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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RC.REV. 149/2015

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Decided on: 23rd March, 2015

MOHD ISMAIL

..... Petitioner

Through: Mr.S.K.Sharma, Advocate.

versus

ASS MECHANICAL ENGINEERING CO

..... Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J (ORAL)

1. Aggrieved by the order dated 27th October, 2014 whereby leave to defend was granted to the Respondent in eviction petition under Section 14 (1) (e) of the Delhi Rent Control Act, 1958 (in short 'the DRC Act') the Petitioner prefers the present petition.
2. Mohd. Ismail, the Petitioner herein filed an eviction petition claiming himself to be the owner of the tenanted premises, that is, one shop on the ground floor of property bearing No.4295, Kucha Pandit, Lal Kuan, Delhi on the ground that he wants to settle his son Mohd.Imran who wants to start the business of general store from the property in question and that Mohd.Imran was presently doing his business from a tenanted premises bearing No.3196-98, Lal Kuan, Delhi.
3. In the leave to defend application various pleas were taken including that Mohd. Ismail has several properties in his possession, that is, seven

shops on the second floor and eight shops on the first floor of the suit property which are lying vacant and are in the possession of Respondent, Plot of about 700 sq. yards at Sunder Nagar, Mathura Road, New Delhi, one property known as 'Chamaron ki Haveli' at Azad Market and Properties bearing Nos.3734, 3735 and 3736, Gali Masjidwali, Shahganj Chowk, Behind G.B. Road, Kucha Pandit, Delhi admeasuring 200 sq. yards.

4. In the reply Mohd. Ismail denied the averments and stated that he has no shop on the first floor and the rooms are godown which are occupied by various tenants, that he had no property at Azad Market, Property bearing Nos. 3734-3736 was a khandar and was not suitable to settle his son and start his business. Since admittedly Mohd. Ismail owns property Nos.3734-3736 and is available to him, the learned ARC that the fact whether it is suitable or not is required to be tried as an issue and thus triable issue has been raised by the Respondent.

5. In view of the properties in possession of Mohd. Ismail as stated in the leave to defend application and there being no specific denial of the same nor it was stated as to in whose possession the same are and what is the condition of the properties Nos. 3734-3736, I am of the considered opinion that there is no error in the impugned order.

6. Petition is dismissed.

(MUKTA GUPTA)
JUDGE

MARCH 23, 2015
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