023/msh/aa

Click here to check corrigendum, if any