

\$

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

RC.REV. 203/2015

%

Decided on: 28th April, 2015

HARISH LAMBA

..... Petitioner

Through: Mr. V.K. Gulati, Advocate.

versus

KASHMIRI LAL

..... Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J (ORAL)

CM No. 7854/2015 (Exemption)

Allowed, subject to all just exceptions.

RC.REV. 203/2015 and CM No. 7855/2015 (Stay)

1. Aggrieved by the order dated 3rd November, 2014 whereby the leave to defend was granted to the Respondent in an eviction petition filed by the Petitioner under Section 14 (1) (e) of the Delhi Rent Control Act, 1958 (in short 'the DRC Act'), the Petitioner prefers the present petition.
2. In the eviction petition, the Petitioner Harish Lamba stated that he was the owner of property bearing No. E-385 (DS), Ramesh Nagar, New Delhi-110015 (in short 'the suit property') wherein one corner shop was let out to Kashmiri Lal. Harish Lamba was having one drawing room, one bed room, one kitchen, toilet and one study room on the ground floor of the property where he is residing with his wife and minor daughter aged 13 years who is a student of 8th standard. Further on the first floor of the premises his son

Munish Lamba, his wife and their minor daughter are residing in two bed rooms, one store, toilet etc. There is one room on the top floor of the suit property which is in possession of the tenant. The wife of Harish Lamba was having one property E-338, First Floor, Ramesh Nagar, New Delhi and Harish Lamba has no concern whatsoever with the said property. Harish Lamba has got vacated two other shops in the same building from two tenants. By eviction of one shop by Munni Devi he has converted his kitchen by extending a small kothri and the shop got vacated from Ashok Puri has been converted into the study room for the minor daughter. Due to paucity of place his relatives etc. cannot visit him and thus he needs the tenanted premises, which is a shop on the ground floor.

3. In the leave to defend application it was pointed out that Kashmiri Lal, the Respondent was inducted as a tenant by late Shri Mulakh Raj Lamba and after his death his daughter in law Pushpa Lamba, that is, wife of Harish Lamba filed the eviction petition against Kashmiri Lal. Thereafter Munish Lamba sent a legal notice dated 29th June, 2005 claiming himself to be the owner of the property. Kashmiri Lal paid the enhanced rent to Munish Lamba but he failed to issue the rent receipts. Thereafter again notice was received whereby Harish Lamba asked Kashmiri Lal to tender rent to him. It is further submitted that the property is still in the name of Smt. Pushpa Lamba in the revenue records and Harish Lamba was not the owner of the suit property. In the leave to defend application, it was further stated that the Petitioner has also filed eviction petition against the three other tenants of the three shops out of which two shops are lying locked as they were vacated and in one shop the Petitioner and his son were running the shop of food for pets.

4. Vide the impugned order the learned Trial Court considered the available accommodation including two shops lying vacant and that there was a Flat No. 388, Double Storey, Ramesh Nagar, which was in the name of wife of Harish Lamba which was adjoining the suit property. Further Smt. Pushpa Lamba has her own accommodation at Flat No.C-317, First Floor, Vikas Puri.

5. As noted above in the eviction petition itself the Petitioner stated about the number of rooms which are available. Prima facie, sufficient accommodation was available in the suit property where the Petitioner and his family members were residing. Moreover no material was placed on record as to how the two shops which were got vacated were used except a bald assertion. Since the Respondent Kashmiri Lal has raised triable issues as noted above no illegality can be attached to the impugned order granting leave to defend.

5. Petition and application are dismissed.

(MUKTA GUPTA)
JUDGE

APRIL 28, 2015
‘vn’