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

Date of decision: 11.12.2023

+ CM(M) 2034/2023, CM APPL. 63885/2023

SHRI DEEPAK AGGARWAL

..... Petitioner

Through: Mr. Lalit Gupta, Mr. Priyansh Jain,
Mr. Anmol Ghai and Mr. Ankit
Singh, Advocates with Petitioner in
person

versus

SHRI A.R. SINGH (SINCE DECEASED, NOW THROUGH LRS)

..... Respondent

Through: Mr. S. K. Rungta, Sr. Advocate with
Ms. Aditi Gupta, Advocates

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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. 63886/2023 (For Exemption)

Allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

CAV 633/2023

Since the counsel for the Respondent has entered appearance, the
caveat stands discharged.

CM(M) 2034/2023 and CM APPL. 63885/2023

1. This petition filed under Article 227 of Constitution of India impugns



the order dated 16.09.2023 passed by ARC-02, Central District, Tis Hazari Courts, Delhi ('Trial Court') in RC ARC No. 80656/2016, titled as '**Shri A.R. Singh Advocate v. Shri Deepal Aggarwal**', whereby the Petitioner's application filed under Order XVIII Rule 4 of Code of Civil Procedure, 1908 ('CPC') seeking permission to place on record certain photographs, has been dismissed.

2. The Petitioner is the tenant. The Respondents are the legal heirs of the since deceased landlord, who originally filed the eviction petition.

3. An eviction petition was filed by the now deceased landlord under Section 14(1)(e) of the Delhi Rent Control Act, 1958 ('DRC Act') with respect to two rooms with kitchen situated on first floor portion ('tenanted premises') of property bearing no. 270, Katra Peran, Tilak Bazar, Khari Baoli, Delhi – 110006 ('suit property').

4. The Petitioner's application seeking leave to defend was allowed by the Trial Court on 24.03.2012 and subsequently, the written statement and replication was filed by the parties.

5. The landlord expired on 10.06.2018 during the pendency of the eviction proceedings and an application under Order XXII Rule 3 CPC was filed by the legal heirs seeking their substitution. The said application was allowed by the Trial Court on 29.08.2018.

6. Due to the demise of the landlord, who was partially cross examined; after his death, his son i.e., Sh. Prashant Singh, filed his evidence affidavit and was examined as PW-1 on 30.11.2021. The PW-1 was cross examined and was discharged on 26.03.2022.

7. After the witness i.e., PW-1 was discharged, the Petitioner herein filed the application under Order XVIII Rule 4 CPC for placing on record



photographs, as additional documents. This application has been dismissed vide impugned order dated 16.09.2023.

Arguments of the counsel for the Petitioner i.e., tenant

8. Learned counsel for the Petitioner states that the PW-1 in his cross-examination has stated that three (3) out of five (5) shops existing on the ground floor of suit property are under the control and occupation of PW-1.

8.1. He states that the said fact is incorrect and as per the Petitioner herein, two (2) out of these three (3) shops have been let out to tenants; and the photographs to prove this are annexed at page 176 to 181 of this petition. He states that as per the Petitioner, the said two (2) shops were let out in the year 2019.

8.2. He states that the photographs at page 182 and 183 are of the first-floor portion of suit property and are sought to be filed to show that the said portion is in a dilapidated condition.

8.3. He states that the eviction petition has been filed seeking recovery of the said first floor portion for the bonafide requirement of setting up a branch office, however, these photographs evidence that the first floor is in a dilapidated condition and therefore, the bona fide need is not borne out.

Arguments of the counsel for the Respondent i.e., landlord

9. In reply, learned senior counsel for the Respondent states that the Petitioner along with his written statement and documents has not filed any site plan to contradict the site plan filed by the Respondent.

9.1. He states that the PW-1 had filed his evidence affidavit in the year 2021 and the facts now sought to be alleged by filing these photographs were not put to the PW-1 during his cross examination.

9.2. He states that the Petitioner, who himself is residing in the suit



property had access to the distinct portions of the said property and there is no reasonable explanation for filing these photographs belatedly on 22.04.2022.

9.3. He states that the submissions made before this Court for justifying the reliance placed on these photographs are inconsistent with the pleadings in the evidence affidavit of the proposed witness, Mr. Deepak Aggarwal as RW-1.

9.4. He states that the conditions of Order VIII Rule 1A of CPC are not satisfied as the Petitioner has ready access to the portions, the photographs whereof are sought to be placed on record.

9.5. He states that the eviction petition has been pending since the year 2009 and the Petitioner is deliberately not permitting the trial to proceed.

Findings and analysis

10. This Court has considered the submissions of the learned counsel for the parties and perused the record.

11. To begin with, it needs to be noted that the photographs, which are sought to be placed on record can be tabulated in the following manner: -

Sl. No.	<i>Photographs of portions of suit property</i>	<i>Relevant Page nos.</i>
1	Shops at ground floor	175 to 177
2	One of the shops at ground floor allegedly under the tenancy of Shri. Alekh Garg (M/s Riddhi Siddhi)	178
3	One of the Shops at ground floor (no particular specified)	179
4	Electricity meter installed at ground floor	180 to 181
5	First floor	182 to 183

12. At the outset, learned counsel for the Petitioner states on instructions that he waives his prayer with respect to photographs at pages 179 and 180



at serial Nos. 3 & 4. The said statement is taken on record.

13. The Petitioner has contended that the necessity for filing the said photographs arose in view of the answers recorded in the cross examination of PW-1 on 26.03.2022.

13.1. He states that the photograph at Serial Nos. 2 and 3 are being filed to substantiate the questions asked to PW-1 during his cross-examination, wherein, it was put to him that two of the shops on the ground floor have been let out by the Respondent herein to one Shri. Alekh Garg and Shri. Surender Kohli.

13.2. This Court has examined the photographs at Serial Nos. 2 and 3 and is of the considered opinion that the said photographs by no stretch of imagination bear out the said contention of the Petitioner herein. There is nothing in these photographs to indicate that the rooms seen in these photographs are let out to a third-party. In fact, these rooms do not appear to be used as shops at all.

13.3. Further, the learned counsel for the Petitioner during the course of oral arguments admitted that as per the Petitioner, the said shops have been allegedly in possession of the third-party tenants since the year 2019. However, the Petitioner has failed to explain the delay of four (4) years from 2019 to 2023 in filing the said photographs on record. On this additional ground of delay as well, the photographs cannot be taken on record.

13.4. The argument that the shops on the ground floor have been let out to a third-party is speculative and not borne out from these photographs. There is no imprint of any third-party seen in these photographs.

14. The Petitioner has contended in the oral arguments that photographs at page 182 and 183 at serial No. 5 are sought to be placed on record to



show that the first floor is in a dilapidated condition. The Petitioner states that the said photographs are sought to be placed on record as the Respondent has contended that he intends to use the first-floor portion for opening a branch office.

14.1. This Court has perused the cross examination of PW-1 and finds that PW-1 has admitted that the building is in a dilapidated condition. Therefore, in view of the said admission of the PW-1, there is no further requirement for placing on record the said photographs.

14.2. The submission of the Petitioner that the reliance is sought to be placed on these photographs to show dilapidated condition of the building is contrary to its evidence affidavit of the RW-1 filed in the month of April, 2022. And, more specifically, paragraph 47 therein, wherein it is alleged that these photographs are sought to be relied upon to show that the first floor is in a good state and not in a dilapidated state as deposed by PW-1 in his evidence affidavit.

15. This Court, therefore, finds material contradictions in the submissions of the Petitioner made before this Court with the averments made in his evidence affidavit.

16. In the evidence affidavit, the Petitioner i.e., RW-1, at paragraph '49' has stated that he is unaware about the name of the alleged tenants to whom the shops at the ground floor have been let out, whereas the photographs at serial no. 2, which is sought to be now placed on record has a note that it has been let out to Shri Alekh Garg.

17. This Court, therefore, finds that the Petitioner is taking inconsistent stands and his evidence affidavit does not bear out the note appended to the photographs. This inconsistency shows that the submissions being made by



relying upon the said photographs are not reliable.

18. The portions of the ground floor and first floor whereof photographs are being sought to be placed on record were easily accessible to the Petitioner since the beginning considering the fact that he has been in occupation of the tenanted premises situated in the same property. The Petitioner has therefore, been unable to explain the delay in filing these photographs and also to show the relevancy of these photographs.

19. The matter has been pending at the stage of tenants' evidence since 18.04.2022 and has not progressed further. This is a petition filed by the landlord under Section 14 (1) (e) DRC Act seeking recovery of possession for bona fide need. The Petitioner i.e., tenant cannot be permitted to protract the trial.

20. This Court is thus, of the opinion that the Petitioner has neither been able show the relevancy of the photographs sought to be placed on record nor able to prove that these photographs were not available to the Petitioner earlier at the appropriate stage of filing.

21. This Court has perused the impugned order of the Trial Court, the operative part whereof reads as under: -

"3. I have heard learned counsel on behalf of both the parties and perused the records of the case very carefully.

4. Clearly, no sufficient cause has been established by the respondent to allow present application at a belated stage as the respondent has failed to explain as to why the said photographs of the contested property could not be tiled earlier. The same cannot be said to be in the knowledge of the respondent earlier. PW-1 had been cross examined by the counsel of respondent at length. Hence, there was ample opportunity for the respondents to bring on record the said documents during cross examination but the same was not availed. It seems that the present application has been filed to fill the lacuna in the cross examination of PW-1 and same cannot be allowed after detailed and lengthy cross examination of PW-1. Hence, there seems to be no ground to recall PW-2 for putting the photographs which were never put during his elaborate cross



examination.

5. In view of the foregoing discussion, the present application on behalf of the respondent is devoid of merits and hence, liable to be dismissed.”

(Emphasis Supplied)

22. In view of the aforesaid observations, this Court does not find any error in the impugned order passed by the Trial Court. Accordingly, this petition is dismissed. Pending applications stand disposed of.

23. The Trial Court is requested to proceed with the recording of evidence on the date fixed, failing which, the right of the Respondent to lead evidence be closed in accordance with law.

MANMEET PRITAM SINGH ARORA, J

DECEMBER 11, 2023/rhc/aa

Click here to check corrigendum, if any