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

+ CM(M) 1153/2019, CM APPL. 35068/2019--stay

LALITA

..... Petitioner

Through: Mr. Rahul Sharma, Ms. Mridul
Sharma, Ms. Jankee B. Pandey, Mr.
Shantanu and Ms. Bharti S.,
Advocates.

versus

MOHAN

..... Respondent

Through: Mr. Hem Chander Sharma, Advocate
along with Respondent.

CORAM:
HON'BLE MS. JUSTICE SHALINDER KAUR

ORDER
20.03.2024

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1. The present petition under Article 227 of the Constitution of India has been filed against the order dated 29.04.2019 passed by learned ACJ-CCJ-ARC, North District, Rohini Court, Delhi (hereinafter referred to as 'Trial Court') in Eviction Petition bearing No.295/2016 titled as "*Sh Mohan vs Ms Lalita*" whereby the application moved on behalf of the petition under Order XXVI Rule 10A of the Code of Civil Procedure, 1908 (hereinafter "CPC") read with Section 112 of the Indian Evidence Act read with Section 151 of the CPC was dismissed.

2. Vide the present petition, the petitioner has prayed for setting aside of the impugned order and thereby allowing the application filed under Order XXVI Rule 10A of the CPC read with Section 112 of the Indian Evidence



Act.

3. The learned counsel for the petitioner submits that the respondent has sought the eviction of the petitioner on false and frivolous allegations. The petitioner states that she is the wife of the respondent and out of the wedlock, a daughter was born, who is currently residing with the petitioner. The petitioner states that denial of the fact of marriage and the birth of a child requires the ascertainment of the paternity of the daughter which is essential to substantiate his defence.

4. The learned counsel for the respondent while refuting the submissions states that the paternity test is nothing but a guise to establish a relationship with the respondent. Further, the counsel submitted that the paternity test argument is highly improbable and is irrelevant to the eviction petition.

5. On a perusal of the record and impugned order, this court finds that the issue the petitioner seeks to highlight is not germane to the petition filed under Section 14(1)(e) and 25B of the Delhi Rent Control Act, 1958, as the petitioner has failed to show the relevance of getting a DNA test of the child. The issue before the learned Trial Court is that of a landlord-tenant relationship and getting a DNA test will not prove the same in any manner.

6. The Hon'ble Supreme Court in the case of "**Aparna Ajinkya Firodia vs Ajinkya ArunFirodia**" 2023 SCC OnLine SC 161 has laid down certain guidelines as to when a DNA test is to be carried out. The same reads as follows:

"i. That a DNA test of a minor child is not to be ordered routinely, in matrimonial disputes. Proof by way of DNA profiling is to be directed in matrimonial disputes involving allegations of infidelity, only in matters where there is no other mode of proving such assertions.



- ii. *DNA tests of children born during the subsistence of a valid marriage may be directed, only when there is sufficient prima-facie material to dislodge the presumption under Section 112 of the Evidence Act. Further, if no plea has been raised as to non-access, in order to rebut the presumption under Section 112 of the Evidence Act, a DNA test may not be directed.*
- iii. *A Court would not be justified in mechanically directing a DNA test of a child, in a case where the paternity of a child is not directly in issue, but is merely collateral to the proceeding.*
- iv. *Merely because either of the parties have disputed a factum of paternity, it does not mean that the Court should direct DNA test or such other test to resolve the controversy. The parties should be directed to lead evidence to prove or disprove the factum of paternity and only if the Court finds it impossible to draw an inference based on such evidence, or the controversy in issue cannot be resolved without DNA test, it may direct DNA test and not otherwise. In other words, only in exceptional and deserving cases, where such a test becomes indispensable to resolve the controversy the Court can direct such test.*
- v. *While directing DNA tests as a means to prove adultery, the Court is to be mindful of the consequences thereof on the children born out of adultery, including inheritance-related consequences, social stigma, etc.”*

7. The Kerala High Court in the case of **“Sujith Kumar S vs Vinaya V.S &Anr:2023 SCC OnLine Ker 8343** held that:

“12. It has to be held further that when DNA test cannot be resorted to clear a suspicion regarding the paternity of the child, in the absence of specific denial of paternity of the child”

8. In the light of the above mentioned judgments, present case is not fit where the DNA test can be ordered. The learned Trial Court has correctly observed in the impugned order as under:



“It is pertinent to mention here that present case is petition for the eviction filed by the landlord against the tenant. The relationship of the landlord and tenant would obviously be decided on the basis of the evidence to be led by the respective parties and in that process, the Court would not enter into the issue of relationship of daughter of respondent with the landlord. If the relationship of the landlord and tenant are proved, then eviction order would follow irrespective of the other defenses, as stated by respondent in present case. Further, the process of court cannot be used to procure evidence on the part of a party to the case”

9. In view of the facts and circumstances of the case, the learned Trial Courts order dismissing the application filed by the petitioner is upheld. Subsequently, this petition stands dismissed.

SHALINDER KAUR, J.

MARCH 20, 2024/f/ab