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

% Judgment delivered on: 23.03.2023

+ CM(M) 1204/2022 & CM APPL. 48271/2022

SHRI ANIL KUMAR GOEL Petitioner

versus

SMT REKHA GOEL & ANR Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Bharat Bhushan Dhingra,
Advocate alongwith petitioner.
For the Respondent : Mr. Tara Chand Sharma, Advocate for
R-1.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

1. The petitioner challenges the order dated 26.09.2022 passed in CS SCJ No. 627/2016 titled '*Rekha Goel vs. Dinesh Kumar Gupta*' whereby an application under order I Rule 10 of the Code of Civil Procedure 1908 (hereinafter referred to "CPC") seeking impleadment by the applicant was dismissed.
2. The admitted fact of the matter is that the parties, i.e., the petitioner and respondent no.1 are husband and wife. It appears that there is an acrimonious relation between them for a long time.
3. The petitioner submits that there are two properties, which the petitioner asserts to be owner of. One property which is situated in the

Central District i.e. 4579, Gali Nathan Singh, Pahari Dhiraj, Delhi – 110006, is a property which the petitioner claims to have received by hierarchy by virtue of the legal heirs of his father relinquishing their rights over the said suit property in favour of the petitioner.

4. There is another property situated in the North District i.e. B-6/237, Sector-8, Rohini, Delhi – 110085. It is stated that in that property, the petitioner is residing at the first floor and the respondent/wife is residing at the ground floor.

5. The dispute pertains to the rent accruing from the property at Pahari Dhiraj, which was in occupation of a tenant.

6. The respondent No. 1 claims to be owner of the said property at Pahari Dhiraj on the basis of a purported sale deed executed by the father-in-law of the respondent No.1 in her favour. It is also asserted that the said sale deed was witnessed by the petitioner himself. This is the property on which the respondent asserts her ownership and on that basis also asserted that she is the landlady.

7. The respondent No.1's case, on that basis is, that from the period 05.04.2014 through till 05.01.2016, the rent payable by the tenant in occupation of the property, which was payable to her, instead was remitted to the petitioner.

8. The respondent No.1 in the meantime filed a suit for injunction against the petitioner. By way of the said Suit No. 333/2013, respondent No.1 sought permanent and mandatory injunction against the petitioner from interfering with the possession of the property as well as prohibiting the petitioner from collecting rent from the tenant in the said

property as also simultaneously to get the property at Rohini vacated.

9. In Suit No.333/2013 the tenant was got impleaded as party/respondent while the suit was pending. It is in this suit, that the learned Trial Court, in an application under Order XXXIX Rule 10 CPC passed the order whereby the rent @ Rs. 13,500/- each was determined as payable from the co-tenants. Since the said amount was not deposited consequent to the orders on the application under Order XXXIX Rule 10 CPC, the defence of the defendant was struck off. The said suit is stated to be pending adjudication before the learned Trial Court at Rohini.

10. The respondent had filed another suit bearing CS SCJ No. 627/2016, i.e., the suit wherefrom the present dispute arises, whereby the respondent sought recovery of Rs.2,83,500/- with interest @ 15 % per annum against the defendants therein, i.e., the tenants.

11. Mr. Tara Chand Sharma, learned counsel appearing for respondent no.1 submits that the sum of Rs.2,83,500/- was calculated on the basis of the ascertainment of the rate of rent @ Rs.13,500/- by virtue of the orders passed by the District Court at Rohini on the application under Order XXXIX Rule 10 CPC.

12. *Per Contra*, Mr. Bharat Bhushan Dhingra, learned counsel appearing for the petitioner submits that, having regard to the fact that in the earlier i.e. Suit No.333/2013, the petitioner was arrayed as party and the respondent herein, by virtue of the present suit, is seeking to implement an order passed by the District Court on an application under Order XXXIX Rule 10 of CPC, the presence of the petitioner as a party

respondent is proper and necessary.

13. Learned counsel submits that it was on that basis that the application under Order I Rule 10 CPC was filed. He submits that, however, without considering the intricacies as also the intermingling issues, the learned Trial Court passed the present impugned order.

14. This Court has considered the arguments of both the sides as also considered the pleadings filed on record in respect of both the cases.

15. An aspect which is beyond doubt is, that the ascertainment of Rs.2,83,500/-, which the respondent No.1 is seeking to recover from the respondent no.2/tenant, are of arrears pertaining to the period between 05.04.2014 and 05.01.2016 arising on the basis of the orders passed in an application under Order XXXIX Rule 10 CPC in suit No. 333/2013.

16. Undoubtedly the order wherefrom the arrears of rent which are sought to be recovered by way of the present suit, has been passed in suit No. 333/2013 in which the petitioner is originally arrayed as defendant.

17. It is not as if the respondent had filed the present suit on an independent claim, *dehors* the orders passed by the District Court at Rohini, in respect of Civil Suit No. 333/2013. It is beyond cavil that the edifice of the present suit, is the order dated 03.01.2015, passed in suit No. 333/2013. In that view of the matter it appears that the petitioner, if not necessary, would definitely be a proper party, without whose presence the decree may not be passed.

18. The petitioner has admitted before this Court that the rent for that period in dispute was deposited by the tenant with the petitioner.

19. In view of the aforesaid submissions, this Court is of the considered opinion that the petitioner ought to be made a party/respondent to the suit.

20. In view thereof, the impugned order dismissing the application under Order I Rule 10 of CPC is set aside.

21. The petition is disposed of alongwith the pending application with no order as to costs.

MARCH 23, 2023/शु

TUSHAR RAO GEDELA, J.

