

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : CODE OF CIVIL PROCEDURE

Date of Judgment: 15.03.2012

CM(M) No.1433/2004 & CM No.13544/2004 & CM No.11701/2007

O.P.KHAITAN KARTA OF O.P.KHAITAN (HUF)

..... Petitioner

Through: Mr.Ramesh Singh, Advocate.

versus

DIGJAM LTD. & ORS.

..... Respondents

Through: Mr.R.C.Bhalla , Advocate.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1. Petitioner is aggrieved by the order dated 24.7.2004 wherein his application filed under Order 1 Rule 10 of the Code of Civil Procedure (hereinafter referred to as the Code) had been dismissed.
2. This judgment has emanated out of proceedings pending under Section 9 of the Delhi Rent Control Act (hereinafter referred to as the DRCA); this relates to fixation of standard rent.
3. Contention of the applicant (seeking impleadment) was to the effect that he is the actual tenant and his presence in the present proceedings would be necessitated as fixation of standard rent without the presence of the tenant cannot be effectively carried out.
4. Record shows that on 23.7.1971 an agreement was entered into between the owner Birender Amarjit Singh and the original tenant (GMCC); landlord was to give a flat to GMCC or their assignee/successor; a deed of assignment dated 30.11.1987 was executed between GMCC and the present applicant (O.P.Khaitan); a further agreement dated 26.9.1989 was entered

into between the applicant and the appellant i.e. VXL India Ltd. wherein the applicant had agreed to sublet these premises to VXL India Ltd. which agreement was executed by the attorney holders of the applicant namely P.K.Khanna and B.Rathke.

5. Section 9 of the DRCA permits the Controller to fix standard rent. Such an order would be passed on an application filed in the prescribed manner either by the landlord or tenant; what is clear from this provision is that the relationship of landlord and tenant is a pre-requisite before an order can be passed under this statutory provision. The existence of a relationship of landlord and tenant is a condition precedent to the assumption of jurisdiction by the Controller; it is also clear that this jurisdiction cannot be conferred by consent. If the relationship of landlord and tenant is denied Controller must decide this question.

6. The facts of this case show that this is a petition which has been filed by the tenant VXL India Ltd. against the landlord Birender Amarjit Singh. It is not the case of the landlord that they do not share a landlord-tenant relationship.

7. Vehement contention of the petitioner before this court is that VXL India Limited is only a sub-tenant and the present petitioner/O.P. Khaitan is the tenant and as such his impleadment in the present proceedings is both necessary and proper; parties would be relegated to further litigation in case this relationship of landlord and tenant is invited between Birinder Amarjit Singh and VXL India Limited; impugned order dismissing his application thus suffers from an infirmity.

8. As noted supra, this is a petition under Section 9 of the DRCA; it is a summary procedure; the Controller to assume jurisdiction in this case must prima facie hold that there is a relationship of landlord and tenant between the parties who are before him; contention of the VXL India Limited is that he is the tenant in the premises and he had sought fixation of standard rent from the Controller.

9. Counsel for the respondent/non-applicant has also drawn attention of this court to the order of the Apex Court dated 08.12.1992 wherein it had been noted that in compliance of the directions of the Apex Court possession of the flat in question had been delivered to VXL India Limited; vehement

contention being that VXL India Limited is in fact the tenant in the suit premises.

10. Be that as it may, for the purposes of deciding the controversy in question which is emanating out of the proceedings under Section 9 of the DRCA, this court is of the view that the presence of the present petitioner is neither necessary nor proper. The test for dealing with an application under Order 1 Rule 10 of the Code of Civil Procedure is that if the parties seeking impleadment is not allowed or permitted to be impleaded, the suit pending between the parties cannot effectually be adjudicated upon. A necessary party is a party in whose absence no decree can be passed and the suit has to be dismissed for want of the necessary party; a proper party is whose presence enables the court to adjudicate the dispute effectively and completely. Present petitioner does not fall in either of the aforementioned two categories. Unless and until there is a flagrant injustice which is caused to one party or there is an open travesty of justice which has accrued qua a party interference by the High Court in its powers of superintendence under Article 227 of the Constitution of India is not called for. The right of second appeal has since been abrogated and Section 39 of the DRCA has been deleted. Powers of superintendence under Article 227 of the Constitution of India is not a substitute for an appellate forum.

11. Reliance by the learned counsel for the petitioner upon the judgment reported in 2007 (10) SCC 82 titled as Sumitbai and ors. vs. Paras Finance Co. Regd. Partnership Firm and 113 (2004) DLT 880 titled as Renu Vij vs. Daljeet Singh Bhatia is misplaced.

12. This court is of the view that the party who is necessary or proper must be impleaded but in the absence of the applicant falling in either of the category, it cannot be said that his presence is either necessary or proper.

13. Impugned order in this background suffers from no infirmity. Petition is without any merit; dismissed.

Sd/-
INDERMEET KAUR, J

MARCH 15, 2012