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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Decided on: 20th May, 2015

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RC.REV. 256/2015 and CM No. 9430/2015 (Stay)

SMT MADHU MANAK TALA

..... Petitioner

Through: Mr. Purushottam Kumar, Advocate.

versus

SH MOHD HANIF

..... Respondent

Through: None.

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RC.REV. 259/2015 and CM No. 9442/2015 (Stay)

MADHU MANAK TALA

..... Petitioner

Through: Mr. Purushottam Kumar, Advocate.

versus

BHIM SEN

..... Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J (ORAL)

1. The two petitions are being taken up together for the reason in the two eviction petitions under Section 14 (1) (e) of the Delhi Rent Control Act, 1958 (in short 'the DRC Act') filed by the Petitioner Smt. Madhu Manak Tala, the two Respondents, that is Mohd. Hanif and Bhim Sen were granted leave to defend vide the impugned orders dated 13th April, 2015.

2. Mohd. Hanif and Bhim Sen are tenants in respect of private shop Nos. 8 and 2 respectively in the property bearing No. 106, Ground Floor, Malviya Nagar, New Delhi owned by Smt. Madhu Manak Tala. In the eviction

petition Smt. Madhu Manak Tala took the plea that the two shops on the ground floor were let out to the Respondents by her father wherein the father of Mohd. Hanif started the work of barber which was continued by Mohd. Hanif and father of Bhim Sen started the business of electrical goods and Bhim Sen continued the same. She stated that despite termination of the tenancy on account of non-payment of rent and mis-user, the building being in dangerous condition required to be demolished and required bona fide, the premises ought to be vacated. In the eviction petition Madhu Manak Tala stated that in compliance of the order of the learned Civil Judge, the first and the second floor of the building has to be demolished as the same are in dangerous condition and thus the Petitioner wants to shift herself on the ground floor and needs the tenanted premises for her use and occupation for residential purpose. Further as per the Master Plan, 2021 and in compliance of the guidelines of the Hon'ble Supreme Court the shops are required to be vacated for the reason of mis-user. The entire residential premises is dilapidated and dangerous to life and property of the habitants. Since the demolition of the first and second floor would cause paucity of the accommodation, thus Smt. Madhu Manak Tala and her mentally retarded daughter needs to shift on the ground floor for which the eviction of the said portion is necessary and there is no other reasonably suitable accommodation.

3. In the leave to defend applications, filed by the Respondents, identical pleas were taken. It was stated that prior to the present petitions Smt. Madhu Manak Tala filed several eviction petitions on the grounds of arrears of rent, causing damage to property etc. which were finally dismissed and thus frustrated by the same she filed a civil suit stating that property No. 106,

Ground Floor, Malviya Nagar, New Delhi is dilapidated and the wall and the roof have developed many cracks which may lead to collapse of the building any moment and prayed directions from the Court thereby directing the Municipal Corporation of Delhi to demolish the entire property. The Court disposed of the application under Order XXXIX Rule 1 and 2 CPC on 3rd January, 2011 and directing Smt. Madhu Manak Tala to carry out demolition of first and second floor without causing any damage to the structure existing on the ground floor. Thus in the garb of the said order the present eviction petition has been filed claiming bona fide requirement. It is further stated that the two tenanted shops were lying sealed by MCD pursuant to complaint by the Petitioner to the Monitoring Committee of MCD. Further the rear portion on the ground floor of the suit property behind the tenanted shops was previously occupied by telegraph office which had been vacated in the year 2008 whereafter Smt. Madhu Manak Tala let out the same to a Sangeet Niketan Dance and Music School. The rear portion consist of one bedroom, drawing dining room, covered veranda, toilet, kitchen and bath etc. and was vacated by the principal of the Dance and Music School in August, 2012. The Dance School is now shifted from B-106, Malviya Nagar to L-73, Malviya Nagar, New Delhi. Thus the rear portion of the suit property was available for Smt. Madhu Manak Tala for occupation as residence. It was further stated that Smt. Madhu Manak Tala has another residential accommodation at A/94, Shivalik, Malviya Nagar and has vacant possession of property bearing No.C-2, Malviya Nagar, New Delhi. The maintainability of the petition under Section 14 (1) (e) of the DRC Act was also challenged and it was stated that only a petition under Section 14 (1) (f) and (g) DRC Act was maintainable. Further the tenanted shops could not be used as

residence as there is no ventilation facility or toilet, bath and kitchen etc. and the two shop measured around 7' x 9' only.

4. In the reply to the leave to defend application Smt. Madhu Manak Tala denied that in the garb of demolition order sought from the Civil Court vacation of the tenanted premises was sought. It was reiterated that the building was in dilapidated condition. She denied having any concern with the property No. A/94, Shivalik, Malviya Nagar and that the property No.C-2, Malviya Nagar, New Delhi was a small shop which cannot be used for residential purpose. The factum of the rear portion on the ground floor of the suit property being available was not denied however, it was stated that such a short space available to her was not sufficient to meet her and her family members' requirement for the residential purpose. In reply it was also admitted that the MCD had sealed the tenanted shops on account of mis-user and the Respondents cannot take the benefit thereof.

5. Learned ARC vide the impugned order came to the conclusion that there is no explanation why the rear portion of the suit property was not suitable as residential accommodation and that Smt. Madhu Manak Tala has not categorically denied her interest in the property No.A/94, Shivalik, Malviya Nagar. Thus in view of the availability of the residential area at the rear portion of the ground floor of the suit property, the leave to defend was granted.

6. The contention of the learned counsel for the Petitioner before this Court is that the Petitioner has no alternate accommodation available. No material has been placed on record by the Respondents to show that the Petitioner owns House No.A/94, Shivalik, Malviya Nagar and thus merely on a bald assertion leave to defend has been granted. No triable issue has

been raised. Both the tenanted shops are lying sealed by the MCD. The Petitioner has already closed the upper portion of the premises in compliance of the order passed by the Court directing demolition of the first and the second floor of the suit property. None of the facts as pleaded by the Respondents required adjudication hence the impugned order be set aside and eviction order be passed.

7. I have heard learned counsel for the Petitioner at length.

8. As noted above it is not disputed that the Petitioner is in possession of the first and second floor of the suit property B-106, Malviya Nagar, New Delhi. Since the same is in dilapidated condition the Petitioner, after failing in eviction petitions against the Respondents filed a civil suit seeking permission to demolish the suit property so as to reconstruct the same and the learned Civil Judge granted relief of demolition of the first floor and the second floor of the suit property. The two tenanted shops are lying closed due to sealing by MCD which fact has also not been disputed. Further the Petitioner does not dispute the availability of the accommodation on the rear side of the ground floor and only contends that the same is insufficient. The Respondents have given the exact area measurement and the fact that the one bedroom, drawing dining room, covered veranda, toilet, kitchen and bath etc. are available in the rear portion on the ground floor where earlier a dance school was being run. The Petitioner claims that the accommodation on the rear portion of the ground floor is insufficient for her. Though the landlord is the best judge of his requirement which cannot be dictated either by the Court or the tenant, however, the fact that the requirement of the Petitioner is temporary till the first and second floor are reconstructed cannot be lost sight of. Thus whether the accommodation on the rear side of the ground floor is

sufficient for the residential purpose of the family of the Petitioner for the temporary period till the first and the second floor are constructed is a triable issue which is required to be decided by the Court.

9. Hence I find no illegality in the impugned orders granting leave to defend to the Respondents. Consequently, the petitions and the applications are dismissed.

(MUKTA GUPTA)
JUDGE

MAY 20, 2015
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