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

+ **CM(M) 1681/2023**

MOHD. SHAMIM

..... Petitioner

Through: Mr. Vineet Jain, Adv.

versus

MEHFOOZ ALI

..... Respondent

Through: Mr. Himal Akhtar, Adv.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

ORDER

04.04.2024

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1. The present petition under Article 227 of the Constitution of India has been filed impugning the order dated 23.08.2023 passed by the learned Additional Rent Controller-02 (Central), Tis Hazari Courts, Delhi (hereinafter referred to as "Trial Court") in RC ARC 1095/17 titled as "*Mohd. Shamim vs. Mehfooz Ali*", whereby the learned Trial Court dismissed the application filed by the petitioner herein under Order XVIII Rule 17 CPC read with Section 151 CPC for recalling of order dated 19.07.2022 and to allow the petitioner to lead evidence.

2. The learned counsel for the petitioner submits that the respondent herein is a tenant in the suit property i.e. shop no. 5653, Gandhi Market, Sadar Bazar, Delhi-110006, at a monthly rent of Rs. 100/- excluding additional charges. Consequently, a landlord and tenant relationship exists between the petitioner and the respondent. On 20.12.2017, the petitioner



filed an eviction petition for eviction of tenant/respondent herein under Section 14 (1)(e) of the Delhi Rent Control Act, 1958. Thereafter, the respondent moved an application for leave to defend which was allowed by the learned Trial Court vide order dated 18.01.2019.

3. Further, the learned counsel submits that after completion of pleadings, the petitioner filed his affidavit of evidence on 26.03.2019 and the first effective opportunity to lead evidence was provided to the petitioner on 03.06.2019 after the transfer application. On the said date of hearing, the petitioner could not lead his evidence due to some reason and the matter was renotified for 20.08.2019. Thereafter, the matter was listed for plaintiff evidence (hereinafter referred to as “PE”) on 20.08.2019 but at joint request of the parties, the matter was adjourned for 20.01.2020. On the said date of hearing, the learned Presiding Officer was on leave and the matter was renotified for 05.05.2020.

4. It is submitted by the learned counsel that the matter was listed for PE on several occasions including 05.05.2020, 21.07.2020, 21.10.2020, 12.02.2021, 16.10.2021. However, on certain dates, the proceedings did not take place as the physical functioning of the Courts was suspended due to Covid pandemic. On the other dates, the proceedings were conducted via video-conferencing and consequently, the evidence could not be led because the physical presence of the parties is required to lead evidence. Thereafter, on 15.03.2022, the learned Trial Court granted last opportunity to the petitioner to lead evidence subject to a cost of Rs. 4,000/- and the matter was fixed for PE on 02.05.2022. On the next date of hearing, the learned Presiding Officer was on leave and the matter was listed for 19.07.2022.

5. Further, the learned counsel submits that on the said date of hearing,



the learned counsel requested an adjournment on behalf of the petitioner, which was accompanied with a prescription on the ground that the petitioner is unwell and suffering from old age ailments. Vide order dated 19.07.2022, the learned Trial Court refused the request for adjournment and closed the right of the petitioner to lead evidence. Thereafter, the petitioner moved an application under Order XVIII Rule 17 CPC for recalling of the said order which was dismissed on 23.08.2023. The aforesaid order dated 23.08.2023 is being impugned before this Court.

6. The learned counsel submits that adjournment was requested on behalf of the petitioner only on one date of hearing i.e. 15.03.2022 whereas on the other dates of hearing, the matter could not be taken up for recording of the evidence. Therefore, the learned Trial Court has erred in closing the right of the petitioner to lead evidence.

7. The submissions are opposed by the learned counsel for the respondent by submitting that as many as fifteen opportunities were granted to the petitioner to lead evidence. Subsequently, a last opportunity was also granted subject to a cost of Rs. 4,000/- as the petitioner failed to get his evidence recorded on any of the dates of hearing. Therefore, the learned Trial Court has rightly closed the evidence of the petitioner and observed so in the order passed on 23.08.2023.

8. Apart from hearing the submissions, the record as well as impugned order have been perused. From the impugned order, it appears that on certain dates of hearing, the effective recording of evidence could not be held as the advocates were abstaining from work and certain application for transfer was also moved on behalf of the petitioner.

9. In view of the above submissions and in the interest of justice, the



petitioner is granted a single opportunity to lead evidence, subject to cost of Rs. 7,000/- to be paid to the respondent on the next date of hearing before the learned Trial Court. Further, the evidence be recorded by the learned Trial Court on the next date fixed before it.

10. The learned Trial Court should ensure not to grant any other opportunity than the next date of hearing fixed before it. It is submitted by the learned counsel for petitioner that evidence affidavit is already on record and the learned counsel for respondent submits that he has copy of the same.

11. With above directions, the present petition stands disposed of.

SHALINDER KAUR, J.

APRIL 04, 2024

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