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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RC.REV. 211/2015 and CM No. 8090/2015 (Stay)

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Decided on: 26th May, 2015

VIPIN KALRA

..... Petitioner

Through: Mr. Rajeev Verma and Mr. Naveen
Chandra, Advocates.

versus

VIDHYAWATI

..... Respondent

Through: Ms. Gyan Mitra, Advocate.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J (ORAL)

1. Aggrieved by the order dated 23rd January, 2015, whereby the leave to defend filed by the Petitioner Vipin Kalra in an eviction petition filed by the Respondent Smt. Vidhya Wati under Section 14 (1) (e) of the Delhi Rent Control Act, 1958 (in short 'the DRC Act') was dismissed, the Petitioner prefers the present petition.

2. In the eviction petition, Smt. Vidhya Wati stated that one shop at the ground floor of property No.E-8, East Chander Nagar, Delhi, that is, privately numbered Shop No.1 (in short 'the tenanted premises') was let out by the deceased husband Vidhya Wati to Vipin Kalra at a monthly rent of Rs.100/- which was enhanced from time to time. Vidhya Wati, aged 68 years, was the owner and landlord of the suit property E-8, East Chander Nagar, Delhi. Smt. Vidhya Wati along with her three sons, their wives and children, that is, 13 members of the family is residing in the suit property. Her three daughters, who were married, were living in their matrimonial

home but frequently visited Vidhya Wati and other family members at least once a week.

3. The suit property consists of six shops of different sizes and out of which three shops were on the main road which were numbered Shop Nos. 1, 2 and 3. Shop Nos. 1 and 2 were in the tenancy of the Petitioner Vipin Kalra and Shop No. 3 was with Vidhya Wati's son namely Pooran. The other three shops measuring 5 ft x 8 ft were on the street side and were given private shop Nos. 4, 5 and 6. Shop Nos. 4 and 5 were with Vidhya Wati's son Narender while Shop No.6 was with Nirmal Kant Gaba. She explained the position of all the rooms occupied by her family on the ground floor and the first floor. It is stated that Vidhya Wati's elder son Suresh Kumar was unemployed and for this reason he could not be married with some suitable girl. Vidhya Wati could not start some business for him due to paucity of accommodation and the said son expired in the month of March, 2012. Vidhya Wati's son Chander Sain was doing a private job and earning salary of Rs.8,000/- which was not sufficient to maintain his family and thus he wants to start his own business. Vidhya Wati needs private shop No. 6 for extending the business of her son Narender and private Shop No.1 for her second son namely Chander Sain and private Shop No.2 occupied by Bhajan Lal for extending hardware business of her son namely Pooran Chand. Her sons are facing great hardships due to lack of accommodation.

4. In the leave to defend application Vipin Kalra took the plea that earlier Vidhya Wati filed petition under Section 14 (d) against Bhajan Lal which was dismissed and the appeal against the said order was also dismissed. It is stated that there was no bona fide requirement and besides the suit property Vidhya Wati was also the owner and in possession of the entire property B-

6, Subhash Gali, Chander Nagar, Delhi which was four storyed building and the ground floor of the said building was in tenancy of Subhash Chaurasia and the first floor and the third floor were having three rooms each which were lying vacant. Her two married sons were running three shops from E-8, Chandar Nagar, Delhi, that is, the suit property. The tenancy was created with Vipin Kalra on 1st January, 1979 through an oral agreement and the building was old in dilapidated condition. Chander Sain, son of the Petitioner has various businesses at Chandni Chowk like brokerage of jewellery, shares and accountancy etc. Chander Sain is not dependant on Vidhya Wati. Thus the three shops in the suit premises in the tenancy of Bhajan Lal, Vipin Kalra and Smt. Nirmal Kant Gaba were not required bona fidely.

5. After hearing the parties, the learned ARC vide the impugned order declined to grant leave to defend on the ground that Vipin Kalra has not disclosed any other property which could be said to be suitable, alternate accommodation and hence in view of the vague assertion no triable issue was raised against him.

6. Before this Court the main ground urged by the Petitioner is that Smt. Vidhya Wati filed another eviction petition E-32/2012 titled as ‘Vidhya Wati vs. Bhajan Lal’ wherein on identical facts the same learned ARC vide its order dated 10th September, 2014 granted leave to defend which order has been upheld by this Court vide order dated 12th March, 2015 in RC Revision No.345/2014. Thus the Petitioner claims parity.

7. Learned counsel for the Respondent on the other hand contends that the shop from Bhajan Lal was required for the expansion of the business of Pooran Chand and Vidhya Wati wanted to merge her son’s shop with that in tenancy of Bhajan Lal however, in the present case the eviction is sought for

on the ground that the Petitioners other son Chander Sain was doing private job and drawing a salary of Rs.8,000/- thus he wants to start his own business. Thus the present requirement is not of additional accommodation.

8. I have heard learned counsel for the parties.

9. Vide the impugned order the learned Trial Court considered the fact that in the reply to the leave to defend application wherein it was stated that B-6, Subhash Nagar, Chander Nagar, Delhi has been sold and the same was residential and that Vipin Kalra has not disclosed any other property which could be claimed to be suitable alternate accommodation. However, a perusal of the eviction petition as noted above would show that all the three shops in the possession of the three tenants are being got vacated on one pretext or other, either for expansion of business or settling the son. Even in the eviction petition filed against Nimral Kanta Gaba leave to defend has been granted. Thus the present petition is required to be allowed on the ground of parity.

10. In view of the facts being similar and leave to defend having been granted in the connected matters, I am of the considered opinion that the learned ARC ought to have granted leave to defend to Vipin Kalra in the present eviction petition as well. Consequently, the impugned order is set aside. Leave to defend application filed by Vipin Kalra is allowed. Written statement be filed without four weeks. Replication be filed within four weeks thereafter. List the matter before the learned ARC on 16th July, 2015 when the parties will be present before the Court.

11. In view of the fact that the eviction petition is of the year 2012 and the hearing in the connected matters has also been expedited the learned ARC is

requested to expedite the trial and conclude the same preferably within a period of one year.

12. Petition and application are disposed of.

(MUKTA GUPTA)
JUDGE

MAY 26, 2015
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