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

Date of decision: 01.12.2023

+ **CM(M) 1976/2023 & CM APPL. 61902/2023**

MUKESH KUMAR & ANR

..... Petitioners

Through: Mr. Kunal Kalra, Advocate with Mr.
S. Pandey, Advocate

versus

MOHD. JAMAL & ORS

..... Respondents

Through: Mr. Kushal Kumar, SPC with Mr.
Abhishek K. Khanna, GP for R-
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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. 61903/2023 (For Exemption)

Allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

CM(M) 1976/2023 & CM APPL. 61902/2023

1. This Petition impugns the order dated 21.10.2023 passed by the Additional Rent Controller – 01, Central District, Tis Hazari Court, Delhi in RC/ARC No. 80482 of 2016 ('Trial Court') whereby the Trial Court vide impugned order dismissed the application filed by Petitioner No.2 i.e., Shri



Vijay Kumar Aggarwal under Order 1 Rule 10 of Civil Procedure Code, 1908 ('CPC') seeking impleadment of Custodian of Enemy Property as a co-respondent in the eviction petition.

1.1. The Petitioner No. 1 before this Court is the tenant and Respondent Nos. 1 to 3 are the owner and landlord of the tenanted premises bearing no. 1805-1806, Bazar Turkman Gate, Delhi ('tenanted premises').

1.2. The Respondent Nos. 1 to 3 have filed a petition under Section 14 (1) (a) and (d) of the Delhi Rent Control Act, 1958 praying for eviction of the Petitioners on the ground of Petitioner No. 1 sub-letting as well as obtaining alternative commercial accommodation elsewhere.

1.3. It is alleged in the eviction petition that the tenant has illegally sub-let the tenanted premises to Sh. Vijay Kumar Aggarwal; and hence the said occupant has been impleaded as respondent No. 2 in the aforesaid eviction petition.

2. The application under Order 1 Rule 10 CPC as been filed by the said Sh. Vijay Kumar Aggarwal seeking impleadment of Custodian of Enemy Property.

3. It is admitted on record that the Petitioner No. 1 herein has been tendering rent to the Respondent Nos. 1 to 3, and, therefore, the relationship between the parties of landlord-tenant stands acknowledged and established. This fact was also confirmed by the counsel for the Petitioners in his oral submissions.

4. The Petitioner No. 1 has not filed the application under Order 1 Rule 10 CPC, which was dismissed and therefore he cannot maintain this petition. Petitioner No. 2 himself is alleged to be an illegally inducted sub-tenant in the premises. The eviction petition was filed in year 2010 and is presently at



the stage of final arguments. A perusal of the petition and list of dates reveals that the matter was at stage of tenant's evidence since 2015 and has not been permitted to progress. The filing of this application at this stage is intended to stall trial.

5. In any event, the Trial Court by a reasoned order has dismissed the application and the same suffers from no infirmity. The relevant portion of the order reads as under:

*“Pertinently, present is an eviction petition filed under Section 14 (1) (b) & (h) of the DRC Act. It is a settled position of law that in eviction proceedings under the DRC Act, absolute ownership is not required to be proved and the only thing to be proved is that there is an existence of relationship of landlord and tenant between the parties. Therefore, **the issue of absolute ownership over the tenanted premises is not a matter of trial in the proceedings herein which are being conducted under the DRC Act.. The only thing to be established by the petitioners is that they are the landlords and the respondent no.1 is their tenant. The issue of ownership over the tenanted premises, if any, is inter-se between the petitioner and the Custodian Department.** Thus, this court is of the view that the Custodian Department is neither a necessary nor a proper party to the present petition.”*

(Emphasis Supplied)

6. Even before this Court, the Petitioners herein admit that they were not inducted as a tenant in the tenanted premises by the Custodian of Enemy Property for India but by the predecessor of Respondent Nos. 1 to 3.

7. In view of the above, this Court finds no merit in this petition and the same is accordingly dismissed.

8. It is, however, clarified that the right, if any, of the Custodian of Enemy Property of India against Respondent Nos. 1 to 3 will not be affected by this order and the same shall be decided by the appropriate forum in



accordance with law.

9. According, the petition stands dismissed along with the pending applications

DECEMBER 1, 2023/rhc **MANMEET PRITAM SINGH ARORA, J**

Click here to check corrigendum, if any