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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CM(M) 56/2014

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Decided on: 26th March, 2015

S N GOEL

..... Petitioner

Through: Counsel (appearance not given).

versus

VINOD KUMAR

..... Respondent

Through: Mr. B.L. Chawla, Advocate.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J (ORAL)

1. The Petitioner S.N.Goel filed an eviction petition against the Respondent Vinod Kumar under Section 14 (1) (a) of the Delhi Rent Control Act, 1958 (in short 'the DRC Act') which was dismissed vide order dated 30th January, 2013. The appeal filed against the order of the learned ARC was also dismissed on 3rd September, 2013 and thus S.N.Goel prefers the present petition.

2. In the eviction petition S.N.Goel stated that one shop on the ground floor of property No.2591, Tota Ram Bazar, Trinagar, Delhi (in short 'the tenanted premises') was let out to the father of Vinod Kumar. The rent was increased to Rs.44/- per month w.e.f. 1st September, 2010. The tenanted premises was originally owned by the father of S.N.Goel late Mitthan Lal Goel who passed away on 22nd September, 2004. Mitthan Lal Goel was survived by S.N.Goel and other legal heirs, that is, S.K. Goel, S.P.Goel and Shyam Sunder Goyal. Thus S.N.Goel along with other legal heirs became

the joint owners of the tenanted premises. Even during the lifetime of Shri Mitthan Lal Goel, the father of Vinod Kumar was not paying rent and thus eviction petition under Sections 14 (1) (a) (b) (c) and (j) of the DRC Act was filed in the year 1985. The relief under Section 14 (1) (a) of the DRC Act was granted but not under Sections 14 (1) (b) (c) and (j) of the DRC Act. Since benefit of Section 14 (2) of the DRC Act was given vide judgment dated 19th July, 1999 the Respondent Vinod Kumar was not evicted. Vinod Kumar deposited the rent from 1st August, 2009 to 31st December, 2009 under Section 27 of the DRC Act. Due to non-payment of rent a legal notice dated 13th July, 2010 was served on Vinod Kumar however, he did not make the payment of arrears of rent despite legal notice and thus the eviction petition was filed.

3. In the written statement Vinod Kumar took plea that the legal notice dated 13th July, 2010 was not in accordance with the provisions of Section 14 (1) (a) of the DRC Act. It consisted of only two pages wherein paras-1 and 2 appear on the first page and paras-7 to 10 on the second page. Paras-3 to 6 were missing in the notice sent to Vinod Kumar. S.N.Goel examined himself as PW-1. Though he proved the site plan of the shop and the copy of the earlier judgment dated 19th July, 1999 however, he did not prove the notice. S.N.Goel was confronted with the incomplete notice sent to Vinod Kumar vide Ex.PW-1/DA however, he could not identify the said notice to be the one which was sent to Vinod Kumar. The eviction petition was dismissed for the reason that the Petitioner could not prove the legal demand notice being served on the Respondent. The appeal filed by S.N.Goel was also dismissed.

4. The only issue urged by the learned counsel for the Petitioner before this Court is that once Vinod Kumar admitted having received a legal notice there was no requirement of the Petitioner to prove the same.

5. One of the essential ingredients for an eviction petition under Section 14 (1) (a) of the DRC Act is that the tenant has neither paid nor tendered the whole of the arrears of the rent legally recoverable from him within two months of the date on which a notice of demand for the arrears of rent has been served on him by the landlord in the manner provided in Section 106 of the Transfers of Property Act, 1882.

6. In the present case the Petitioner has failed to prove that a legal notice was sent as neither the legal notice nor the Registered AD by which it was sent were exhibited. Though the Respondent has stated that he has received the legal notice dated 13th July, 2010 however, the said notice received by the Respondent is incomplete, hence it cannot be held that Vinod Kumar admitted the legal notice and thus there was no requirement of the Petitioner to prove the demand notice. Since the eviction petition was filed by the Petitioner the onus was on him to prove his case by proving the legal demand notice which the Petitioner has miserably failed to do so.

7. In Chikkam Koteswara Rao vs. Chikkam Subbarao and others, AIR 1971 SC 1542 the Supreme Court while considering the effect of an admission under Section 17 of the Evidence Act held that before the right of a party can be considered to have been defeated on the basis of an alleged admission by him, the implication of the statement made by him must be clear and conclusive and there should be no doubt or ambiguity about the alleged admission.

8. I find no merit in the petition. Petition is dismissed.

(MUKTA GUPTA)
JUDGE

MARCH 26, 2015
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