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HIGH COURT OF DELHI AT NEW DELHI

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RC REV No. 310/2015

Decided on : 2nd September, 2015

MOHAN GUPTA

..... Petitioner

Through: Mr. Vineet Mehta, Advocate with Mr.
H.S. Dhawan, Advocate along with
petitioner in person.

Versus

B.K. NAGPAL & ANR.

..... Respondents

Through: Mr. Sunil Sabharwal, Advocate with
Respondent No.1 in person.

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

1. This is a revision petition filed by the petitioner against the order dated 31.1.2015 by virtue of which leave to defend of the petitioner was dismissed on the ground that it does not involve any triable issue and that the petitioner has not been able to show that the premises in question are required for mala fide needs by the respondent.

2. I have heard learned counsel for the petitioner and also gone through the impugned judgment.

3. Briefly stating the facts of the case are that the respondent herein is the owner and landlord in respect of the ground floor of property No.E-116, Ground Floor, East of Kailash, Delhi having purchased the same from the previous owner one Sushila Malhotra. The ground floor of the said suit property which is situated in East of Kailash is in occupation of the present petitioner who was inducted as a tenant almost four decades back by Sushila Malhotra whilst the respondent landlord is in occupation of the first floor of the suit property. It has been averred in the eviction petition that the petitioner (respondent herein) is having a house in Faridabad having construction only on the ground floor consisting of three bedrooms, drawing-cum-dining room and other modern amenities. While as the premises in possession of respondent/landlord consists of one room, drawing-cum-dining and other modern amenities. It is further averred in the eviction petition that the petitioner's (respondent herein) family consists of two sons; one of them is married having wife and two children while the other son is of marriageable age. In addition to this, the petitioner (respondent herein) also has two married daughters who often stay with him and because of paucity of accommodation; he is not able to live comfortably

and, therefore, eviction of the present petitioner/tenant was sought from the tenanted premises.

4. The petition for eviction was contested by the petitioner/tenant who took the plea that the respondent/landlord is not the owner of the suit property and that he was inducted as a tenant by Smt. Sushila Malhotra. It is alleged that so far as the respondent/landlord is concerned, he is claiming himself to be the owner on the basis of a power of attorney, agreement to sell etc. purported to have been executed by Sushila Malhotra in favor of one Shri B.K. Vadera. Further power of attorney and agreement to sell were executed by B.K. Vadera as attorney of Sushila Malhotra in favour of B.K. Nagpal. It has also been stated that the respondent/landlord had attacked the present petitioner on account of which a case FIR No.423/1989 under Section 307 IPC was registered by P.S. Tilak Marg, Delhi and that the present eviction petition is actuated on account of the ill will which the respondent/landlord had against the petitioner.

5. On the basis of the pleadings of the parties, the short point that arose for consideration before the learned ARC was with respect to the bonafide of the respondent/landlord herein in seeking eviction of the present petitioner/tenant. Subsequently, the petitioner had filed his leave to defend.

However, the only point that was averred in the said leave to defend was that the respondent does not have any bonafide requirement of the premises. Vide order dated 31.5.2015 the leave to defend was rejected and orders of eviction were passed by the learned ARC on the grounds that the petitioner/tenant had failed to substantiate the averments made with any cogent reason or evidence. Leading to the present revision petition.

6. I have heard the learned counsel for the petitioner. I have also gone through the record. During the course of arguments the only aspect which was raised by the learned counsel for the petitioner/tenant was with regard to the bona fide requirement of the tenanted premises by the respondent/landlord. I have considered the submissions. However, I do not agree with the contentions of the learned counsel for the petitioner that the petitioner has been able to create any doubt with regard to bona fide requirement of the respondent. As a matter of fact, the petitioner has lived in the suit property for last more than four decades on a paltry sum of Rs.425/- by way of rentals.

7. Today the petitioner is taking the plea of the respondent not being the owner of the suit property but the fact of the matter remains that the petitioner had paid and attorned the rent to the respondent herein. Further, as

recorded by the learned ARC the petitioner/tenant had in his own deposition dated 20.05.1994 and 08.08.1994 on FIR No.423/1989, PS Tilak Marg had admitted that he is the tenant and the respondent herein is the landlord and therefore is stopped from disputing the same. In light of aforesaid the petitioner having admitted the respondent to be the landlord cannot be now permitted to turn turtle and contest the ownership rights of the respondent in respect of the suit property.

8. During the course of arguments, the petitioner was also offered time by the respondent's counsel on instructions. However, though initially he had accepted the offer, but during the course of arguments, he made scandalous and baseless allegations that the respondent is helping out persons involved in construction activities. It was also alleged by the petitioner that the present malls are being run by a group of people who are inimical towards him and accordingly he had sought quashing of the order of eviction as well as recall of the order so as to grant him permission to contest.

9. I have carefully considered the submissions and I feel satisfied that the judgment rejecting the leave to defend and passing a decree of eviction

is correct as the petitioner has failed to establish prima facie any triable issue in the matter.

10. For the aforesaid reasons, the revision petition is dismissed.

V.K. SHALI, J.

SEPTEMBER 02, 2015
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