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

*Date of decision: 22.12.2023*

+ CM(M) 2141/2023 & CM APPL. 66990/2023

SHANTI

..... Petitioner

Through: Mr. H. S. Arora, Advocate

versus

GURBAKSH SINGH (DECEASED) THROUGH LRS

..... Respondent

Through: Mr. Parminder Singh and Mr.  
Harinder Singh, Advocates

**CORAM:**

**HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA**

### **J U D G M E N T**

#### **MANMEET PRITAM SINGH ARORA, J (ORAL):**

1. This petition under Article 227 of the Constitution of India impugns the order dated 30.11.2023 passed by the ADJ, Tis Hazari Courts, Delhi, ('Trial Court') in the civil suit being CS DJ/9622/2016, titled as '*Shri Gurbaksh Singh (Deceased) Through LRs v. Smt. Shanti*', whereby an application under Order XVI Rule 1(3), Code of Civil Procedure, 1908, seeking summoning of an official witness, filed by the Petitioner herein was dismissed.

1.1. The Petitioner herein is the defendant and the Respondents herein are the legal representatives of the original plaintiff in the said civil suit.

1.2. The civil suit has been filed seeking decree of mandatory injunction against the Petitioner herein, to vacate a portion of the premises in the



property bearing no. No. A-1/331, Paschim Vihar, New Delhi - 110063 ('suit property'), which includes One (1) room, One (1) kitchen and toilet.

2. The learned counsel for the Petitioner states that the Petitioner's contention is that she is occupying the suit property as a tenant and not as a licensee as alleged by the Respondents herein.

2.1. He states that the Petitioner has already lead evidence of eleven (11) witnesses and filed documents before the Trial Court to prove the factum of her occupation in the suit property since 1984.

2.2. He states that by way of the application filed under Order XVI Rule 1(3) CPC the Petitioner seeks permission to lead evidence of the concerned official of the Transport Department, Zonal Office, West, Janakpuri, New Delhi to prove the driving license (Annexure P-7) issued in favour of her elder son, namely Mr. Gopal. He states that the said driving license bears the address of the suit property and was initially issued on 27.05.1988.

3. In reply, learned counsel for the Respondents states that the impugned order of the Trial Court is well reasoned.

3.1. He states that Mr. Gopal, whose purported license is sought to be brought on record, admittedly, is not in occupation of the suit property.

3.2. He states that without prejudice, the plea of the claim of tenancy raised by the Petitioner will not be proved by the said driving license and therefore, the said document is not relevant to adjudicate the issue of nature of possession.

3.3. He states that the said civil suit is listed on 05.01.2024 before the Trial Court for final arguments and the Petitioner herein is delaying the proceedings before the Trial Court by using these tactics.

3.4. He relies upon letter dated 10.12.2011 filed by the Petitioner herein



before the SHO, Police Station, Paschim Vihar, exhibited as Ex. DW-1/D-1, Trial Court, to contend that the Petitioner has consistently taken a stand that it is only the Petitioner and her younger son Mr. Mukesh, who are in occupation of the suit property and there is no mention of any person by the name of Mr. Gopal residing in the suit property. He, therefore, states that this new document cannot be permitted to be brought on record at this belated stage.

4. This Court has considered the submissions of the counsel for the parties.

5. The Petitioner herein has admittedly led evidence of eleven (11) witnesses and file documents in support of her defence that she is in occupation in capacity as a tenant in the suit property and placed on record the relied upon documents to support her said contention as well as the contention that she is in occupation since 1984.

6. The suit was filed in the year 2011 and the plaintiff's evidence was closed on 04.09.2018.

7. This document i.e., driving license, which is now sought to be produced from the official witness, is admittedly not a part of the Trial Court record.

8. To a query from this Court, the Petitioner has clarified that Mr. Gopal, whose driving license is sought to be brought on record had left the suit property as per the stand of the Petitioner in the year 2009 and has not been in occupation since then. Mr. Gopal resides separately in a tenanted accommodation.

9. This Court has perused the copy of the driving license (Annexure P-7) issued in the name of Mr. Gopal on 18.09.2021. It indeed bears the address



of the suit property. However, in view of the admitted stand of the Petitioner that Mr. Gopal stopped residing at the suit property since 2009, the Petitioner has failed to explain on what basis the address of the suit property is reflected in the driving license issued by the Transport Department GNCT of Delhi on 18.09.2021. It is, therefore, clear the mention of the address of the suit property in the driving license is not on the basis of any actual physical inspection of the suit property by the department official but only on the basis of the documents submitted by the Applicant at the time of application of the license.

10. This Court finds merit in the submissions of the Respondents that since it is the stand of the Petitioner that Mr. Gopal is not a resident of this of this suit property; therefore, document sought to be brought on record have no relevance to the defence of plea of tenancy raised by the Petitioner.

11. The issue arising before the Trial Court is whether the Petitioner herein i.e., defendant is a tenant or a licensee in the suit property and the Trial Court has rightly held that this document will not assist the Court in adjudicating the said issue.

12. Moreover, this document has not been filed on record till date even though the suit was filed in the year 2011. The Petitioner cannot be permitted to overcome the procedural requirement of filing documents at the appropriate stage in this roundabout manner.

13. There is no infirmity in the order of the Trial Court. Accordingly, the present petition is dismissed alongwith pending applications.

14. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, [www.delhihighcourt.nic.in](http://www.delhihighcourt.nic.in), shall be treated as a certified copy of the order for the purpose of ensuring compliance. No



physical copy of order shall be insisted by any authority/entity or litigant.

**MANMEET PRITAM SINGH ARORA, J**  
**DECEMBER 22, 2023/rhcMG**

*Click here to check corrigendum, if any*