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

Date of decision: 12.12.2023

+ CM(M) 1998/2023

KAMAL NARAIN KAPOOR

..... Petitioner

Through: Mr. Harkirat Shawney, Mr. Sanjeev Kumar, and Mr. Aditya and Mr. Punit Vinay, Advocates

versus

SH UMA SHANKAR KAPOOR & ORS.

..... Respondents

Through: Mr. Sumit Chander, Mr. Nitesh Kumar Singh and Mr. Devender Singh, Advs for R-1 to 4.
Mr. Naresh Kapoor, R-5 (through VC)

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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. 62853/2023 (for exemption)

Allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

CM APPL. 62852/2023

1. This petition filed under Article 227 of the Constitution of India impugns the order dated 16.10.2023 passed by the A.D.J. (Central), Tis Hazari Court, Delhi ('Trial Court') in CS No. 20463/2016, titled as **Uma Shankar Kapoor v. Kamal Narain Kapoor**, dismissing an application filed by the Petitioner under Order XVI Rule 6 read with Section 151 of the Code of Civil Procedure, 1908 ('CPC') and Section 165 of the Indian



Evidence Act to summon the official record keeper or trustee of the landlord Trust i.e., defendant no.3 with the original rent agreement dated 08.08.1973 before the Trial Court.

2. The Petitioner is defendant no.1. Respondent Nos. 1 to 4 are the plaintiffs. Respondent No.5 is defendant no.2. Respondent No.6 is defendant no.3.

2.1 The civil suit has been filed for possession on the assertion that the plaintiffs along with defendant nos. 1 and 2 are co-tenants in the suit property.

Defendant no.3 is the trust, which has admittedly let out the suit property to 'Daya Shankar and Sons'. Late Mr. Daya Shankar Kapoor was the father of the plaintiffs and defendant nos. 1 and 2. The tenancy in the suit property is governed by Delhi Rent Control Act, 1958.

2.2 The dispute between the parties is whether 'Daya Shankar and Sons' is an HUF of Mr. Daya Shankar Kapoor as its Karta; or a partnership firm in which Mr. Daya Shankar Kapoor was a partner.

3. The learned counsel for the Petitioner i.e., defendant no.1 states that the rent agreement dated 08.08.1973 is a material document and the date of 08.08.1973 finds due mention in the written statement.

3.1 He states that the date of 08.08.1973 is also mentioned in the affidavit of late Sh. Shiv Kumar Jatia who was proposed as a witness on behalf of the landlord Trust i.e., original defendant no. 3. He states however, Mr. Shiv Kumar Jatia could not step into the witness box and tender his evidence affidavit as he was initially unwell and then passed away.

3.2 He states that the Trial Court has however, failed to consider this application on account of the orders passed by the High Court on 26.09.2023



and 09.10.2023 in CM(M) 1375/2019.

3.3 He states that the Petitioner can neither confirm nor deny before this Court whether the original of the rent agreement dated 08.08.1973 is available in the custody of the Trust i.e., defendant no.3, however, there is a presumption since they are the landlord; they would have the original of this agreement.

4. In reply, learned counsel for the Respondent Nos. 1 to 4 i.e., the plaintiffs oppose the present petition and states that the alleged rent agreement dated 08.08.1973 was not placed on record before the Trial Court with the written statement.

4.1 He states that the photocopy of the alleged rent agreement has been placed on record before the High Court in CM(M) 1375/2019 for the first time on 21.11.2023.

4.2 He states that the evidence of the Petitioner i.e., defendant no. 1 stood concluded on 14.05.2018 and thereafter, the matter has remained pending for last five (5) years due to the dilatory tactics adopted by the Petitioner herein.

4.3 He states that there is no dispute that 'Daya Shankar and Sons' was the tenant in the suit premises and the reliance on the alleged rent agreement dated 08.08.1973 is of no consequence. **He states that it is not an issue as to whether it was an HUF or a partnership firm.**

5. Respondent No.5 i.e., defendant no.2 supports the contention of the Petitioner and adopts his arguments.

6. This Court has considered the submission of the parties and perused the record.

7. The defendant nos. 1 and 2 concluded their evidence. The Trial Court



vide order dated 06.05.2019 closed the right of the defendant no. 3 to lead further evidence as no witness on behalf of defendant no.3 was present. The order dated 06.05.2019 was challenged by the Petitioner herein i.e., defendant no.1 in CM(M) 1375/2019; the said petition was also decided by this Bench.

8. This Court in CM(M) 1375/2019 after hearing the parties had passed orders dated 26.09.2023 and 09.10.2023 granting a final opportunity to lead evidence of one Sh. Shrawan Aggarwal and one Sh. Subodh Bansal for and on behalf of the landlord i.e., defendant no.3.

9. The defendant no.3 has elected not to lead evidence despite the permission granted by this Court and in fact, the written statement of defendant no.3 has also not taken on record. In fact, it is anomalous that the Petitioner herein i.e., defendant no.1 is seeking to lead evidence by summoning defendant no.3, whose right has otherwise been foreclosed. The Petitioner was unable to lead evidence of the officers of defendant no.3 despite the opportunities granted by Trial Court and the High Court. The order dated 06.05.2019 which merged into orders dated 26.09.2023 and 09.10.2023 has therefore, become final.

10. Thereafter, belatedly the Petitioner i.e., defendant no.1 filed an application before the Trial Court on 16.10.2023 for seeking a direction to defendant no.3 for production of the alleged rent agreement dated 08.08.1973; though the photocopy of the said alleged rent agreement had not been filed in the suit (instituted on 15.10.2016). For the first time, on 21.11.2023, in CM(M) 1375/2019 on a query from this Court a photocopy of the alleged rent agreement was filed before the High Court.

11. It has been stated by the Petitioner that the rent agreement could not



be placed on record of the Trial Court earlier as no copy of rent agreement was available with defendant nos. 1 and 2. In fact, it is averred in the application dated 16.10.2023 that a photocopy of this rent agreement has been provided to them by a broker.

12. On an enquiry from this Court, the learned counsel for the Petitioner states that the details of the date when the photocopy of the alleged agreement photocopy was received by the defendants and the name of the property dealer who provided photocopy to the defendants, is not readily available.

13. To sum up, in a suit instituted on 15.10.2016; the defendants file their written statement on 24.01.2017 which contains no reference to a written rent agreement dated 08.08.1973 and no copy of the alleged rent agreement dated 08.08.1973 was filed in the suit proceedings. The alleged rent agreement finds no mention in the evidence led by defendant nos. 1 and 2. The photocopy of the alleged agreement has been filed for the first time on 21.11.2023 and the chain of custody is from a broker, whose name and details are not known. Further, the custody of the original of this alleged rent agreement is also not established.

14. In the overall circumstances of this case, it appears to this Court that this document is extremely suspicious and does not appear to be genuine.

15. This Court is not satisfied with the defendant's explanation for no non-production of the alleged rent agreement in the suit proceedings. In fact, on a careful examination of the pleadings in the written statement, it is evident that there is no mention of a written rent agreement and it only mentions a date. Further, defendant nos. 1 and 2 have already led evidence and there was no mention of any such written agreement by them. This



Court has perused the contents of the application dated 16.10.2023 and is not persuaded with the averments made therein.

15.1. Nevertheless, this Court on 06.12.2023 granted an opportunity to the Petitioner to confirm if the original of the alleged rent Agreement is indeed available with the landlord i.e., defendant no. 3 since permission was being sought to issue summons to said defendant. This was done in order to find out if the issuance of process would lead to any result.

15.2. The Petitioner herein sought an adjournment and has filed an affidavit dated 11.12.2023 stating that he has been unable to confirm if the original is with the custody of the landlord. In fact, learned counsel for the Petitioner states that the defendant nos. 1 and 2 sent a lawyer to the office of defendant no.3 who declined to respond to the queries.

15.3. Thus, there is no evidence before this Court that any such original agreements exists or is in custody of the defendant no.3.

15.4. The aforesaid facts also strengthen this Court's conclusion that the existence of the alleged agreement dated 08.08.1973 is doubtful; and if this application is allowed, it will only delay the process.

15.5. This Court for this reason additionally finds that the application dated 16.10.2023 is bereft of any merit.

16. Accordingly, in the light of aforesaid discussion the present petition is dismissed. This Court is refraining from imposing costs on the Petitioner and Respondent No.5. Pending application stands disposed of.

17. The Trial Court is requested to proceed with the matter on 21.12.2023 in accordance with law.

MANMEET PRITAM SINGH ARORA, J

DECEMBER 12, 2023/hp/sk