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

Date of decision: 26.09.2023

+ CM(M) 1586/2023 & CM APPLs. 49956/2023, 49957/2023

MRS. PREM SIKRI & ANR. Petitioner

Through: Mr. Irfan Ahmed, Advocate

versus

MR. PRAKHAR PRABHAT GUPTA Respondent

Through: None

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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. 49957/2023(for exemption)

Allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

CM(M) 1586/2023 & CM APPL. 49956/2023

1. The present petition filed under Article 227 of the Constitution of India impugns the order dated 28.04.2023 passed by the Rent Controller, East District, Karkardooma Court, Delhi ('Trial Court') in RC ARC 1113/2016 titled as "**Prakhar Prabhat Gupta v. Smt. Prem Sikri & Ors**" whereby, the Trial Court dismissed (i) an application filed by the Petitioners herein under Order VIII Rule 1A(3) read with Section 151, Code of Civil Procedure, 1908 ('CPC') to place on record additional documents and (ii) an application under Order VI Rule 17 read with Section 151, CPC seeking



leave to amend the leave to defend application.

2. The Respondent is the landlord of the property bearing No. P-35&36, Pandav Nagar, Delhi ('building') and has filed an eviction petition on 28.05.2016 under Section 14(1)(e) read with Section 25 of the Delhi Rent Control Act, 1958 with respect to eviction of Shop No. 2 in the building ('tenanted premises').

2.1. The premises were let out to Mr. K.K. Sikri who has since passed away. The Petitioners are the legal heirs of the deceased tenant.

2.2. However, despite the passage of seven (7) years the matter remains at the stage of adjudication of the application for seeking leaving to defend. The pleadings in the leave to defend stand concluded in the year, 2016.

3. On 28.11.2020, the Petitioners herein filed the aforesaid two (2) applications to bring on record the alleged fact that at Shop nos. 6 and 7 in the same building have been vacated by the earlier tenant; and the said Shops have been re-let by the Respondent, landlord to a new tenant who is carrying on the restaurant business under the name and style of M/s GoodDO- the Vegan Kiosk. The said averment was sought to be substantiated by filing the photographs of the restaurant.

3.1. In reply filed to the said application, the landlord clarified that Shop nos. 6 and 7 have been let out to Sh. Rakesh Gupta, who is an old tenant and continues to occupy the said shops and there has been no fresh letting to any new tenant as alleged. It was clarified that earlier Sh. Rakesh Gupta who was carrying restaurant business under the name of M/s. Food Fantasy, Chicken and Pizza corner, however, subsequently, changed the name of the business and now he is carrying on the business under the name and style of M/s GoodDO- the Vegan Kiosk.

3.2. The landlord further took a stand that neither of the Petitioners are



using the tenanted premises which have been kept shut by them and are lying vacant and unused.

4. The learned counsel for the Petitioners during the course of his submission states that the Trial Court fell in error in dismissing the applications by relying upon the averments made by the landlord in the reply. He states on the basis of the photographs filed by the Petitioners herein he is entitled to seek an amendment.

4.1. He admits that the Petitioners herein are not aware about the name and identity of the new tenant who is alleged to have taken Shop nos. 6 and 7 on rent after the closing down of the M/s. Food Fantasy, Chicken and Pizza Firm.

5. This Court has considered the submissions of the counsel for the Petitioners and perused the record. The operative part of the Trial Court order dated 28.04.2023 reads as under:

“Heard. Record is perused.

The leave to defend application in the present case was filed on 29.07.2016. The present applications under Order VIII Rule 1A (3) r/w Section 151 CPC and application under Order VI Rule 17 r/w Section 151 CPC filed on 28.11.2020. Thus, it is apparent that the above stated applications were filed more than four years after filing of the leave to defend application.

Petitioner in reply to the above stated applications specifically contended that Sh. Rakesh Gupta is a old tenant in respect of two shops i.e. shop no.6 & 6. It is contended that Sh. Rakesh Gupta has been doing his business in the name of M/s. Food Fantasy, Chicken and Pizza Corner in both the shops, but due to countrywide lockdown, Pizza business suffered badly. So, he added another Vegan Food business in shop no.6 under name of GoodDo in the month of November, 2020. The petitioner also filed the affidavit of Sh. Rakesh Kumar Luthra regarding the above stated fact.

Law is well settled that after the statutory period of 15 days, no document on behalf of the respondent can be taken on record.

*The **Hon’ble Supreme Court of India** in “Prithipal Singh Vs. Satpal Singh (dead) through his LRs” 2010 (1) RCR (Rent) S3: 2010 2 SCC15”.*

“The statutory time period of 15 days for filing leave to defend is sacrosanct and inflexible and whatever has to be stated in the said application with respect to the facts and events, must be stated in the leave to defend



application itself and not by way of subsequent affidavit or documents. “

Though, some event pertaining to the petitioner and his property bound to happen during the pendency of the petition. However, each and every fact is not supposed to be brought on record just because it pertains to the property in question or the bonafide requirement of the petitioner. The facts/documents must be such which is relevant to the controversy in question and subsequent to the filing of the leave to defend application. If litigation is protracted due to the conduct of the respondent and then, respondent is permitted to bring additional fact/document on record, then, it will result granting benefit to the respondent for his own wrong and the same cannot be allowed.

The Hon’ble Supreme Court of India in “Gaya Prasad Vs. Pradeep Srivastava” (2001) 2 SCC 604 held that “Bonafide requirement of the landlord has to be seen on the date of the petition and the subsequent events intervening due to protracted litigation can be taken into consideration for moulding the reliefs provided such events have a material impact on those rights and obligations and materially change the ground of relief. The landlord should not penalized for the slowness of the legal system. However, subsequent events may in some situations be considered to have overshadowed the genuineness of the landlord’s need but only if they are of such nature and dimension as to completely eclipse such need and made it lose significance altogether.”

Thus, when the present applications is read in the light of the above stated decisions of the Hon’ble Supreme Court of India, then I am satisfied that the proposed fact/documents are not material for deciding the present petition. Needless to say that litigation is protracted due to the conduct of the respondents. So, respondents cannot be allowed to take benefit of their own wrong.”

(Emphasis Supplied)

6. This Court is of the opinion that there is no infirmity in the order passed by the Trial Court. The Petitioners have not brought on record any subsequent event which would entitle him to amend the leave to defend. The landlord has filed a sworn affidavit confirming that Shop nos. 6 and 7 in the building continue to remain with the old pre-existing tenant Sh. Rakesh Gupta. The Respondent has sufficiently explained the change of name of the restaurant to M/s GoodDo-the Vegan Kiosk. The Petitioners have not denied that Sh. Rakesh Gupta was a pre-existing tenant. The Petitioners admittedly have not placed on record any facts identifying alleged new tenant. It is



therefore, apparent that the Petitioners are merely speculating that a new tenant has been inducted in Shop Nos. 6 and 7.

7. To a query raised by this Court as regards the current status of the use of the tenanted premises in view of the stand recorded by the Trial Court in its impugned order. In reply, the learned counsel for the Petitioners states that the Petitioner No.2 who is an architect by profession is using the tenanted premises i.e., the Shop for storing his goods. He states that Petitioner No.1 is about 75 years old and therefore, not capable of using the said premises. He also admits that there is no electricity connection in the Shop. In these facts, it is apparent that the Petitioners are not using the tenanted premises and are prolonging the proceedings before the Trial Court for oblique purposes.

8. This Court also notes that though the impugned order was passed on 28.04.2023, the present petition has been filed after five (5) months and was first listed on 26.09.2023; hence, the preset petition is also barred by delay and laches.

9. This Court finds no merits in this petition and the same is accordingly, dismissed. Pending application stands disposed of. The Registry is directed to send the copy of this order to the Trial Court for its record.

10. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as a certified copy of the order for the purpose of ensuring compliance. No physical copy of order shall be insisted by any authority/entity or litigant.

MANMEET PRITAM SINGH ARORA, J

SEPTEMBER 26, 2023/msh/asb

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