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HIGH COURT OF DELHI AT NEW DELHI

Decided on: 19th October, 2015

+ **RC.REV. 370/2015**

MADHU GUPTA Petitioner
Through: Mr. Raj Kumar Mittal, Advocate with
Petitioner in person.

Versus

MUKESH BANSAL Respondent
Through: Mr. Sukumar Pattjoshi, Senior Advocate
with Mr. S. Shantanu, Advocate &
Mr. Pratap Shanker, Advocate.

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 23.04.2015 by virtue of which the petitioner's leave to defend has been rejected and an eviction order has been passed in respect of a shop more particularly shown in red in the site plan annexed to the eviction petition.
2. I have heard the learned counsel for the petitioner and Mr. Pattjoshi, the learned senior counsel for the respondent-landlord. I have also gone through the record.

3. Before dealing with the submissions of the leaned counsel for the parties, it may be pertinent here to give brief background of the case.
4. The respondent-landlord filed an eviction petition in respect of a shop under the tenancy of the present petitioner. It was claimed by him that he is the owner of the property bearing No.24/3, Shakti Nagar, Vyas Marg, Delhi-110 007 on the basis of a Will dated 24.05.2010 executed by his father. He claimed that he required the premises bona fide for himself and for his wife both of whom are stated to be cancer patients. It has also been alleged in the eviction petition that the mother of the respondent-landlord is bedridden and suffering from old age ailments which requires frequent medical treatment from the hospital as well at home because of which it becomes impossible for them to bring her to the ground floor from the third floor and then take her to the hospital. The respondent-landlord has also stated that they need the shop in occupation of the present petitioner-tenant for having a gate on the main 40 ft. wide road from the shop in question. It was stated that the service lane has a width of only 15 ft. which is invariably dug up because of

which it is not possible for the ambulance to come and pick up the patient.

5. The present petitioner-tenant filed his leave to defend and contested the claim. It was contended by him that the requirement of the respondent-landlord is not bona fide and the present plea of shifting of mother to the ground floor or even the property having no access from the rear was only ruse to seek unlawful eviction of the present petitioner. It was stated that the respondent-landlord himself intends to settle abroad along with his son and daughter and therefore, the present eviction petition is totally misconceived. It has also been stated by the learned counsel for the respondent that there are three shops on the ground floor and in respect of one shop which is similarly placed to the shop of the present petitioner, the same Rent Controller has already granted leave to defend and there was absolutely no reason for denying the leave to defend to the present petitioner.
6. Mr. Sukumar Pattjoshi, the learned senior counsel contested the claim by stating that there was no parity in the case in hand with the case in which the leave to defend was granted. Moreover, it

was stated that this was not the plea taken by the petitioner-tenant in the leave to defend application and therefore, could not be considered.

7. I have carefully gone through the record and thoughtfully considered the submissions of the learned counsel for the parties.
8. The very fact that the respondent-landlord is claiming the possession of the ground floor shop on two counts, namely, on account of shifting of his mother to the ground floor and in the same breath stating that he wants to have a gate from the said shop for access from the front road so as to permit the patients to be taken to hospital is clearly a contradictory stand. This is because of the fact that in case a gate is opened from the shop then the shop in question cannot be used for bringing the mother of the respondent-landlord to the ground floor, if that be so, then there was hardly any occasion or genuine cause on the part of the respondent-landlord to get the premises vacated on that score. I feel that by hook or crook the respondent-landlord wants to evict his tenant. It is not a case where he does not have access to the house. Since he has been using the back portion for entrance during all these years of his

residence. Even in 2012 when the legal notice was given by the respondent-landlord to the petitioner, he did not mention the bona fide need for using the tenanted shop for access into the house on the basis of which eviction was allowed vide impugned order. This clearly shows that the plea which has been taken by the respondent is prima facie not bona fide and cannot be summarily believed so as to order the eviction of the present petitioner. Even the order which has been returned by the learned ARC is very cryptic and without any detail. I feel that this is a fit case where the leave to defend should be granted to the petitioner-tenant in order to enable him to contest the petition. I accordingly, set aside the impugned order dated 23.04.2015 and grant the leave to defend to the present petitioner-tenant.

9. The petitioner shall file his written statement within 30 days from today.
10. Parties are directed to appear before the learned ARC on 16.11.2015.
11. With these directions, the revision petition is allowed.

12. Pending application also stands disposed of.

V.K. SHALI, J.

OCTOBER 19, 2015
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