

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RC.REV. 43/2015**

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Decided on: 29th January, 2015

AMARJIT SINGH

..... Petitioner

Through

Mr. Khusbhir Singh, Ms. Guncha
Anand, Advs.

versus

RAVINDER KUMAR KANDH

..... Respondent

Through

Mr. Anil Sharma, Adv.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

CAVEAT 43/2015

Learned counsel for the caveator enters appearance. Caveat is discharged.

CM 1225/2015

Exemption allowed subject to just exceptions.

CM 1226/2015

For the reasons stated in the application the delay of 10 days in refilling the petition is condoned.

RC.REV. 43/2015 & CM 1224/2015 (stay)

1. The petitioner challenges the order dated 30th October, 2014 whereby the leave to defend application filed by the petitioner was dismissed in an

eviction petition filed by the respondent under Section 14(1)(e) of the Delhi Rent Control Act (in short the DRC Act).

2. In the eviction petition, the respondent pleaded that the respondent was the owner of the properties bearing No. 8697, 8698, 8699, 8700 and 8702 at Mohalla Bhar Garh, Near Palace Cinema, Gali SBI, Roshanara Road, Delhi which were merged together as one property and the total area of the five properties was approximately 90 sq.yds. In the said suit property one room on the ground floor of property No.8700 was given on tenancy to the mother of petitioner Smt. Davinder Kaur. On her death the tenanted premises devolved on her husband and thereafter on her husband's death on the petitioner herein. The brothers of the petitioner shifted from the tenanted premises during life time of their mother who were also impleaded as respondents No.2 to 4 in the eviction petition. The respondent/eviction petitioner stated that his family consisted of his wife, two sons of marriageable age and two married daughters. The younger son was doing engineering whereas the elder has completed the same. The respondent is in possession of first floor and second floor of the suit property comprising of one bed room, one kitchen, one drawing room and one dining room on the first floor and one room, bathroom, open terrace and one dilapidated room on the second floor which is used for store and washing of the clothes. The wife of the respondent is suffering from spinal problem and the Doctors have advised her not to climb stairs. Therefore one room is required on the ground floor for the wife and the other room for converting the same into kitchen. Further the respondent was also suffering from arthritis and thus it was difficult for him to climb the stairs. Thus since both the respondent and

his wife would be living on the ground floor they would also need space for bathroom for themselves. It is stated that the respondent also requires a guest room for the married daughters when they come and one room for pooja. Further one room was being used as garage, the other for store to keep household articles. Since sons of the respondent are of marriageable age they would also need independent rooms for their personal needs.

3. The petitioner filed leave to defend application wherein he pleaded that the respondent had not disclosed the existence of Will in his favour, that additional accommodation was available at Shastri Nagar and a DDA Flat at Rohini and that the respondent and his dependents were in occupation of three rooms, kitchen with WC on the first floor, three rooms and WC on the second floor and an open terrace which was sufficient accommodation for the respondent and his family members to live comfortably and that one room of premises 8698 was lying vacant on the ground floor. Thus the entire thrust in the leave to defend application was on sufficient accommodation available with the respondent and thus there was no bona-fide requirement.

4. The petitioner placed no material before the learned ARC to show that the respondent had additional accommodation at Shastri Nagar and DDA Flat at Rohini nor gave details of the said properties and in the reply to the leave to defend application, the respondent denied that he had alternate accommodation at Shastri Nagar or DDA Flat at Rohini. Without any particulars having been given this plea could not have been taken any further.

5. As regards the available accommodation, the respondent placed on record a site plan. The respondent has explained that the vacant place available at premises 8698 on the ground floor was being used as a garage and the other as a store room and to park the motorcycle of his son. No counter site plan has been filed by the petitioner. From the site plan filed by the respondent it was clear that the accommodation on the first floor and the second floor was not sufficient for the respondent, his wife, two marriageable sons, guest and the married daughters.

6. This Court in Harish Kumar & Ors. Vs. Manmohan 2012 V AD (Delhi) 450 held that a mere bald assertion by the tenant that the landlord has in his possession number of rooms without any document to substantiate the same cannot in any manner raise a triable issue. In Ramesh Chand Vs. Uganti Devi 157 (2009) DLT 405 this Court held that if a tenant alleges that landlord has at its disposal other accommodation he has to place before learned ARC some material to show that the landlord has a specific alternate accommodation at his disposal. Mere bald allegations with respect to availability of additional accommodation with the eviction petitioner do not hold any basis and cannot be the reason to deny the petitioner of his right to get vacated the tenanted premises for his bona-fide requirement.

7. In view of the medical records placed on record and the ailment of the respondent and his wife and the advice of the Doctor not to climb the stairs and from the material on record it was evident that the respondent needed space on the ground floor and hence the decision of the learned ARC declining to grant leave to defend and directing the petitioners to vacate the

premises cannot be stated to be a view which was not plausible or suffer from any illegality.

8. Petition and application are dismissed.

(MUKTA GUPTA)
JUDGE

JANUARY 29, 2015
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