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

% ***Date of Decision: 12.03.2025***

\+ **RC.REV. 340/2017**

LAJJAWATI SHARMA & ANR .....Petitioners

Through: Ms. Nandni Sahni and Ms. Tanya Singh, Advs.

versus

RAM CHANDER JAIN (DECEASED) THR LEGAL HEIRS .....Respondent

Through: Mr. J.K. Srivastava, Ms. Tarun and Mr. Deepak Kashyap, Advs.

CORAM:
HON'BLE MS. JUSTICE TARA VITASTA GANJU

TARA VITASTA GANJU, J.: (Oral)

1. The present Petition has been filed on behalf of the Petitioners/landlords impugning the order dated 26.05.2017 [hereinafter referred to as "Impugned Order"] passed by the learned ARC-02/Central/Tis Hazari Courts, Delhi with respect to the premises i.e., Municipal No. 404, Ward No. VI, Haveli Haider Kuli, Chandni Chowk, Delhi-110006 as shown in colour red in the site plan annexed with the Eviction Petition [hereinafter referred to as "subject premises"]. By the Impugned Order, the Eviction Petition filed by the Petitioners/landlords was dismissed.

2. Learned Counsel for the Petitioners/landlords submits that the Impugned Order suffers from an infirmity on two counts. Firstly, that the learned Trial Court has given a finding that the Petitioners/landlords failed to prove their ownership of the subject premises, which is contrary to the record.

2.1 Learned Counsel for the Petitioners/landlords further contends that

once a Sale Deed was placed on record and exhibited before the learned Trial Court, the challenge to the ownership does not remain. The Petitioners/landlords had purchased the subject premises by virtue of a registered sale deed dated 27.09.2000 executed between the Petitioners/landlords and one, Shri Sunder Lal [hereinafter referred to as "Sale Deed"]. She seeks to rely upon a copy of the Sale Deed which is annexed as Ex. PW1/5 in the Trial Court record in this regard. Reliance is also placed on the recitals of the sale deed which also set out the title chain. The sale deed is duly registered with the Office of the Sub-Registrar which bears the following details; Registration No. 5347, Additional Book I, Volume 194, pages from 173 to 179.

3. Secondly, it is contended that since the Petitioners/landlords did not themselves personally step into the witness box, the evidence of their husband(s) was disregarded by the learned Trial Court.

3.1 Learned Counsel for the Petitioners/landlords submits that the husband of the Petitioner No.1 had entered into the witness box and given his evidence. She seeks to rely upon Ex.PW1/1, which is a Special Power of Attorney and sets out that given the fact that the Petitioners are housewives and remain busy with day-to-day work, they are unable to appear and pursue the case. The Petitioners/landlords have therefore appointed the husband of the Petitioner No.2 as an attorney to deal with the cases pending before the learned Trial Court. The Special Power of Attorney is dated 21.03.2012 and forms part of the record as ExPW1/1.

3.2 Learned Counsel for the Petitioners/landlords submits that the husband of Petitioner No.2 to submit that the husband of the Petitioner No. 2

had also set out in examination-in-chief that his wife was the owner of the subject premises. Reliance is placed on Paragraph 3 of the affidavit in evidence filed by the husband of the Petitioner No.1 (PW1), which is set out below:

> *"3. That the petitioners are the owners of the tenanted premises as stated above by virtue of registered sale deed dated 27.09.2000. The copy of the same is Ex. PW1/5(OSR)."*

3.3 Learned Counsel for the Petitioners thus submits that the finding of the learned Trial Court that none of the Petitioners came into the witness box is without any basis given the fact that the Petitioners had authorised their husbands to appear on their behalf and evidence was given by the said attorney.

4. Learned Counsel for the Respondent/tenant, on the other hand, relies upon an order passed by the learned Civil Court in Suit No. 48 of 1939 dated 22.12.1939 in this behalf which is captioned as ***Abhe Dass alias Ram Das & Ors. v. Kalyan Dass & Ors.*** [exhibited as Ex.RW1/7 Colly] to submit that the subject property is the property of the Trust and cannot be bequeathed or transferred by an individual. It is contended that this fact is admitted by the husband of Petitioner No.1, Shri Sundar Sharma [PW-1] in his cross examination.

4.1 In addition, learned Counsel for the Respondent/tenant has relied upon on a Will dated 08.05.1999 executed by Mehant Ram Tirath Chela, S/o Late Mahant Abhey Dass, R/o Property no. 423, Haveli Haider Kuli, Chandni Chowk, Delhi in favour of Shri Sunder Lal Sharma, to submit that although it is contended that the Trust has bequeathed the property to the Petitioners/landlords, the Will has not been proved in accordance with law.

5. This Court has examined the Impugned Order. The Impugned Order shows that the Eviction Petition has been dismissed essentially on two grounds. One that the Petitioners did not come into the witness box to give their evidence, and secondly, the Petitioners have failed to prove their *"ownership/landlordship"* over the subject premises.

5.1 The finding of the learned Trial Court is contrary to the documents on record. As stated above, the Petitioners seek to rely upon the registered sale deed which has been registered in their favour for ownership. It is a settled law that all that a landlord has to prove is a better title than the tenant to seek eviction from the tenanted premises under Section 14(1)(e) of the Delhi Rent Control Act, 1958 [hereinafter referred to as "Act"]. The Supreme Court in the case of ***Swadesh Ranjan Sinha v. Haradeb Banerjee***[1], in the context of ownership in an eviction petition, has clarified that:

> *" 9.* ***All that a plaintiff needs to prove is that he has a better title than the defendant. He has no burden to show that he has the best of all possible titles. His ownership is good against all the world except the true owner.*** *The rights of an owner are seldom absolute, and often are in many respects controlled and regulated by statute. The question, however, is whether he has a superior right or interest vis-a-vis the person challenging it…."*
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> [Emphasis supplied]

6. This Court while discussing the issue of ownership in a Petition filed under Section 25-B(8) of the Act in a case titled ***R.S. Chadha v. Thakur Dass***[2] has held that what a landlord has to prove is a better title than the tenant to seek his eviction for the tenanted premises. The Court relied on the judgment of the Supreme Court in the case of ***Shanti Sharma vs. Ved***

[1] (1991) 4 SCC 572
[2] 2024 SCC OnLine Del47

Prabha[3] to hold that the term owner has to be understood in the context of the background of the law. The relevant extract reads as follows:

> *"10.1 It is settled law that what a landlord has to prove is a better title than the tenant to seek his eviction from a tenanted premises under Section 14(1)(e) of the Act. The Supreme Court in the case of Shanti Sharma v. Ved Prabha has held as follows:*
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> > *"14. The word "owner" has not been defined in this Act and the word 'owner' has also not been defined in the Transfer of Property Act. The contention of the learned Counsel for the appellant appears to be that ownership means absolute ownership in the land as well as of the structure standing thereupon. Ordinarily, the concept of ownership may be what is contended by the counsel for the appellant but in the modern context where it is more or less admitted that all lands belong to the State, the persons who hold properties will only be lessees or the persons holding the land on some term from the government or the authorities constituted by the State and* ***in this view of the matter it could not be thought of that the legislature when it used the term "owner" in the provision of Section 14(1)(e) it thought of ownership as absolute ownership****. It must be presumed that the concept of ownership only will be as it is understood at present.* ***It could not be doubted that the term "owner" has to be understood in the context of the background of the law and what is contemplated in the scheme of the Act.*** *This Act has been enacted for protection of the tenants. But at the same time it has provided that the landlord under certain circumstances will be entitled to eviction and bona fide requirement is one of such grounds on the basis of which landlords have been permitted to have eviction of a tenant.* ***In this context, the phrase "owner" thereof has to be understood, and it is clear that what is contemplated is that where the person builds up his property and lets out to the tenant and subsequently needs it for his own use, he should be entitled to an order or decree for eviction the only thing necessary for him to prove is bona fide requirement and that he is the owner thereof. In this context, what appears to be the meaning of the term "owner" is vis-a-vis the tenant i.e. the owner should be something more than the tenant.*** *Admittedly in these*

[3] (1987) 4 SCC 193

cases where the plot of land is taken on lease the structure is built by the landlord and admittedly he is the owner of the structure…."

[Emphasis supplied]

7. The Respondent/tenant has not averred that he is the owner. He only submits that the Petitioners are not the owners of the subject premises. However, the Respondent/tenant has also admitted to being a tenant. The relevant extract of the leave to defend filed by the Respondent/tenant setting out this admission is reproduced below:

"*10.* ***That the Respondent is a tenant in the portion shown in red colour in the site plan in the trust property no. 404, Haweli Haider Kuli, Chandni Chowk, Delhi, under the management earlier Mehant Abhey Dass, then Ram Tirat and now the next Gaddidar.*** *Since the death of Ram Tirat no Gaddidar/Trustee has been appointed by the Trust. Sunder Lal, the husband of Petitioner no. 1 who is working as a Property Dealer by forged documents, in the form of Will purported to have been executed by Ram Tirat, is trying to grab the trust Property by way of Sale Deed, forged and manipulated in favour of his own wife and sister-in-law.*"

[Emphasis Supplied]

7.1 Once the Respondent has admitted to being a tenant, he is estopped from challenging the title of the Petitioners/landlords. The provisions of Section 116 of the Evidence Act, 1872/Section 122 of The Bharatiya Sakshya Adhiniyam, 2023 provides for an estoppel on a tenant to challenge the ownership of a landlord. Section 116 of the Evidence Act, 1872 is reproduced below:

"116. Estoppel of tenants and of licensee of person in possession. — No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession there of shall be permitted to deny that such person had a title to such possession at the time when such licence was given."

7.2 The Supreme Court in the case of ***Bansraj Laltaprasad Mishra v. Stanley Parker Jones,***[4] has held that where a person has been brought into possession as a tenant by the landlord and if such tenant is permitted to question the title of the landlord, it will give rise to extreme confusion in the matter of relationship of the landlord and tenant and hence the equitable principle of estoppel has been incorporated by the legislature. The relevant extract of the ***Bansraj Laltaprasad Mishra case*** is reproduced below:

> *"13.* ***The underlying policy of Section 116 is that where a person has been brought into possession as a tenant by the landlord and if that tenant is permitted to question the title of the landlord at the time of the settlement, then that will give rise to extreme confusion in the matter of relationship of the landlord and tenant and so the equitable principle of estoppel has been incorporated by the legislature in the said section.***
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> *14. The principle of estoppel arising from the contract of tenancy is based upon a healthy and salutary* ***principle of law and justice that a tenant who could not have got possession but for his contract of tenancy admitting the right of the landlord should not be allowed to launch his landlord in some inequitable situation taking undue advantage of the possession that he got and any probable defect in the title of his landlord****. It is on account of such a contract of tenancy and as a result of the tenant's entry into possession on the admission of the landlord's title that the principle of estoppel is attracted.*
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> ***15. Section 116 enumerates the principle of estoppel which is merely an extension of the principle that no person is allowed to approbate and reprobate at the same time****."*
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> [Emphasis Supplied]

7.3 Thus, the contention of the Respondent/tenant disputing the ownership of the Petitioners/landlords over the subject premises is without any merit.

8. It is no longer *res integra* that an Eviction Petition or even a Revision Petition does not decide a title dispute between parties. In any Eviction Petition, the title is not germane in the strict sense. In the case of

[4] **(**2006) 3 SCC 91

Kanaklata Das v. Naba Kumar Das[5], the Supreme Court has held that in an Eviction Petition, landlord and tenant are the only necessary parties for the decision of the suit and the question of title to the tenanted premises is not germane for the decision of the Eviction Petition. The relevant extract is set out below:

> *"11.1. First, in an eviction suit filed by the plaintiff (landlord) against the defendant (tenant) under the State Rent Act, the landlord and tenant are the only necessary parties. In other words, in a tenancy suit, only two persons are necessary parties for the decision of the suit, namely, the landlord and the tenant.*
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> ***xxx xxx xxx xxx xxx***
>
> *11.3.* ***Third, the question of title to the suit premises is not germane for the decision of the eviction suit. The reason being, if the landlord fails to prove his title to the suit premises but proves the existence of relationship of the landlord and tenant in relation to the suit premises and further proves existence of any ground on which the eviction is sought under the Tenancy Act, the eviction suit succeeds.*** *Conversely, if the landlord proves his title to the suit premises but fails to prove the existence of relationship of the landlord and tenant in relation to the suit premises, the eviction suit fails. (See Ranbir Singh v. Asharfi Lal [Ranbir Singh v. Asharfi Lal, (1995) 6 SCC 580].)*
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> *11.4. Fourth, the plaintiff being a dominus litis cannot be compelled to make any third person a party to the suit, be that a plaintiff or the defendant, against his wish unless such person is able to prove that he is a necessary party to the suit and without his presence, the suit cannot proceed and nor can be decided effectively. In other words, no person can compel the plaintiff to allow such person to become the co-plaintiff or defendant in the suit. It is more so when such person is unable to show as to how he is a necessary or proper party to the suit and how without his presence, the suit can neither proceed and nor it can be decided or how his presence is necessary for the effective decision of the suit. (See Ruma Chakraborty v. Sudha Rani Banerjee [Ruma Chakraborty v. Sudha Rani Banerjee, (2005) 8 SCC 140].)*
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> ***xxx xxx xxx xxx xxx***
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> *11.6. Sixth, if there are co-owners or co-landlords of the suit premises then any co-owner or co-landlord can file a suit for eviction against the tenant. In other words, it is not necessary that all the owners/landlords should*

[5] (2018) 2 SCC 352

join in filing the eviction suit against the tenant. (See Kasthuri Radhakrishnan v. M. Chinniyan [Kasthuri Radhakrishnan v. M. Chinniyan, (2016) 3 SCC 296: (2016) 2 SCC (Civ) 331].

xxx xxx xxx xxx xxx

13. In our considered opinion, Respondent 1, who claims to be the co-sharer or/and co-owner with the plaintiff-appellants herein of the suit property is neither a necessary and nor a proper party in the eviction suit of the appellants against Respondents 2 to 5. In other words, such eviction suit can be decreed or dismissed on merits even without the impleadment of Respondent 1."

[Emphasis Supplied]

8.1 The Supreme Court in the case of ***Tribhuvanshankar vs Amrutlal***[6] has held that in case where a landlord initiates eviction proceedings against the tenant based on landlord-tenant relationship the scope of the proceedings are very limited and the question of title cannot be adjudicated. It was further observed therein that all that the Court has to do is to satisfy itself that the person seeking eviction is a landlord, who has prima facie right to receive the rent of the property in question. In order to decide whether denial of landlord's title by the tenant is bona fide the Court may have to go into tenant's contention on the issue but the Court is not to decide the question of title finally as the Court has to see whether the tenant's denial of title of the landlord is bona fide in the circumstances of the case. The relevant extract is set out below:

"28. At this juncture, we may fruitfully refer to the principles stated in Ranbir Singh v. Asharfi Lal [(1995) 6 SCC 580]. In the said case the Court was dealing with the case instituted by the landlord under the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 for eviction of the tenant who had disputed the title and the High Court had set aside the judgment and decree of the courts below and dismissed the suit of the plaintiff seeking eviction. ***While adverting to the issue of title the Court in Ranbir Singh [(1995) 6 SCC 580] ruled that in a case where a plaintiff institutes a suit for eviction of his tenant based on the relationship of the***

[6] (2014) 2 SCC 788

landlord and tenant, the scope of the suit is very much limited in which a question of title cannot be gone into because the suit of the plaintiff would be dismissed even if he succeeds in proving his title but fails to establish the privity of contract of tenancy. In a suit for eviction based on such relationship the court has only to decide whether the defendant is the tenant of the plaintiff or not, though the question of title if disputed, may incidentally be gone into, in connection with the primary question for determining the main question about the relationship between the litigating parties.

29. In the said case the learned Judges referred to the authority in LIC v. India Automobiles & Co. [(1990) 4 SCC 286] wherein the Court had observed that: (Ranbir Singh case [(1995) 6 SCC 580] , SCC pp. 585-86, para 9)

"9. ... in a suit for eviction between the landlord and tenant, the Court will take only a prima facie decision on the collateral issue as to whether the applicant was landlord. If the Court finds existence of relationship of landlord and tenant between the parties it will have to pass a decree in accordance with law. It has been further observed therein that all that the Court has to do is to satisfy itself that the person seeking eviction is a landlord, who has prima facie right to receive the rent of the property in question. In order to decide whether denial of landlord's title by the tenant is bona fide the Court may have to go into tenant's contention on the issue but the Court is not to decide the question of title finally as the Court has to see whether the tenant's denial of title of the landlord is bona fide in the circumstances of the case."

[Emphasis Supplied]

9. In view of the settled law as discussed hereinabove and the documents placed on record by the Petitioners/landlords, it is clear that the Petitioners/landlords purchased the subject premises by virtue of a registered sale deed dated 27.09.2000. The Respondent/tenant was the tenant of the erstwhile owners of the subject premises and estopped by the provisions of Section 116 of the Evidence Act, 1872 from disputing the ownership of the landlord.

9.1 As is the settled law, a title dispute cannot be decided in a revision petition or even an eviction petition filed under the provisions of the Act and

the question of title to the tenanted premises is not germane for a decision of an eviction petition.

10. So far as concerns the aspect that the Will was not proved by the Petitioners/landlords, the averment is without merit. It is settled law that a Will does not require to be subject to probate proceedings in Delhi. The Supreme Court in the case of ***Kanta Yadav v. Om Prakash Yadav***[7], while referring to the judgement of a Coordinate Bench of this Court in the case of ***Winifred Nora Theophilus v. Lila Deane***[8], has held if the Will is made in Delhi relating to an immovable property in Delhi by Hindu, Buddhist, Sikh or Jain, no probate is required. The relevant extract of the Kanta Yadav case is reproduced below:

> *"4. The short question to be examined is whether it is necessary to seek probate or letter of administration in respect of a will in terms of Section 213 of the Act in the National Capital Region of Delhi.*
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> *xxx xxx xxx xxx*
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> *8. In Winifred Nora Theophilus v. Lila Deane [Winifred Nora Theophilus v. Lila Deane, 2001 SCC OnLine Del 644 : AIR 2002 Del 6] , a Single Bench of the Delhi High Court held as under : (SCC OnLine Del para 11)*
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> > *"11. On interpretation of Section 213 read with Sections 57(a) and (b), the Courts have opined that where the will is made by Hindu, Buddhist, Sikh and Jaina and were subject to the Lt. Governor of Bengal or within the local limits of ordinary, original civil jurisdiction of High Courts of Judicature at Madras and Bombay or even made outside but relating to immovable property within the aforesaid territories that embargo contained in Section 213 shall apply.* ***From this it stands concluded that if will is made by Hindu, Buddhist, Sikh or Jaina outside Bengal, Madras or Bombay then embargo contained in Section 213 shall not apply. This is what the various judgments cited by the learned counsel for the defendants decide. Therefore, there is no problem in arriving at the conclusion that if the will is made in Delhi relating to immovable***

[7] (2020) 14 SCC 102
[8] 2001 SCC OnLine Del 644

property in Delhi by Hindu, Buddhist, Sikh or Jaina, no probate is required."

[Emphasis Supplied]

11. The Supreme Court in ***Abid-Ul-Islam v. Inder Sain Dua***[9] while interpreting the intendment of the legislature in removing two stages of Appeal that were earlier provided in the Act has held that this is a conscious omission. It was held that the High Court is not expected to substitute and supplant its view with that of the learned Trial Court, its only role is to satisfy itself on the process adopted. Thus, the scope of revisionary jurisdiction of this Court has been limited to examine if there is an error apparent on the face of the record or absence of any adjudication by the learned Trial Court, and it is only then should the High Court interfere. The Supreme Court has also cautioned from converting the power of superintendence into that of a regular first Appeal under revisionary jurisdiction. This has been elucidated at length by Supreme Court in ***Abid-Ul-Islam*** case in the following manner***:***

> *"23. The proviso to Section 25-B(8)* ***gives the High Court exclusive power of revision against*** *an order of the learned Rent Controller, being in the nature of superintendence over an inferior court on the decision-making process, inclusive of procedural compliance.* ***Thus, the High Court is not expected to substitute and supplant its views with that of the trial court by exercising the appellate jurisdiction. Its role is to satisfy itself on the process adopted. The scope of interference by the High Court is very restrictive and except in cases where there is an error apparent on the face of the record****, which would only mean that in the absence of any adjudication per se, the High Court should not venture to disturb such a decision. There is no need for holding a roving inquiry in such matters which would otherwise* ***amount to converting the power of superintendence into that of a regular first appeal, an act, totally forbidden by the legislature.***
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> *xxx xxx xxx xxx xxx*

[9] (2022) 6 SCC 30

> ***25…. It could thus be seen, that this Court has held, that the High Court while exercising the revisional powers under the Delhi Rent Control Act, 1958 though could not reassess and reappraise the evidence, as if it was exercising appellate jurisdiction, however, it was empowered to reappraise the evidence for the limited purpose so as to ascertain whether the conclusion arrived at by the fact-finding*** *court is wholly unreasonable.*
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> *xxx xxx xxx xxx xxx*
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> ***It was thus held, that though the scope of revisional powers of the High Court was very limited one, but even so in examining the legality or propriety of the proceedings before the Rent Controller, the High Court could examine the facts available in order*** *to find out whether he had correctly or on a firm legal basis approached the matters on record to decide the case. It has also been held, that pure findings of fact may not be open to be interfered with, but in a given case, if the finding of fact is given on a wrong premise of law, it would be open to the Revisional Court to interfere with the same."*
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> [Emphasis supplied]

11.1 As stated above, the revisionary jurisdiction of this Court is limited and circumspect. All that the Court is required to examine, in terms of the judgment of the Supreme Court in ***Abid-ul-Islam*** case, is whether there is absence of adjudication for interference by this Court or any error apparent on the face of the record.

12. As stated above, the learned Trial Court found that the Petitioners/landlords could not prove their ownership or the fact that they were the landlords of the Respondent and thus, dismissed the Eviction Petition. The Impugned order also does not adjudicate on any aspect *qua* bona fide need and availability of suitable alternate accommodation.

13. The examination by the learned Trial Court was limited by it to the aspect of material available on record in respect of ownership and landlord-tenant relationship between the Petitioners/landlords and the Respondent/tenant. The learned Trial Court held that in view of the fact that

the Petitioners/landlords could not prove this aspect of the matter, the remaining two ingredients which are required to be proved in a Petition under Section 14(1)(e) of the Act i.e., the *bona fide* need of the landlord and availability of alternate suitable accommodation are not required to be gone into. Thus, the Impugned Order did not examine both these contentions.

14. The Impugned Order is accordingly set aside. However, the matter is remanded to the learned Trial Court to examine the two ingredients of Section 14(1)(e) of the Act i.e., *bona fide* need and non-availability of alternate suitable accommodation. However, and in view of the fact that the matter has remained pending for the last few years, the learned Trial Court is requested to examine the pleadings and documents afresh and pass a fresh order as expeditiously as possible and not later than six months from today.

15. The Petition is disposed of in the aforegoing terms.

16. The parties will act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

MARCH 12, 2025/r

Click here to check corrigendum, if any