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

% ***Date of decision: April 01, 2024***

+ **CM(M) 2239/2024**

AJAY KUMAR SINGH @ DEEP..... Petitioner

Through: **Mr. Niraj Kumar Mishra, Adv**

Versus

SHANTI DEVI Respondent

Through: **Ms. Gurmeet Kaur Kapur, Adv**

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G E M E N T (oral)

1. The present petition under Article 227 of the Constitution of India read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter “CPC”) has been filed assailing the order dated 29.01.2024 passed by the learned Additional District Judge-03, Saket Court, South District, Delhi in Civil Suit No.510/2018 titled as “*Shanti Devi vs Ajay Kumar Singh @ Deep*” whereby the learned Trial Court allowed the respondent’s application under Section 151 of the CPC and deleted paragraphs 19,20,23,24 and 26 of the affidavit of evidence of the petitioner. The respondent herein is the plaintiff and the petitioner herein is the defendant before the learned Trial Court.



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2. The petitioner had taken the property bearing H.No.6-A, Krishna Nagar, Safdarjung Enclave, New Delhi from the respondent at a fixed rent of Rs.14,000/- per month along with electricity charges at Rs.10/- per unit, vide the rent agreement dated 14.01.2013. The respondent asked the petitioner to renovate the suit shop, stating the cost of renovation would be adjusted against the rent and further assured the petitioner that she will not get the suit shop vacated for the next 20 years.

3. On 09.12.2013, a fresh lease deed was executed between the parties for a sum of Rs.15,000/- along with electricity charges at Rs.10/- per unit, following which tenancy was extended from time to time, however, no written agreement was in place.

4. That on 26.03.2018, the respondent disconnected the electricity supply of the suit shop, which compelled the petitioner to file a complaint with the SHO, Safdarjung Enclave as well as a complaint dated 30.03.2018 with the ACP, Sarojini Nagar. After the electricity was again disconnected on 02.04.2018, the petitioner/defendant filed a suit bearing CS SCJ No.281/2018 titled as "*Ajay Kumar Singh vs Shanti Devi & Ors*" against the respondent/plaintiff, praying for permanent and mandatory injunction, that the respondent herein may be restrained from dispossessing the petitioner from the suit shop as well as to restore the water and electricity supply of the petitioner.

5. The respondent herein in her written statement stated that she had informed the petitioner in the month of December, 2015, the electricity and



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water supply of the suit property would stop, however, the petitioner chose to continue tenancy stating that he would arrange the two amenities on his own. The respondent then proceeded to send the petitioner a legal notice dated 13.04.2018, terminating the tenancy of the suit shop.

6. The respondent then filed a the Civil Suit No.510/2018 titled as “*Shanti Devi vs Ajay Kumar Singh @ Deep*” claiming to be the absolute owner of the property bearing H.No.6-A, Krishna Nagar, Safdarjung Enclave, New Delhi and for the recovery of possession as well as arrears of rent.

7. It is pertinent to note that in CS SCJ No.281/2018 filed by the petitioner herein, vide the order dated 31.08.2018, the learned Civil Judge had directed the SDMC to carry out an inspection and file a status report. The report dated 05.10.2018 was filed by the SDMC, which stated that the shop was in violation of the Master Plan Delhi 2021 and accordingly be sealed under Section 345A of the Delhi Municipal Corporation Act, 1957. On perusal of the status report, the learned Civil Judge dismissed the petitioner’s application under Order XXXIX Rule 1 & 2 of the CPC stating that equitable relief in terms of a property carrying out activities in violation of applicable law cannot be granted.

8. On 11.10.2018, the petitioner filed his written statement along with an application under Order VII Rule 11 in the Civil Suit No.510/2018 and thereafter withdrew the suit CS SCJ No.281/2018 vide the order dated 17.11.2018.



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9. That on 25.09.2019, the learned Trial Court decided the application under Order XII Rule 6 in favour of the respondent / plaintiff, directing the petitioner to hand over vacant possession of the suit shop to the respondent. Thereafter, issues were framed with respect to arrears of rent and mesne profit and both the parties filed their Evidence by way of affidavit.

10. The respondent then filed an application under Section 151 of the CPC, seeking to strike of certain paragraphs from the evidence affidavit filed by the petitioner which is beyond pleadings. In the application under Section 151 of the CPC, the respondent sought to strike of paragraphs 19,20,23,24,25 and 26 of the evidence by way of affidavit dated 12.04.2022. The petitioner filed his reply to the said application and stated that the contents of the Evidence by way of affidavit are not beyond pleadings and are duly recorded in his written statement.

11. Vide the impugned order, the learned Trial Court allowed the application of the respondent under Section 151 of the CPC and struck off paragraphs 19,20,23,24 and 26 on the ground that these paragraphs are beyond the pleadings, compelling the petitioner to approach this Court.

12. At the outset, the learned counsel for the petitioner submits that he is not pressing paragraphs 19 and 20, without prejudice to his rights; to be included in the evidence affidavit of the petitioner dated 12.04.2022. The learned counsel for the respondent submits that she is conceding with respect to paragraph 26 and the same may form a part of the evidence affidavit.



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13. Now, a grievance only remains with respect to paragraph 23 and 24.
14. The learned counsel for the petitioner, Mr. Niraj Kumar Mishra submits that the order passed by the learned Trial Court is erroneous and fails to keep in mind the provision of the CPC enumerated under Order VI Rule 1,2 and 9 of the CPC. The learned Trial Court has misplaced the facts of **Biraji @ Birijraji vs Surya Pratap** [CA-No.4883-4884 of 2017] on the present case. The counsel seeks to place reliance on the judgement of the Hon'ble Apex Court in **Bhagwati Prasad vs Sri Chandramaul** [AIR 1966 SCC 735] submitting that if a plea is not specifically made and yet is covered by implication on which the parties knew were involved in the trial, then if it is not specifically taken in the pleading may be permitted to be taken in evidence.
15. To consider the rival submissions, it is necessary to take note of the impugned order, whereby the learned Trial Court has observed as under:-

“7. This court has also gone through the order dated 25.07.2023 of this court and also through the order dated 15.12.2023 of Hon'ble High Court of Delhi. Perusal of these orders read with the pleadings of the application qua which the said orders have been passed clearly reveals that in substance, what has been sought to be brought forth by the defendant in his affidavit of evidence, the documents relating to the same were sought to be brought on record by filing an application under Order 8 Rule 1 (A) CPC and vide the aforesaid orders, the plea of the defendant was rejected. In substance, what relief has been denied to the defendant vide these orders, the defendant is trying to bypass the same and bring the pleadings qua the documents which were sought to be placed on record by the medium of application under Order 8 Rule 1 (A) CPC. It is also well settled court cannot allow a thing to be done in an indirect way which is not allowed or permitted to be in a direct way.”



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16. The learned counsel further submits that the said contention in paragraph 23 of evidence by way of affidavit is duly mentioned in the complaint dated 26.03.2018 filed with the written statement as well as paragraph 8 of the written statement. The learned counsel submits that the said contention in paragraph 24 of evidence by way of affidavit is mentioned in paragraph 5,7 and 8 of the preliminary objections of the written statement.

17. Refuting the same, the learned counsel for the respondent, Ms. Gurmeet Kaur Kapur submits that the petitioner by way of paragraph 23 and 24 is taking up additional defences which were not part of the pleadings.

18. However, petitioner is relying upon a complaint made to SHO PS Safdarjung Enclave recorded vide DD No. 45 B dated 26.03.2018 and seeks to make it a basis for inclusion of para 23 in evidence affidavit dated 12.04.2022.

19. A reading of the complaint justifies the stand of the petitioner as in view of the aforesaid complaint, the petitioner has mentioned facts in paragraph 23 of the evidence affidavit though the same is not explicitly mentioned in the written statement. Thus, paragraph 23 to be included in the evidence affidavit subject to the condition that complaint dated 26.03.2018 was filed on the Trial Court record along with written statement and is not subsequently filed alongwith affidavit of evidence, which shall be considered by learned Trial Court at the time of tender of evidence



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affidavit in evidence by the petitioner. However, the pleas recorded in written statement and paragraph 24 and evidence affidavit are different, thereby being beyond pleading, cannot be included in evidence.

20. In view of aforesaid only paragraph nos. 23 & 26 shall remain to be part of the evidence affidavit of the petitioner and paragraph 23 shall be included, subject to condition as mentioned herein above. Accordingly, the petition stands disposed of.

SHALINDER KAUR, J.

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