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

Date of decision: 06.10.2023

+ CM(M) 1638/2023

NITIN RAI SHARMA

..... Petitioner

Through: Mr. Hitesh Sachar, Advocate
(Through VC)

versus

ASHOK KAPOOR

..... Respondent

Through: None

%

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. 51695/2023(for exemption)

Allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

CM(M) 1638/2023

1. This petition filed under Article 227 of Constitution of India impugns the order dated 22.07.2023 passed by the ASCJ – cum – JSCC – cum – DJ, South District, Saket Courts, New Delhi ('Trial Court') in CS SCJ No. 258/2019, titled as '**Ashok Kapoor v. Nitin Rai Sharma**', whereby the Trial Court dismissed the application filed by the Petitioner under Section 151 of Code of Civil Procedure, 1908 ('CPC') seeking recall of the order dated 03.06.2023.

1.1. The Trial Court vide order dated 03.06.2023 had closed the



opportunity of the defendant for leading defendant evidence ('DE').

2. The Petitioner is the defendant and the Respondent is the plaintiff in the civil suit filed before the Trial Court seeking possession, recovery of arrears of rent and mesne profits.

3. The Petitioner admits that the plaintiff's evidence stood concluded on 18.11.2022 and the matter was put up for DE on 19.12.2022. It is also admitted that the matter was thereafter listed by the Trial Court on 27.01.2023, 06.04.2023 and 26.05.2023 to enable the defendant to lead evidence. However, no evidence was led on the said dates due to the absence of either the defendant himself or the counsel for the defendant.

4. It would be relevant to mention here that the Trial Court on 27.01.2023 while granting an adjournment has also imposed costs of Rs. 1,000/- on the defendant for non-presence on 27.01.2023.

5. In these circumstances, the Trial Court on 06.04.2023 and 26.05.2023 passed the following orders:

"06.04.2023

Present: Plaintiff in person.

None for defendant.

Cost of Rs. 3,000/- and Rs. 1,000/- imposed upon defendant vide orders dated 19.12.2022 and 27.01.2023, respectively not paid to plaintiff. Let the same be paid on NDOH.

Matter is at the stage of DE.

None has appeared for defendant. In the interest of justice, one last and final opportunity is given to defendant to lead DE.

Advance copy of affidavit of evidence be supplied to opposite side.

Put up for DE/FP on 26.05.2023."

(Emphasis Supplied)

"26.05.2023



Present: Sh. Narender Pal, Ld. Counsel for plaintiff along with plaintiff.

Sh. Shubham, Ld. Proxy Counsel for defendant.

Cost of Rs. 3,000/- and Rs. 1,000/- imposed upon defendant vide orders dated 19.12.2022 and 27.01.2023, respectively paid to plaintiff.

Matter is at the stage of DE.

Evidence by way of affidavit has been filed by defendant. Copy has been supplied to Ld. Counsel for plaintiff.

It is clarified that in case the defendant does not appear on NDOH. the opportunity for leading defence evidence would stands closed.

Put up for DE, being last and final opportunity of defendant/FP on 03.06.2023.”

(Emphasis Supplied)

6. The contents of the orders dated 06.04.2023 and 26.05.2023 show that the Trial Court did not find the request for adjournments by the defendant genuine; and had cautioned the defendant that 03.06.2023 will be the final opportunity. However, despite the Trial Court cautioning and putting the defendant to notice that it was the last opportunity, the defendant, who had to be examined on 03.06.2023 elected to remain absent. It was in these circumstances that the Trial Court closed the right of the defendant to lead evidence vide order dated 03.06.2023.

7. The Trial Court therefore after giving four (4) opportunities to the defendant closed the right to lead evidence.

8. In the opinion of this Court, the impugned order dated 22.07.2023 passed by the Trial Court declining to recall the order dated 03.06.2023 does not suffer from any infirmity. The Trial Court after perusal of the order sheet has rightly concluded that the defendant was avoiding recording of evidence and delaying the proceedings.



9. The Petitioner's right to lead evidence was closed on 03.06.2023 and the matter was set down by the Trial Court for final arguments on 15.07.2023. The Petitioner herein did not file the application for recall of the order 03.06.2023 before the Trial Court immediately but waited till July, 2023 for a date after the date fixed for final arguments. Therefore, the Petitioner's intention to delay the trial is writ large.

10. The Petitioner's application for recall of the order dated 03.06.2023 was dismissed by the Trial Court vide impugned order dated 22.07.2023. The Trial Court vide impugned order dated 22.07.2023 while dismissing the Petitioner's application fixed the matter for final hearing for 06.10.2023.

10.1. Though the impugned order was passed by the Trial Court on 22.07.2023, this petition has been filed and first listed only on 06.10.2023, the date on which the suit is fixed before the Trial Court for final arguments.

10.2. In the opinion of this Court, this act of the Petitioner to strategically has the matter/petition listed on 06.10.2023, with a prayer for stay of the proceedings before the Trial Court clearly evidences and substantiates the finding of the Trial Court that the Petitioner herein is delaying the adjudication of the suit.

11. It would be pertinent to mention here that the civil suit has been filed by the Respondent, landlord, relying upon the lease deed dated 09.04.2012 wherein the rent amount was reserved at Rs. 10,000/- per month. The Petitioner herein on merits has resisted in making payment of rental amount of Rs. 10,000/- by setting up a plea that the rental amount is Rs. 3,000/- and therefore, set up a defense that the tenancy is a statutory one and protected under the Delhi Rent Control Act, 1958.

11.1. The Petitioner is neither paying the rent reserved under the lease deed



nor permitting the Trial Court to proceed with the matter.

11.2. This Court therefore, finds no infirmity in the impugned order dated 22.07.2023, which clearly brings out the willful non-presence of the defendant aimed at delaying the trial.

12. The learned counsel for the Petitioner has been unable to point out any infirmity in the facts recorded in the impugned order. This Courts finds no reason to differ with the Trial Court for the reasons which weighed with it for rejecting the explanation provided in the application for non-presence of the defendant on 03.06.2023.

13. Accordingly, the present petition is without any merits and is dismissed.

14. Pending applications, if any, stand disposed of.

MANMEET PRITAM SINGH ARORA, J

OCTOBER 6, 2023/hp/aa

Click here to check corrigendum, if any