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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RC.REV. 458/2013 & CM No.19634/2013 (for stay)

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Decided on: 15th January, 2015

SHAHIDA BEGUM @ SHAHIDA BANO Petitioner

Through: Mr. Diwan Singh Chauhan, Adv.

versus

MOHD. IQBAL KHAN

..... Respondent

Through: Mr. Nitin Sharma, Adv.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J (ORAL)

1. The petitioner is aggrieved by the order dated 26th July, 2013 whereby the leave to defend application filed by the petitioner in an eviction petition under Section 14(1)(e) of the Delhi Rent Control Act, 1958 (in short 'the DRC Act') was dismissed by the learned Additional Rent Controller.

2. In the eviction petition, the respondent stated that he was the owner of the entire premises bearing No.6853/1, Ward No.XIV, Gali Atthare Wali, Ahata Kedara, Bara Hindu Rao, Delhi-110006. The respondent purchased the said property from its erstwhile owner Smt. Usha Rani Sharma, wife of Sh. Devendra Kumar Sharma and Sh. Surender Kumar Sharma, son of late Sh. Manphul Singh Sharma through a registered Sale Deed dated 28th July, 1998. The respondent was initially a tenant of Smt. Usha Rani Sharma and Sh. Surender Kumar Sharma through their General Power of Attorney and paid a rent of Rs.20/- per month. After the purchase of the property, the respondent informed the petitioner about the fact of purchasing the property and the sale of tenanted premises but the petitioner never paid any rent to the

respondent. The family of the respondent consisted of his wife and daughter aged 14 years studying in 10th standard. Besides this, the respondent had two married sisters who along with their children were dependant on the respondent. Residential accommodation available with the respondent was a room measuring 13 ft x 7½ ft approximately with a small study room measuring 5½ ft x 9½ approximately, one store room of 5.8 ft x 7½ approximately, small kitchen, latrine and bathroom with small courtyard totally measuring 50 sq yards on the first floor of the premises No.6853/1, Gali Atthare Wali, Ahata Kedara, Bara Hindu Rao, Delhi-110006, besides a small barsati room on the roof of the first floor of the premises.

3. The respondent stated that he had no other reasonably suitable residential accommodation except the tenanted premises on the ground floor of the house mentioned above which had been let out for residential purposes. It was also pointed out that the respondent was owning a commercial property measuring 58 sq yards on the ground floor at 6745, Gali Chakki Wali, Ahata Kedara Bara Hindu Rao, Delhi-110006 which was used by him for his factory of plastic buckles and as godown, besides a commercial small space on rent at 6831, Ground Floor, Gali Chakki Wali, Ahata Kedara, Bara Hindu Rao, Delhi-110006 for which he was paying a rent @ Rs.250/- per month. The respondent was facing unbearable hardships because of insufficient residential accommodation and thus the tenanted premises was required for his bona fide residential needs.

4. The petitioner filed a leave to defend application taking the pleas that there was no landlord tenant relationship between the petitioner and the respondent. Hence, the respondent had no locus standi to file and maintain the eviction petition. The petitioner had taken the premises from one

Manphul Singh Sharma after paying pugri/security of Rs.1 lac and the petitioner was entitled to use the premises until and unless the aforesaid amount of Rs.1 lac was not refunded. That the requirement of the respondent was self created as the members of the respondent's sisters families were not dependant on him and the sisters were residing happily in their matrimonial houses. The respondent has suppressed the fact that he has alternative accommodation available as he is the owner of the entire ground floor of property bearing No. 6745, Gali Chakki Wali, Ahata Kedara Bara Hindu Rao, Delhi-110006 and the said property is in exclusive use, occupation and possession of the respondent and his family members which comprises of two rooms, store, latrine bathroom and verandah. It is further stated that property No. 6853, Gali Atthare Wali, Ahata Kedara, Bara Hindu Rao, Delhi-110006 consisting of two rooms, one store, latrine, bathroom and courtyard at the first floor and one big room at the second floor was available and the second floor's room is not being used by the respondent for residential purpose exclusively. The respondent is using the second floor for commercial purpose as well. Besides the respondent is in possession of ground floor of property bearing No. 6831, Ground Floor, Gali Chakki Wali, Ahata Kedara, Bara Hindu Rao, Delhi-110006 which is being used for residential cum commercial purposes.

5. The learned ACR decided the three issues against the petitioner, that is, the landlord tenant relationship, bona fide requirement and alternative accommodation.

6. The contention of learned counsel for the petitioner before this Court is that there is no jural relationship of landlord and tenant between the petitioner and respondent. The petitioner had taken the premises from one

Manphul Singh Sharma and has no privy with the respondent. The respondent had placed on record copy of the registered Sale Deed dated 28th July, 1998 whereby Pandit Ravi Parkash, son of Pandit Sant Lal through General Power of Attorney of Smt. Usha Rani Sharma, wife of Sh. Devender Kumar Sharma and Sh. Surender, son of late Manphul Singh Sharma sold the demise premises to the respondent. The said Sale Deed in clause-3 notes that the first floor portion of the property was occupied by the vendee and the ground floor portion was occupied by Smt. Shahida Begum, wife of Sh. Raisuddin Ahmad as tenant and hence the vendor has delivered the proprietary/symbolic possession of the said property onto vendee. The vendee also authorized/empowered the vendor to receive the rent from the tenant and issue receipt thereon. Thus, the petitioner was recognized as a tenant of Manphul Singh Sharma on whose death his legal heirs executed the Sale Deed in favour of the respondent. Hence, the respondent had stepped into the shoes of Manphul Singh Sharma and, thus, prima facie the respondent has been able to establish the jural relationship of landlord and tenant between the respondent and the petitioner. This finding of the learned trial court with which this Court concurs calls for no interference as is based on the material placed on record.

7. During the course of the proceedings since names of the wife and the daughter were wrongly reflected the same was got corrected by the Respondent by seeking amendment. The petitioner has not challenged that the family of the respondent comprises of his wife and one daughter besides the respondent except that it is vaguely stated that Ms. Aisha was not the daughter of the respondent. The accommodation on the first floor and the second floor as stated by the respondent is more or less admitted though it is

claimed that the study room with the respondent was also a room and that the second floor of the premises was being used for residential purposes. The respondent has filed the site plan in support of his premises and the Sale Deed of the suit property which was also appended with the site plan of the suit property. A perusal of the site plan would show that the first floor comprises of two rooms, one store room, one courtyard, one kitchen and one washroom. The second floor of the suit property comprises of one small barsati room which was being used as a store. Thus, as regards the description of the suit property is concerned, there is no dispute except that the small study room is stated to be as full room by the petitioner whereas the barsati floor was claimed to be commercial cum residential.

8. Further as noted above, in the eviction petition, the respondent has disclosed about the ground floor accommodation at property No. 6745, Gali Chakki Wali, Ahata Kedara Bara Hindu Rao, Delhi-110006. Thus there was no concealment. The site plan filed by the respondent would show that the said property, that is, bearing No. 6745, Gali Chakki Wali, Ahata Kedara Bara Hindu Rao, Delhi-110006 comprises of one hall and one room only and there was nothing on record to controvert respondent's statement that the same was used for commercial purpose. As a matter of fact, the respondent has placed on record complaint filed by the petitioner to the Government authorities regarding the illegal commercial user of property bearing Nos.6745 and 6831 wherein the petitioner himself has alleged that respondent is using the said two premises illegally for commercial purposes. Thus, the averment in the leave to defend application that these premises are being used for residential purposes does not merit consideration.

9. On the material on record, the learned ARC came to the conclusion that having proved the jural relationship of landlord and tenant, the respondent has also been able to prove his bona fide requirement and that there was no alternative suitable accommodation available. Finding no triable issue, the ARC dismissed the petition and in view of the aforesaid discussion, I find no reason to disagree with the learned ARC as the view taken by the learned ARC is a plausible view and warrants no interference.

10. The petition and application are dismissed.

CM No.12653/2014 (for directions)

1. By this application the respondent is claiming user charges from 27th January, 2014 till the disposal of the present petition.

2. Since this Court has decided the main petition, no orders are passed in the present application.

(MUKTA GUPTA)
JUDGE

January 15, 2015
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