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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 1351/2017 & CM APPL. 43258/2017 (stay)
KIRAN DEVI THR LRS Petitioner
Through: Mr. Puneet Goel, Advocate.
versus
NETRAPAL YADAV Respondent
Through: None.

CORAM:
HON'BLE MS. JUSTICE SHALINDER KAUR

ORDER

% **27.03.2024**

1. Petition under Article 227 of the Constitution of India impugning the orders dated 17.11.2017 and 20.11.2017 passed by the learned Senior Civil Judge/Rent Controller in RC/ARC No.04/2016 in the case titled *Kiran Devi Vs. Netrapal* whereby the application moved on behalf of the petitioner under Section 151 CPC was partly allowed i.e. the witness with original file of CS No 4689/2015 titled as *Kiran Devi Vs. Rahunath & Ors.* was allowed to be summoned. However, the case file of MAC No. 72A/2010 titled as *Bimla Devi Vs. Tapender Giri & Ors.* was not allowed. Vide the impugned order dated 20.11.2017, the application moved under Order XVI Rule 1 (3) of the CPC was dismissed.
2. Learned counsel for the petitioner submits that Sh. Netrapal Yadav, father of deceased Sh. Satish was under cross-examination before the learned Senior Civil Judge/Rent Controller in RC/ARC No.04/2016 titled as *Kiran Devi Vs. Netrapal* wherein he had stated the wrong age of deceased Satish whereas in the MACT case instituted by the widow of Satish, she had mentioned his age before the MACT Court as 30 years. He therefore wanted to summon the Court record of the MACT petition filed by the widow to



confront to Netrapal RW-1. It is submitted that the learned Trial Court ignored the relevant facts and erroneously dismissed the application by not allowing the petitioner to summon the record from the MACT Court.

3. None has been appearing on behalf of the respondent and even the reply has not been addressed were not addressed despite the opportunities been granted.

4. After from hearing the learned counsel for the petitioner, impugned orders and the record have been perused.

5. Vide order dated 20.11.2017, the learned Trial Court has observed that the evidence of the petitioner has already been closed on 17.12.2014 and even the RE has been concluded on 17.11.2017. On the said date of hearing i.e. 17.11.2017, the learned Trial Court had granted a single opportunity to the petitioner for leading the evidence by summoning witness. As the matter was more than 10 years old, a further opportunity thereafter was not granted and the application was dismissed.

6. Learned counsel for the petitioner submits that the record from the MACT Court is relevant to prove the correct age of deceased Satish for which the opportunity is to be granted to the petitioner. It is relevant to note that the MACT petition to be relied upon by the petitioner i.e. MAC No. 72A/2010 titled as *Bimla Devi Vs. Tapender Giri & Ors.* has not been filed by the respondent Netrapal. The widow of the deceased Satish is not a witness in the present petition filed before learned Trial Court.

7. Therefore, no fruitful purpose would be served even by summoning the record of the MACT Court as the petitioner will require to produce cogent evidence to prove the correct age of deceased Satish. Moreover, the learned Trial Court has already granted sufficient opportunities to the



petitioner to lead its entire evidence but the petitioner has been moving application to summon fresh witnesses thereby delaying the proceeding to reach to its conclusion.

8. In view of above, discussion, there is no merit in the present petition. Consequently, the same is dismissed.

SHALINDER KAUR, J

MARCH 27, 2024/A