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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ RC.REV. 298/2012 & C.M. Nos.11709/2012 & 10532/2014
MOHD IRFAN & ORS

..... Petitioners

Through Mr. Bahar U Barqi, Adv.
versus

MOHD AHMAD DECD THR LRS & ORS

..... Respondents

Through Mr. Waseem Firoz, Adv.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **29.03.2016**

The petitioner is aggrieved by the impugned order dated 18.04.2012 vide which in the pending eviction petition filed by the landlord under Section 14 (1)(e) of the Delhi Rent Control Act (DRCA), the application filed by the tenant seeking leave to defend had been dismissed.

Record shows that the present eviction petition has been filed by three landlords. They are stated to be owners and landlords of premises No. 2195, Katra Mehar Parwar, Kucha Nahar Khan, Kucha Challan, Darya Ganj, Delhi which comprised of two rooms, one kitchen with facilities of bath room and latrine and open space on the ground floor besides two rooms, balcony and open space at first floor along with bathroom-cum-toilet and a shed of RCC with open court yard. It had been tenanted out to the tenant at monthly rent of Rs.50/-. Petitioners No. 1 & 2 are stated to be living in premises No. 2195, Mehar Parwar Street, Mucha Nahar Khan, Mucha Challan, Darya Ganj and petitioner is stated to be residing in property No. 1047,

Pathak Mufti Walan, Tiraha Farahm Khan, Darya Ganj. The family members of petitioner No. 1 are stated to be two sons and two daughters and that of petitioner No. 2 is three sons and two daughters. The family of petitioner No. 3 has not been disclosed. The application seeking leave to defend had been filed by the tenant within the stipulated period. Attention has been drawn to para 5 of the application wherein it has been specifically averred that in property No. 2195, there is one complete floor which is lying vacant and property No. 1047 which is a big property described as 'mahal' and containing a large number of rooms which are lying vacant. The corresponding paragraph of the reply filed by the landlord to this application has also been perused. There is no specific denial of this averment which is categorically mentioned by the tenant and at the cost of repetition which is to the effect that there is one complete floor in property No. 2195 and in property No. 1047, there are several rooms which are lying vacant. The Trial Court had probably not considered these submissions and had decreed the eviction petition.

Before this Court, an affidavit had been directed to be filed by the respondents. In this affidavit, which is of petitioner No. 3, it has been disclosed that there is ground, first and second floors in the property bearing No. 1047 of which ground floor comprised of one room, kitchen, latrine and verandah. The first floor comprised of two rooms, kitchen and one store and second floor comprised of two rooms and bath room. The family of petitioner No. 3 who is alone living in this property is himself and his two sons. His unmarried sister who was residing with him has since expired. His wife has

also unfortunately expired.

Learned counsel for the petitioner submits that the Trial Court having passed the impugned order decreeing the eviction petition in favour of the landlord has committed an illegality as besides the fact that the family of petitioner No. 3 has not been disclosed, the specific averment made in para 5 of the application seeking leave to defend filed by the tenant wherein it has been averred that there is a complete floor in property No. 2195 which is lying vacant and several rooms in property No. 1047 also lying vacant and there being no specific denial to the same, the Trial Court having decreed the eviction petition has committed an illegality. This submission of the learned counsel for the petitioner has force. This Court also notes that in the affidavit filed before this Court, petitioner No. 3 has disclosed the family to be three persons and the details of the accommodation in property No. 1047 have also been noted supra.

Triable issues have arisen. Leave to defend is accordingly granted to the tenant. Written statement be filed by the tenant within three weeks with advance copy to the learned counsel for the landlord who may file his rejoinder before the next date. Parties are directed to appear before the ARC on 22.04.2016.

Petition disposed of.

INDERMEET KAUR, J

MARCH 29, 2016

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