

\$

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

CM(M) 345/2015

%

Decided on: 22nd April, 2015

SHAMSHAD ALI

..... Petitioner

Through: Mr. Manoj Kumar, Advocate.

versus

MUKHTIAR BEGUM

..... Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J (ORAL)

CM No. 7413/2015 (Exemption)

Allowed, subject to all just exceptions.

CM(M) 345/2015 and CM No. 7412/2015 (Stay)

1. Aggrieved by the order dated 28th February, 2015 dismissing the appeal of the Petitioner Shamsah Ali against the order of the learned ARC dated 13th December, 2013 dismissing his objections in Execution No. 41/2013, the Petitioner files the present petition.

2. Eviction petition was filed by Mukhtar Begum against Hamid Ali stating that Hamid Ali was a tenant in two rooms, open space and latrine in property bearing No. 1861, Suiwala Bazar, Gali Pattewali, Delhi-110006 (in short 'the tenanted premises') on a rent of Rs.100/- per month excluding other charges. It was stated that Shri Raees Ullaha, husband of Mukhtar Begum was the absolute owner of Property No. 1861, Suiwala Bazar (in short 'the suit property') having purchased the same vide registered Sale Deed dated 25th May, 1973 and 3rd December, 1981. Raees Ullah executed a

Will in his lifetime and thus Mukhtar Begum became the absolute owner of the suit property. The eviction petition was filed for the bona fide requirement under Section 14 (1) (e) of the Delhi Rent Control Act, 1958 (in short 'the DRC Act') due to the growing needs of the family of Mukhtar Begum which comprises of four sons and three daughters, two of whom were unmarried. It was further stated that Hamid Ali had sub-let the property or otherwise parted with the possession without the knowledge and consent of the landlord and was not living in the premises in question and had shifted to 1474, Chowk Sui Wallan, Delhi-110006. No leave to defend was granted to Hamid Ali and an eviction order was passed vide order dated 6th December, 2012.

3. In the meantime, Hamid Ali expired and his Legal Heirs filed a revision petition being R.C. Revision No. 18/2013 before this Court challenging the eviction order dated 6th December, 2012, which was dismissed on 4th April, 2013. Thereafter, Mukhtar Begum filed an execution petition wherein objections were filed by Shamshad Ali. In the objection petition Shamshad Ali stated that he along with his brother Irshad Ali were in exclusive, physical possession of two rooms set with open space in the ground floor of the suit property, that is, the tenanted premises. The LR's of the judgment Debtor Hamid Ali were not in possession of any portion of the tenanted premises. The Decree Holder invoked wrong provision of law, that is, bona fide requirement to seek eviction. The ownership of the Decree Holder was disputed.

4. Vide order dated 13th December, 2013, the learned ARC dealing with the objections held that in the objection petition Shamshad Ali admitted that he and his family members were in possession of the tenanted premises as

per mutual family settlement and the family of the objector was in occupation since last many years. No details of the family settlement have been given. A finding of landlord tenant relationship in respect of the Decree Holder and Judgment Debtor was returned which has been upheld by this Court. Once the relationship of the landlord-tenant between the Decree Holder and the Judgment Debtor was established a third party has no locus to challenge either the eviction order or its execution.

5. Against the order dated 13th December, 2013 Shamshad Ali filed an appeal before the learned Rent Control Tribunal which also upheld the order of the learned ARC and it was held that even assuming Shamshad Ali succeeded to the tenancy rights of Hamid Ali on the demise of their father, Shamshad Ali was well represented before the learned ARC and the legal heirs of the original tenant succeeded to the tenancy as the joint tenants and not as tenants in common.

6. Before this Court Shamshad Ali reiterates the same claim and states that he and his brother Irshad Ali were in exclusive possession of the tenanted premises and Hamid Ali and legal heirs were not residing in the premises. This fact has been disclosed by Mukhtar Begum in her eviction petition itself. There is no claim in the objection petition as to how Shamshad Ali entered the premises. Shamshad Ali merely denies the title of husband of Mukhtar Begum stating that Shri Wazirullah was not the landlord of the premises. He had no title in his favour. In fact the husband of Mukhtar Begum was known as Raees Ullah and in the eviction petition Mukhtar Begum fortified her claim to the ownership of the tenanted premises on the basis of the Sale Deeds executed in faovur of her husband and subsequently

a Will executed in favour of Mukhtar Begum which were all registered documents. Hence I find no merit in the petition.

7. Petition and application are dismissed.

(MUKTA GUPTA)
JUDGE

APRIL 22, 2015
‘vn’