

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

+ **RC.REV. 15/2015, CM 520/2015 (stay) & CM 3768/2015  
(direction)**

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Decided on: 5<sup>th</sup> May, 2015

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| RIYAZUDDIN & ORS | ..... Petitioner                              |
| Through          | Mr. Anil K. Khaware, Mr. Pramod Pandey, Advs. |
| versus           |                                               |

|                     |                                     |
|---------------------|-------------------------------------|
| SAIRA (WIDOW) & ORS | ..... Respondent                    |
| Through             | Mr. A.J. Khan, Mr. A.K. Suri, Advs. |

**Coram:**

**HON'BLE MS. JUSTICE MUKTA GUPTA**

**MUKTA GUPTA, J. (ORAL)**

1. Aggrieved by the order dated 1<sup>st</sup> December, 2014 whereby leave to defend was declined to the petitioners in an eviction petition filed by the respondents i.e. the legal heirs of late Shri Ahsan Elahi under Section 14(1)(e) of the DRC Act, the petitioners prefer the present petition.

2. In the eviction petition it was pleaded by Ms.Saira and others, legal heirs of late Shri Ahsan Elahi, that they were the owners and landlord in respect of the tenanted shop measuring 116 sq.yds. on the ground floor of property bearing No. 7609, Quresh Nagar, Sadar Nala Road, Sadar Bazar. It is stated that grandfather and grandmother of respondents No. 2 to 9 and father-in-law and mother-in-law of respondent No.1 were the owners of suit property which devolved on Shri Ahsan Elahi pursuant to compromise

agreement between late Shri Ahsan Elahi and Smt. Mussavira Khatoon whereby she extinguished her share in the suit property. After the death of Shri Ahsan Elahi the suit property devolved on the respondents being his legal heirs. Relevant documents in this regard were placed on record.

3. In the eviction petition it was claimed that the tenanted premises was required for the professional needs of respondents No.7 & 8 as respondent No.7 was a practicing lawyer since 1998 in Delhi and was carrying on his office from a small place of 6 feet x 12 feet on the ground floor of property bearing No. 7386 Quresh Nagar, Sadar Bazar. The one room on the first floor of the said property i.e. 7381-7386 was being used as residence for respondent No.7. The second floor of the said property which consists of one room was being used for residential purposes by respondent No.8 along with his family and the third floor by respondent No.9 and his family members. The said property comprises of two shops and one office on the ground floor. One shop measuring 8 feet x 12 feet on the ground floor was in possession of respondent No.9 who was running the business of general store and another shop measuring 3 feet x 6 feet was in possession of joint tenants i.e. Mohd. Furkan, Mohd. Sadiq and Mohd. Aftab. The suit property was required as respondent No.7 had no separate room for sitting of his clerks, waiting of the clients, consultation, office room etc. He also owned car and scooter which were parked on the road and in case the tenanted premises was available the same could be re-constructed and used for garage as well. Respondent No.8 is a practicing doctor in modern as well as Unani medicines having passed BUMS degree in 1997 and started his practice in 1998. Respondent No.8 was doing his practice from rented accommodations

since 1998 and was presently running his clinic from tenanted premises bearing No. 1071, Main Road, Farash Khanna for which he was paying use and occupation charges.

4. In the leave to defend application the petitioners pointed out that the respondents own several properties i.e. property bearing No. 1155-1160, Mohalla Raqab Ganj, Turkman Gate and that the said property was sold in 2008 after filing of the earlier eviction petition; property bearing No.7692, Gali Daroga Wali, Sadar Bazar which also devolved on the respondents; property No. 7385-7386, Qasabpura wherein part of the property was lying vacant in possession of the respondents. Respondent No.7 has another office at T-1D, Tehsil Lane, Tis Hazari and another property No. 6053, Gali Haider Wali, Nawab Road, Basti Harphool Singh, Sadar Bazar. The respondents also own property bearing No. 7331, Gali Gurdware Wali, Quresh Nagar, Delhi built up to four storied; property No. 7347, Ghasmandi, Sadar Nala Road built up to four storied; property No. 6237, Gali Jharsaiyan, Quresh Nagar, Delhi; property No. 519, Gali No.1, Vishwas Nagar, Karkari Mord. Shahadra, Delhi; two built up shops in property No. 6661, Gali Munshi Abdul Rahim, Sadar Nala Road; property No. 7228, Gali Garahiya, Quresh Nagar from where respondent No.8 was running his clinic. The shop in property No. 7609 was recently let out to one new tenant Mohd. Haroon for doing business of fridge and A.C. It was stated that the respondents did not disclose all the properties owned by them and sufficient accommodation was available to the respondents and the requirement was not bonafide.

5. However, the moot question which was urged in the leave to defend application was that the respondents had earlier filed a similar eviction

petition against the petitioners in 2008 being Eviction Petition E-35/08 on the ground of same and additional bonafide requirement wherein leave to defend was granted to the petitioners on 16<sup>th</sup> January, 2010. The order granting leave to defend was affirmed by this Court when RC.REV.154/2010 was withdrawn on 30<sup>th</sup> August, 2012. However, thereafter the respondents failed to lead any evidence on the ground that the eviction petition suffers from technical defects and withdrew the same. Having been granted leave to defend earlier and the respondents choosing to sell one or two properties thereafter, they cannot take the said benefit and now come up to claim the bonafide requirement.

6. In the impugned order learned ARC though noted this contention of the petitioners taken in the leave to defend application but did not consider the same and considered the various accommodations available and came to the conclusion that the bonafide requirement was made out and declined to grant leave to defend. The learned ARC ought to have considered the change in circumstances if any from the previous order in E-35/08. A material aspect of the matter not being considered by the learned ARC i.e. the earlier order passed in eviction petition No. 35/2008 suffers from illegality and warrants interference.

7. In the order dated 16<sup>th</sup> January, 2010 in E-35/08, learned ARC noted that the petitioner herein has alleged that the respondents have several properties and the respondents merely denied the allegations and some of the properties owned were not then specifically denied and portion of some properties have been admittedly possessed. Merely by selling one or two properties, the respondents cannot now claim change in circumstances and

thus dismissal of leave to defend. I am of the considered view that leave to defend is required to be granted to the petitioners.

8. Consequently, the impugned order is set aside. Leave to defend is granted to the petitioners who will file their written statement within four weeks. Replication be filed within four weeks thereafter. Parties will appear before the learned ARC 27<sup>th</sup> July, 2015. It is hoped and expected that the learned ARC will try and conclude the trial expeditiously and preferably within a period of one year.

9. Petition and applications are disposed of.

**(MUKTA GUPTA)**  
**JUDGE**

**MAY 05, 2015**  
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