

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

+ **RC.REV. 140/2015**

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Decided on: 17th March, 2015

SANT LAL NAGAR

..... Petitioner

Through Mr. Anand Nandan, Mr. D.S. Mishra,
Adv.

versus

JAI PRAKASH

..... Respondent

Through Mr. Sunil Agarwal, Adv.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

CAVEAT 263/2015

Learned counsel for the caveator enters appearance. Caveat is discharged.

CM 4829/2015

Exemption allowed subject to just exceptions.

RC.REV. 140/2015 & CM 4830/2015 (stay)

Notice. Learned counsel for the respondent accepts notice.

Aggrieved by the order dated 23rd December, 2014 dismissing the petitioner's application for leave to defend in an eviction petition under Section 14(1)(e) of the DRC Act filed by the respondent, the petitioner prefers the present petition.

In the eviction petition the respondent stated that he was the owner and landlord of property bearing No.118-A Main Market, Badarpur, New Delhi (herein after referred to as suit property) wherein the petitioner was a tenant on the second floor at a monthly rent of ₹400/- which was let out for residential purposes. The respondent is engaged in the business of readymade garments from the shop situated at ground floor and first floor of the suit property and as the accommodation is insufficient and he has no space for storing the clothes he requires tenanted premises to expand his business. The three sons of the petitioner are also working with him and thus he requires the tenanted premises bonafidely for starting the business of his sons who are dependent on him as the premises is more suitable since the respondent is already running his business from ground floor and first floor. The respondent has no other suitable accommodation for expansion of his business.

By leave to defend application the petitioner contested the eviction petition, inter alia, on the grounds that the respondent had earlier filed an eviction petition in the year 2004 which was withdrawn without liberty to file a fresh petition. The respondent is the owner of H.No. 351 Badarpur which has sufficient commercial and residential accommodation available. Respondent is also the owner of H.No.216-217 Main Mathura Road, Badarpur which is a three bedroom accommodation. Even the first floor of H.No.118-A, Main Market, Badarpur was vacant.

In the reply to the leave to defend application the respondent stated that the first floor of suit property was being used by the respondent for his business and was not vacant. H.No.216-217 Mathura Road, Badarpur

belongs to his brother and the respondent has no right, title or interest in the said house. H.No.351 Badarpur does not belong to him and H.No.350 Badarpur was residential house of the respondent.

After hearing of the parties and on the basis of reply of the respondent the learned ARC declined leave to defend.

Heard learned counsel for the parties. In the leave to defend application, the petitioner has stated about the other properties available to the respondent and in support thereof he has placed affidavits of the respondent regarding the other accommodations. The case of the respondent in the reply to leave to defend application is that H.No.351 does not belong to him though before this Court it was argued that H.No.351 does not exist. However, in affidavit of the respondent sworn on 29th August, 2005 the respondent mentioned his residential address as H.No. 351 First floor. Further though the claim of the respondent is that he has no right, title or ownership in H.No.216-217 Main Mathura Road, Badarpur, however in an affidavit sworn by the respondent in December, 2004 he has given his residential address as 216-217 Main Mathura Road, Badarpur. Both these affidavits of respondent were placed on record by the petitioner before the learned ARC.

In view of the material placed on record by the petitioner regarding availability of the other accommodations, the petitioner was entitled to grant of leave to defend. The learned ARC failed to notice these affidavits which were on record. Consequently, the impugned order is set aside. Leave to defend application of the petitioner is allowed. Written statement be filed by

the petitioner within four weeks. Replication in four weeks thereafter. List before the learned ARC on 25th May, 2015.

Petition and application are disposed of.

(MUKTA GUPTA)
JUDGE

MARCH 17, 2015
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