

(2012) 03 DEL CK 0225

In the Delhi High Court

Case No : CM (M) 277 of 2012 and CM No"s. 4125-26 of 2012

Balbir Singh and Another

APPELLANT

Vs

Devi Charan Gupta Decd and Others

RESPONDENT

Date of Decision : 05-03-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 16 Rule 1, Order 16 Rule 2

Citation : (2012) 03 DEL CK 0225

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : Arjun Bhandari, for the Appellant;

Final Decision : Dismissed

Judgement

Indermeet Kaur, J.—Order impugned is the order dated 23.01.2012 which has dismissed the review petition filed by the petitioner under Order XLVII of Civil Procedure (hereinafter referred to as the "Code") seeking a review of the order dated 03.05.2011. The order dated 03.05.2011 was passed on an application filed by the defendant under Order XVI Rules 1 & 2 of the Code.

2. Record shows that the present eviction petition has been filed by the landlord against the tenant on the ground of respondent having caused substantial damage to the tenanted premises. Written statement was filed. Evidence has been led by the respective parties. At this stage, the present application (dated 13.10.2010) had been filed by the defendant seeking permission of the Court to examine three witnesses details of which find mention in para 7 of the application; contention was that they are vital witnesses. The impugned order had rejected the prayer qua the two witnesses Karandeep Singh and Country Manager (BSP) International Air Transport Association (IATA). It had rightly noted that the name of Karandeep Singh had not appeared in the list of witnesses; there was no explanation as to why Preetam Singh had been summoned when the matter was fixed for the evidence of the petitioner. The petitioner now seeking to substitute Karandeep Singh with Preetam Singh was

for no valid reason; submission that Preetam Singh was indisposed at the relevant time not being supported by any medical certificate, the Court had rightly declined this prayer. As noted supra that this application has been filed after the evidence had concluded between the parties. Second witness sought to be witnessed which was a person from IATA to bring the original record of certain photographs of the premises taken in the year 1982 was also dismissed. This finding also calls for no interference; admittedly these photographs were taken in the year 1982. On a specific query put to the learned counsel for the petitioner as to how these photographs would effect the case of the petitioner, his answer is that these photographs were taken at the time when IATA had been granted permission to run his business from the tenanted premises; however why these photographs were not filed earlier in this entire intervening period has not been explained; even on a specific query put to learned counsel on this count, there is no answer to this. Counsel for the petitioner has also failed to explain as to how these photographs would substantiate or help the defence of the petitioner; these documents not having been filed at the relevant stage and having been filed at such a belated state leads to only but one obvious conclusion which is the role of the tenant to delay the proceedings as far as possible. This submission was also rightly declined by the order dated 03.05.2011. The order dated 03.05.2011 had allowed the petitioner to get the record summoned for production of certified copies of certain documents which were purported to have been filed before Ms. Saumya Chauhan, Civil Judge.

3. This order dated 03.05.2011 was the subject matter of a review petition which had been dismissed by the impugned order. The Court had been guided by the guidelines of Order XLVII of the Code. There was no error apparent on the face of the record or new facts which were brought to the notice of the Court which were not in the knowledge of the petitioner even after exercise of due diligence when the impugned order was passed, calling for any interference in the order dated 03.05.2011. In this background, the review petition was rightly dismissed. The impugned order calls for no interference.

4. Petition is without any merit. Dismissed.