



2025:DHC:7954



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

% *Date of Decision: 11.09.2025*

+ **CM(M) 2263/2024 & CM APPL. 19754/2024 (stay)**

DR. ARUN NARULA

.....Petitioner

Throughs: Mr. Dhruv Madan and Mr. Shivanshu
Gusain, Advocates

versus

U.S. BAL (DECEASED THROUGH HIS LRS) & ANR.

.....Respondents

Through: Mr. Brijender S. Dhull and Mr.
Manjeet Singh Bal, Advocates

CORAM: JUSTICE GIRISH KATHPALIA

J U D G M E N T (ORAL)

1. Petitioner (*defendant in the suit*) has assailed order dated 20.03.2024 of the learned trial court whereby application of the present respondents (*plaintiffs in the suit*) for permission to lead rebuttal evidence was allowed. I have heard learned counsel for both sides.

2. Broadly speaking, in the suit for recovery of possession of immovable property alongwith other reliefs including *mesne* profits, the major defence of the present petitioner was that the subject property is situated in Khasra No. 26, Village Saidulajab, MB road, New Delhi and not in Khasra No. 27



as claimed by the present respondents. The present petitioner placed reliance on demarcation report of 2003 and PWD report dated 16.04.2018 to prove that the subject property falls in Khasra No. 26.

3. The present respondents sought permission to lead rebuttal evidence by summoning and examining the Tehsildar to bring on record the demarcation report dated 08.09.2016, the Ahlmad from the Court of learned Senior Civil Judge to bring on record complete judicial record pertaining to a suit (*details described in the application*), and one individual namely Anuj Kumar to bring on record the lease deed of comparable property in order to establish market rent.

4. By way of detailed order, impugned in the present petition, the learned trial court allowed the application of the present respondents to lead rebuttal evidence as above. Hence, the present petition.

5. At the outset, it is pointed out by both sides that vide order dated 03.04.2024 of the predecessor bench, the present petitioner confined his challenge only in respect of summoning the Ahlmad and Anuj Kumar, on the ground that the said witnesses should have been examined during evidence of the present respondents.

6. Today, learned counsel for petitioner takes me through the portions of the impugned order at printed page 55 of the paperbook and submits that initially, the learned trial court took a view that Anuj Kumar ought to have been examined at the stage of plaintiff's evidence by the present respondents



in order to discharge the burden of proof as regards market rate of rent, but that was not done; having observed the aforesaid, the learned trial court allowed summoning of Anuj Kumar, considering the relevance of the witness and taking note that the suit was filed in the year 2004 but continuing till date, and that testimony of Anuj Kumar seemed essential to ascertain the current prevailing market rent. It is contended by learned counsel for petitioner that having clearly observed that Anuj Kumar was not examined at appropriate stage, the trial court ought not to have allowed his examination in rebuttal evidence. As regard summoning of the record of the suit mentioned above, it is contended by learned counsel for petitioner that in the application, there is no mention as regards relevance of the said suit record sought to be summoned through the Ahlmad.

7. On the other hand, learned counsel for respondents supports the impugned order and contends that the present petition is totally devoid of merits and filed simply to protract the suit.

8. So far as the witness Anuj Kumar now sought to be summoned in rebuttal evidence, as correctly submitted by learned counsel for petitioner, the learned trial court took an explicit view that the said witness ought to have been examined at the stage of leading plaintiff's evidence to prove the market rate of rent, but thereafter, the learned trial court summoned this witness as well. It would be clear from the impugned order that having held that the said witness ought to have been examined at the stage of plaintiff's evidence, the learned trial court further clarified that the trial court



considered it fit in the exercise of powers under Section 151 CPC to summon Anuj Kumar in order to ascertain the market rent of the subject property. Even otherwise, vide Order XX Rule 12 CPC, the trial court certainly had power to summon the said witness in inquiry in order to ascertain the market rent of the subject property.

9. So far as the Ahlmad sought to be summoned, it was explained before the trial court that the said suit record contains testimony of Assistant Engineer concerned of PWD who would prove the relevant report. Besides, the present petitioner had relied upon report dated 16.04.2018 of the said Assistant Engineer in defendant's evidence in order to prove that the subject property lies in Khasra No. 26. That being so, the learned trial court considered it necessary to examine the said Ahlmad as well in order to prove the record of the abovementioned suit, especially because it is on the application of the present petitioner that the said report dated 16.04.2018 of the Assistant Engineer PWD was taken on record.

10. In view of the aforesaid, I am unable to find any infirmity in the impugned order, warranting interference by this Court.

11. At this stage, at the request of learned counsel for petitioner, it is made clear, though obvious that the said three witnesses if summoned and examined, the present petitioner would certainly have a right to cross-examine them.



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12. Therefore, the impugned order is upheld and the petition as well as the accompanying application is dismissed.

**GIRISH KATHPALIA
(JUDGE)**

SEPTEMBER 11, 2025/as