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

+ RC.REV. 80/2008

BHIM SEN SHARMA Petitioner
Through: Mr. S.P. Singh, Adv.
versus

ARVINDER SINGH Respondent
Through:

CORAM:
HON'BLE MR. JUSTICE SHIV NARAYAN DHINGRA

O R D E R

% **08.09.2008**

1. By this petition, the petitioner has assailed an order of learned ARC dated 29th February, 2008 whereby an application for leave to defend of the petitioner was dismissed and an eviction order was passed.

2. The landlord in this case filed an Eviction Petition under Section 14(1)(e) of Delhi Rent Control Act. He claimed ownership of premises/property no. I-85, Lajpat Nagar-I, New Delhi on the basis of a gift deed by previous owner Smt. Maser Kaur. It is not disputed that petitioner was a tenant under Smt. Maser Kaur in respect of a room in front portion of Property No. I-85, Lajpat Nagar-I, New Delhi at a monthly rent of Rs.500/-. The petitioner in his leave to defend challenged the ownership of landlord on the ground that a 'Will' was executed by Smt. Maser Khan in his favour. The petitioner had also filed a petition for cancellation of the 'Will' and a suit for cancellation of the gift deed.

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The suit filed by the petitioner for cancellation of gift deed was dismissed by this Court despite the fact that Probate Petition of the petitioner was pending. The learned ARC on the ground of pendency of Probate Petition had earlier granted leave to defend. On a petition filed by the landlord, this Court set aside the order of learned ARC with a direction to learned ARC to re-consider the matter without taking into account the pendency of the Probate Petition.

3. The learned ARC considered entire material before it. Since the gift deed in favour of the landlord was registered and suit a filed by the petitioner for cancellation of gift deed had been dismissed, the ARC had no difficulty in holding that landlord was the owner of the premises. The 'Will' which was allegedly made by the erstwhile landlady in favour of the petitioner was subsequent in time then the execution of the gift deed by her. Since no property was left with her after having gifted the same, the 'Will' was in-consequential even if it was a genuine 'Will'.

4. It was admitted by the petitioner in his leave to defend that premises was let out for residential purpose. However, the petitioner contended that he had started using it also for commercial purpose. This could not help him as the ARC found that the premises was a residential premises situated in the residential colony and mere assertion that it was subsequently

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put to commercial use without written consent of landlady would not have helped the petitioner. The letting was held to be residential as admitted by the petitioner.

5. The petitioner had taken a stand before learned ARC that respondent/landlord was having another premises G-6, Mukh Ram Garden, Tilak Nagar with him for residential purpose. The landlord denied this. The petitioner had not placed on record any material to show that landlord was even remotely connected with this premises.

6. As far as bonafide requirement is concerned, the landlord's family consisted of himself, his wife and two growing children, a son and a daughter. The learned ARC came to conclusion that landlord required one bed room for himself and his wife, one bed room for growing children, one guest room, one study room for children and one drawing room apart from kitchen, latrine and bath room. The landlord was in possession of only one room, though, the petitioner had alleged that he was in possession of two rooms. Taking any of the case whether the landlord was in possession of one room or two rooms, the accommodation in possession of the landlord was highly insufficient and his requirement was of five rooms with kitchen, latrine and bath room and the premises in occupation of the petitioner was bonafidely required by the landlord and no triable

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issue was raised in the petition.

7. Counsel for the petitioner argued that since the Probate petition was pending, the learned ARC should not have held the landlord as owner. I consider this issue cannot be re-agitated. This Court had already settled the position and remanded back the matter to ARC that leave to defend should be considered unaffected by pendency of the Probate Petition. Even otherwise, I find no force in this contention. The second argument addressed by counsel for the petitioner was about residential-cum-commercial use of the premises. This argument of the petitioner also must fail in view of admission made by the petitioner that premises was let out for residential purpose and not for composite purpose. It is undisputed that premises falls in residential colony and unauthorized use by the tenant of a residential premises for commercial purpose does not change its letting purpose and cannot be a ground for granting leave to defend.

8. I find no force in the petition. The petition is hereby dismissed.

SEPTEMBER 08, 2008
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SHIV NARAYAN DHINGRA, J