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

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Date of Judgment: 15.02.2012

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RC.REV. 70/2006

RAM KISHORE VERMA & ANR Petitioners
Through Mr. Vikram Nandrajog, Adv.

Versus

MAHAVIR PRASAD Respondent
Through None.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1 Impugned judgment is dated 14.07.2006. The eviction petition filed by the landlord seeking eviction of his tenant from the disputed premises (two rooms, one kitchen, one bath with a court yard on the ground floor of property bearing No 4530/3 (7/26A), Bhatia Building, Mahavir Street, Darya Ganj, New Delhi) had been dismissed. The impugned judgment had recorded this finding after a trial.

2 Record has been requisitioned and it has been perused. Vehement arguments have been addressed by the respective parties. The eviction petition discloses that the bonafide need of the landlord is for the aforementioned premises as his family comprised of himself and his wife for whom he requires one room; his son Nand Kishore Verma who is a married son and also requires one room. The grandson of petitioner No. 1 is also married for whom also a third room is required; his daughter on the date of filing of the eviction petition was a member of this household but thereafter in this intervening period, she had got married. There is no dispute to his membership of the family of the petitioners. The accommodation presently available with the petitioners as per the eviction petition comprises of one room and one bathroom on the mezzanine floor; two rooms with a kitchen and a bathroom on the first floor and one balcony on the barsati. The site plan filed along with the eviction petition has depicted the accommodation available with the petitioners as comprising of two rooms on the mezzanine floor; the bathroom has not been depicted separately; two rooms on the first floor with a kitchen and a bath and one room on the second floor.

3 Oral and documentary evidence had been led by the respective

parties. AW-1 was the landlord; he had reiterated the averments made in the eviction petition on oath in Court; the site plan had been proved as Ex. AW-1/4; the portion tenanted out to the tenant was shown in red colour and the portion in occupation of the landlord himself was depicted in blue colour. In his cross-examination, AW-1 has stated that there is no construction on the second floor and in fact the second floor does not exist; his contention in the eviction petition is that there is a balcony on the second floor which has been corroborated in the site plan filed. On this count, learned counsel for the respondent submits that the Will of deceased Manohari Devi dated 13.10.1980 (mark 'A') filed along with the eviction petition shows that the disputed premises is a three storeyed structure; attention has been drawn to the said document wherein the disputed premises has been described as a three storeyed building; contention of the respondent being that since the averments of the landlord in his eviction petition do not match with the accommodation depicted by him in the site plan and neither is it contemporaneous with the document mark 'A'; submission being that the trial Court had rightly recorded a finding that the site plan has shown six rooms available with the petitioners which is a sufficient

accommodation and in these circumstances, the dismissal of the eviction petition suffers from no infirmity.

4 In this context, attention has been drawn by learned counsel for the respondent to the testimony of RW-1 as well. He was the only witness who was examined on behalf of the tenant. RW-1 in his cross-examination has disclosed the accommodation which is available with the landlord. Relevant extract reads herein as under:-

“It is correct that the petitioner is in possession of one room above my back room along with passage over my kitchen bath in the mezzanine floor. It is correct that the petitioner is in possession of two rooms above my rooms and a kitchen above passage on 1st floor. The petitioner is in possession of one room on 2nd floor.”

5 This was by and large the oral evidence which has been led and which has been highlighted by the parties.

6 At the outset, learned counsel for the respondent has pointed out that this Court is sitting in its powers of revision under Section 115 of the Code and unless and until there is a patent illegality or a manifest injustice which has been caused to one party qua the other, scope of interference by this Court in a revision petition is limited.

7 Arguments have been appreciated in this background.

8 Ex. AW-1/4 is the site plan which has been filed and proved on record by the landlord. This site plan has depicted the accommodation which is available with the petitioner in blue colour; there is no dispute that on the first floor there are two rooms and a kitchen; the barsati floor has been depicted as an open space which is clearly in conformity with the averments made in the eviction petition as also the testimony of AW-1 wherein in his cross-examination he has stated that the second floor has in fact not been built up; the submission of the respondent that the Will (mark 'A') has described the suit property as a three storeyed building would not be contrary to this site plan or the averments in the eviction petition as admittedly this property comprises of three floors which is the ground, first and the second floor; the Will marked 'A' has not described the superstructure which has been built on the second floor; there is thus nothing contrary which has emerged qua the description of the property in the Will and the description of the property in the site plan Ex. AW-1/4. Ex. AW-1/4 has deciphered the mezzanine floor as having one room; second room mentioned therein is as per the averment of the petitioner a bathroom only and there is no separate bathroom and has been misdescribed as a room in the site plan;

it is admittedly only a bathroom. AW-1 in his examination has in fact explained this discrepancy which has occurred in the site plan; it is obviously a mistake as the tenant (RW-1) himself has in fact admitted that the landlord has only one room with a bathroom on the mezzanine floor; extract of which has been extracted hereinabove.

9 Ex. RW-1/1 is the site plan which has been filed by the landlord. There is no dispute about the first floor; however in the mezzanine floor, has been described to have two rooms; two rooms have also been shown on the second floor. This site plan is clearly not correct and is contrary to the admissions of the tenant himself wherein he has admitted that on the mezzanine floor, there is only one room with a bathroom whereas on the second floor there is one room to which a specific suggestion has been given that this is only a tin shed which has been denied by the tenant. Be that as it may, whether the room on the second floor is covered with a tin shed or it has a RCC roof would not take away the otherwise admitted position that there is only one room on the second floor. Thus the total accommodation which is available with the landlord is one room on the mezzanine floor, two rooms on the first floor and one tin shed or a pucca structure on the second floor. The need of the

landlord is much more. There are three married couples i.e. petitioner No. 1, petitioner No. 2 and the married son of petitioner No. 2; daughter of petitioner No. 2 has since got married. Three bed rooms are a minimum for this family apart from which a living room/drawing-cum-dining room as also a guest room is required by these three families. Present accommodation available with them definitely falls short.

10 The ARC holding otherwise has committed a manifest illegality and has not appreciated the evidence in the correct perspective. In fact perusal of the impugned judgment shows that there has been no discussion at all; pleadings have been reproduced and there is also reproduction of testimony of the witnesses but no reasons had been given by the trial Court about his conclusion; nothing has been discussed as to how the finding was arrived at by the ARC that the need of the landlord for the aforementioned tenanted premises is not bonafide. This conclusion arrived at by the trial Court clearly suffers from an infirmity; it has resulted in a grave mis-carriage of justice qua the landlord which require a correction by the revisional Court ; this patent illegality has amounted to a perversity. The evidence on record is clearly contrary to the conclusions arrived at by the ARC. The end result is that

the petition is allowed; eviction petition stands decreed.

11 Petition disposed of in the above terms.

INDERMEET KAUR, J

FEBRUARY 15, 2012

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