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

% ***Date of Decision: 28th April, 2025***

+ CM(M) 761/2025, CM APPL. 24858/2025, CM APPL. 24859/2025,
CM APPL. 24860/2025 & CM APPL. 24861/2025

HARMUKHI JAIN

.....Petitioner

Through: Mr. Sushant Sagar, Advocate

versus

MADHU BALA SAWAI

.....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Petitioner is defending an eviction petition filed on the ground of *bonafide* requirement and is aggrieved by order dated 31.01.2025 whereby such eviction petition has been permitted to be restored.

2. When such *eviction petition* filed by respondent was taken up by learned Addl. Rent Controller on 28.07.2022, it noticed that landlord had not filed any reply to the application seeking *leave to defend* filed by his tenant. It also recorded that there was request for adjournment and time was sought for filing reply to such *leave to defend* application. However, learned Addl. Rent Controller, while declining to give any time, dismissed the petition in-default for *non-prosecution*.

3. Right here, this Court is compelled to observe that in case learned Addl. Rent Controller was of the view that landlord did not deserve any further opportunity of filing any reply to leave to defend application, it could have, easily, proceeded further with the matter and could have disposed of the



application filed by the tenant whereby such tenant was seeking *leave to defend* to the aforesaid eviction petition. However, dismissal of the *eviction petition*, as such, for *non-prosecution* was not warranted from any angle whatsoever.

4. Fact, however, remains that immediately after such dismissal of the *eviction petition*, application was filed by landlord, *albeit*, under Order IX Rule 9 r/w Section 151 CPC seeking setting aside of aforesaid order and consequent restoration of its petition.

5. It seems that since application was not moved under the appropriate provision of law, the landlord was directed to move application afresh and it was in the aforesaid backdrop that the landlord moved application afresh under the relevant provision of law i.e. under Order IX Rule 4 CPC and the learned Addl. Rent Controller has allowed the same and has restored eviction petition to its original number and position.

6. Such order is under challenge.

7. After having gone through the aforesaid order dated 31.01.2025 and after having heard learned counsel for the petitioner/tenant, this Court does not find any illegality or perversity, at least, in impugned order dated 31.01.2025. Rather, as noticed above, there was no reason or occasion for the learned Addl. Rent Controller to have dismissed the eviction petition for *non-prosecution*. It could have easily gone ahead with the application seeking *leave to defend* but there was no logic in dismissing the eviction petition for *non-prosecution*.

8. There is one more aspect. Though the application had been moved under wrong provision of law, the Court could have, still, treated the same as the one filed under Order IX Rule 4 CPC in order to do substantive justice and



to ensure that there was no further delay in the matter.

9. Be that as it may, keeping in mind the overall facts and circumstances of the case and finding no illegality or perversity in the impugned order, this Court does not find any reason to invoke its supervisory power under Article 227 of the Constitution of India.

10. Petition is accordingly dismissed.

11. Pending application, if any, stands disposed of.

(MANOJ JAIN)
JUDGE

APRIL 28, 2025/dr/shs