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

+ **CM(M) 115/2024**

KRISHNA TALUJA

..... Petitioner

Through: Mr. Ashwani Garg and Mr. Sameer
Garg, Advs.

versus

PRAKHAR PRABHAT GUPTA

..... Respondent

Through: Mr. Murari Lal Sharma, Adv. along
with respondent in person.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

ORDER

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23.04.2024

CM APPL. 3714/2024—Exp.

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

**CM(M) 115/2024, CM APPL. 3713/2024—stay, CM APPL. 3715/2024—
Exp. From filing complete TCR**

3. The supervisory jurisdiction of this Court under Article 227 of the Constitution of India has been invoked against the orders dated 21.08.2023 and 20.12.2023 passed in CS No.268/2017 by the learned Additional District Judge-02, Karkardooma Courts, Delhi, which is titled as “*Dr Prakhhar Prabhat Gupta vs Smt Krishna Taluja*” whereby the defence evidence was closed and subsequently, the application filed by the petitioner/defendant under Order XVIII Rule 17 of the Code of Civil



Procedure, 1908 (hereinafter “CPC”) seeking to recall the order dated 21.08.2023 was also dismissed.

4. A short summary of facts is that the respondent/plaintiff along with his father filed an eviction petition against the petitioner/defendant under Section 14(1)(a) of the Delhi Rent Control Act, 1995, on the ground of non-payment of rent. The said petition came to be dismissed in default on 21.01.2011. An application seeking to restore the petition was dismissed as well.

5. The respondent herein then filed the present Civil Suit bearing No.268/2017 on 17.04.2017 for possession, arrears of use and occupation charges and permanent injunction against the petitioner herein. The petitioner after entering appearance, proceeded to file her written statement on 21.07.2017. The respondent thereafter filed his replication on 20.03.2018 and on the same date, issues were framed as well.

6. It is submitted on behalf of the petitioner that the respondent herein took about 4 years to complete his evidence as admittedly issued were framed on 20.03.2018 however, evidence was concluded on 23.11.2022. Further submitted that the petitioner filed the affidavit in evidence on 10.02.2023 which came on record vide order dated 13.02.2023 and posted the matter for 17.04.2023. On the said date of hearing, the learned counsel for the petitioner/defendant was not available and one last opportunity to lead defence evidence was granted to the petitioner/defendant on the next date of hearing i.e. 21.08.2023. On the said date of hearing, as the learned counsel for the petitioner/defendant was out of station, the learned Trial Court closed the defence evidence while stating that delay tactics were being adopted. The matter was put up for final arguments on 21.09.2023.



7. It was submitted that on 21.09.2023, the petitioner/defendant filed an application under Order XVIII Rule 17 of the CPC, seeking to recall the defendant and her witness for their cross examination. Since there was no appearance on behalf of the respondent/plaintiff, the matter was adjourned to 20.12.2023.

8. Vide the impugned order 20.12.2023, the learned Trial Court dismissed the application filed by the defendant, while stating that various opportunities were granted to the defendant to summon and examine its witnesses however the same was not done. The matter was put up for final arguments again on 28.03.2024.

9. The learned counsel for the petitioner, Mr. Ashwani Garg, submits that the petitioner was present on all of the dates except two, which was due to the personal commitments and therefore could not be present on those dates. It is submitted that allowing the petitioner to lead defence evidence would cause no harm or prejudice to the opposing party and the same is necessary for the correct adjudication of the case.

10. The counsel representing the petitioner submits that the learned Trial Court has employed an excessively technical approach, and instead, a somewhat lenient perspective should have been taken. Additionally, it is requested that the petitioner be afforded a single opportunity to present evidence, with the condition that costs may be imposed.

11. The learned counsel for the respondent, Mr Murari Lal Sharma, has confuted the submissions made on behalf of the petitioner by submitting that the petitioner was provided four opportunities but failed to examine his witnesses. On 21.08.2023, learned Trial Court has recorded the conduct of the petitioner and observed that neither the witness was available nor the



evidence affidavit was filed in the Court. The Petitioner was deliberately delaying the matter somehow and making lame excuses and found that the petitioner was not interested in leading any further evidence. The Learned counsel also submitted that the application moved on behalf of the petitioner was not maintainable under the provision of Order XVIII Rule 17 of the CPC. More so, the petitioner failed to furnish any cogent reason for not examining his witnesses, as was directed by the learned Trial Court.

12. In rebuttal, the learned counsel for the petitioner asserted that the petitioner possesses a valid defence, and on technical grounds, their assertions cannot be dismissed. It is contended that established legal principles dictate that the substance and essence of applications should be paramount, disregarding their mere nomenclature. A litigant ought not to suffer due to inadvertent technical errors. The counsel for the petitioner places reliance on the cases of “**Suman Kundra vs Sanjeev Kundra**” AIR 2015 DELHI 124, “**K.K Vellusamy vs N. Palanisamy**” (2011) 11 SCC 275 and “**Pruthvirajsinh Nodhuba Jadeja (D) by LRS vs Jayeshkumar Chhakaddas Shah & Ors**”.

13. Incipiently, it is imperative that parties demonstrate diligence and exercise due care and caution when moving applications before the Court. Consequently, it is the responsibility of the litigant to accurately frame their applications. However, a litigant should not be subjected to adverse consequences solely due to incorrect nomenclature, as such technicalities should not be the basis for suffering.

14. It is to be noted that the learned Trial Court framed issues on the pleadings of the parties on 20.03.2018 and the case was set for recording the evidence of the respondent, which came to be concluded on 23.11.2022.



Thereafter, the matter was listed for petitioner's evidence on 13.02.2023. On 13.02.2023, the petitioner had filed the affidavit and furnished the copy to the opposite side. The matter was listed for DE on 17.04.2023 with directions that the advance copies of the affidavit of the DWs be supplied to the respondent at least 15 days prior to next date of hearing. On 17.04.2023, the evidence could not be recorded as the counsel of the petitioner was not available and the matter was listed for 21.08.2023. Again, the defendant's evidence could not be recorded as an advance copy of the affidavit though was given to the respondent, but not filed on the record. Furthermore, the witness for the defendant was unavailable on the designated date of the hearing. Consequently, the learned Trial Court deemed it inappropriate to further postpone the proceedings for recording the DE on a subsequent date, thereby concluding the petitioner's opportunity to present evidence. The matter was listed for hearing final arguments on 21.09.2023. Thereafter, the petitioner moved an application under Order XVIII Rule 17 of the CPC, which was taken up for hearing on 20.12.2023 and was dismissed on the same date by the learned Trial Court.

15. Be it noted that the co-ordinate Bench of this Court in the case of **“Deepak vs Ramesh Seth”** 2022 SCC OnLine Del 1321 observed that:

“13. The right to lead evidence is pivotal to a fair trial and partakes of the character of natural justice and fair play. No doubt, where a party is unconscionably indolent, the Court may put its foot down and close the right of the party to lead evidence; else, as adversarial litigations are meant to be tried after allowing the parties to an adequate opportunity to place their respective stands on record, the Court should not be hyper-technical, in the matter of granting opportunity to lead evidence and the like”

16. Keeping in view the submissions made, as well as the facts and



circumstances of the present case, the petitioner is granted one opportunity to lead DE, subject to the costs of Rs.10,000/-. The date for the same is to be fixed as per the convenience of the learned Trial Court, however, while keeping in mind that proceedings are not delayed further.

17. With the above directions, the present petition along with all pending applications stands disposed of.

SHALINDER KAUR, J

APRIL 23, 2024/ss