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

Date of decision: 21.11.2023

+ **CM(M) 1375/2019**

KAMAL NARAIN KAPOOR

..... Petitioner

Through: Mr. Harkirat Sawhney, Mr. Punit Vinay and Mr. Aditya Kapoor, Advocates.

versus

UMA SHANKAR KAPOOR & ORS

..... Respondents

Through: Mr. Sumit Chander, Mr. Nitesh Kumar Singh, Mr. Arjun Kapoor and Mr. Devender Singh, Advocates for R-1 to R-4

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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. 58729/2023 and CM APPL. 59504/2023

1. In these applications, the Petitioner herein is aggrieved of the order dated 16.10.2023 passed by the Trial Court dismissing the application filed by the Petitioner under Order XVI Rule 6 read with Section 151 of Code of Civil Procedure, 1908 ('CPC').
2. The Petitioner vide these applications seeks setting aside of the order dated 16.10.2023 and a direction to the Trial Court to hear the application filed under Order XVI Rule 6 of CPC, afresh.



3. Learned counsel for the Petitioner states that the rent agreement dated 08.08.1973 was duly pleaded in the written statement and since the custody of the original of the said agreement is not with the Petitioner, an application under Order XVI Rule 6 CPC read with Section 151 CPC was filed for summoning of the original rent agreement from the landlord i.e., the trust.

4. In reply, learned counsel for the Respondent states that the order dated 16.10.2023 passed by the Trial Court affords a fresh cause of action to the Petitioner and this order of the Trial Court cannot be impugned in the present proceedings.

4.1. He states that since the present petition, filed on 16.09.2019, impugns the order dated 06.05.2019, the adjudication of these applications (i.e., CM APPL. 58729/2023 and CM APPL. 59504/2023) in the present proceedings will cause prejudice to the Respondent.

4.2. He states that the therefore, the Petitioner should be directed to file a fresh petition impugning the order dated 16.10.2023, if so advised, in accordance with law.

5. This Court has considered the submissions of the parties.

6. This Court is in agreement with the submissions of the counsel for the Respondents, since the necessary pleadings for challenging the said order are not available on record and it is likely to cause embarrassment to the process of adjudication.

7. Accordingly, these applications are disposed of reserving liberty to the Petitioner herein to file a fresh petition within ten (10) days impugning the Trial Court's order dated 16.10.2023, in accordance with law.

8. It is made clear that while granting the aforesaid liberty, this Court has not expressed any opinion on the merits. The rights and contentions of



the parties are left open.

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9. This petition filed under Article 227 of Constitution of India impugns the order dated 06.05.2019 passed by the Trial Court in civil suit no. 20463/2016, titled as '**Uma Shankar Kapoor v. Kamal Narain Kapoor**', whereby the defendant's right to lead evidence has been closed.

10. This Court however, is of the opinion that in view of the subsequent orders dated 26.09.2023 and 09.10.2023 passed by this Court, the challenge in the said petition does not survive for consideration.

11. Accordingly, this petition is disposed of along with pending applications.

12. It is however, clarified that the disposal of this petition shall not come in the way of the Petitioner to assail the order dated 16.10.2023, which will be decided on its own merits uninfluenced by the disposal of this petition.

13. Learned counsel for the Petitioner states that the Petitioner has paid the cost of Rs. 50,000/- imposed by this Court vide order dated 26.09.2023. The said statement is taken on record and the Petitioner will be at liberty to rely on the said fact while assailing the order dated 16.10.2023.

14. Pending applications stands disposed of.

MANMEET PRITAM SINGH ARORA, J
NOVEMBER 21, 2023/rhc/aa

Click here to check corrigendum, if any