

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

**SUBJECT : DELHI RENT CONTROL ACT, 1958**

**CM(M) 706/2014 & CM No.11901/2014**

**DATE OF DECISION : 28th July , 2014**

**M/S DEVIDAYAL STAINLESS STEEL INDUSTRIES PVT. LTD.**

**.....Petitioner**

**Through: Ms. Anupama Kaul, Adv. for Mr. Prabhjit Jauhar, Adv.**

**VERSUS**

**SMT. PRAKASH DEVI ANAND**

**..... Respondent**

**Through:**

**CORAM:**

**HON'BLE MR. JUSTICE VALMIKI J.MEHTA**

**VALMIKI J. MEHTA, J (ORAL)**

1. This petition under Article 227 of the Constitution of India impugns the order of the trial court dated 30.1.2014 by which the trial court has allowed the application of the respondent/landlord for recalling of the witness Sh. Atam Aggarwal for cross-examination. The main petition is a petition under Section 14(1)(b) of the Delhi Rent Control Act, 1958 seeking eviction on the ground of subletting.

2. The first date which was fixed for cross-examination of the witness of the petitioner (respondent in the eviction petition) was 9.10.2012 when witness appeared and tendered his evidence but the counsel for the respondent on account of death in his family was not present. The case was adjourned to 17.12.2012 when the court was on leave. On the next date of hearing i.e 16.1.2013, the right of the respondent/landlord to cross-examine the witness was closed.

3. By the impugned order the application under Order 18 Rule 17 CPC was allowed and which provision permits the court to recall any witness at any stage.

4. The court below notes that the application is supported by an affidavit of the counsel for the respondent/landlord giving reasons for non-appearance as also the fact that the stand of the petitioner/tenant (respondent in the court below) that his witness was an out-station witness who had to come from Bombay was not recorded in the earlier two orders.

5. CPC is a handmaid of justice. Parties can make mistake in the conduct of cases and therefore unless there is a grave prejudice, courts do permit correction of the mistake subject to payment of costs. In this case, the impugned order awards costs while allowing the recall of the witness. I hence do not find any illegality in the impugned order.

6. Powers under Article 227 of the Constitution of India are not exercised in a routined manner, because not only they are extraordinary powers, but also because they are discretionary powers and which are to be invoked in furtherance of justice and not to frustrate justice. Impugned order causes justice and therefore to set aside such an order powers under Article 227 of the Constitution of India cannot be invoked.

Dismissed.

JULY 28, 2014

Sd/-  
VALMIKI J. MEHTA, J.