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

+ RC.REV. 271/2015 & C.M. No.10240/2015

M/S FIRE FIGHTING (DELHI) PVT LTD

..... Petitioner
Through Mr.Kirti Uppal, Sr. Adv. with
Mr.R.S.Sahni and Mr. Sidharth,
Advocates

versus

UDAYJEET PRAKASH

..... Respondent
Through Mr.Sanjiv Bahl, Advocate.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **18.03.2016**

Petitioner/tenant is aggrieved by the order dated 24.02.2015 vide which his application seeking leave to defend in a pending eviction petition has been declined. His submission is that bona fide need of the landlord was not made out. He has also addressed his submission on an other ground which is to the effect that a co-owner by himself cannot file an eviction petition. His contention being that if the co-owner had taken over the share of the other co-owner (who had relinquished his share in his favour vide relinquishment deed); the

bar of Section 14(6) of the DRCA (which is that pursuant to a transfer, a landlord cannot file an eviction petition for a period of 5 years), would operate.

Learned counsel for the petitioner hereafter has now given up his challenge on last two said submissions.

His contention now is only based upon the bona fide need of the landlord; submission being that this need was not bona fide. In para 10 of his application seeking leave to defend, it is stated that the accommodation available with the landlord is four bed rooms, one drawing, one dining room, one puja room, three stores, one kitchen, three toilets, one lobby, two verandah, lawn, one garage on the ground floor and two rooms and one bath room on the first floor of the property and this being an admitted, the accommodation available with the landlord is sufficient.

Needless to state that these arguments have been refuted. Reliance has also been placed upon Laxmi Narain Vs. Bhagwanti in RCR No.48/2009 decided on 30.08.2011, Sudershan Dutta Vs. Krishan Nrain & Others in C.R. No.190/1997 decided on 23.05.1997 as also Rajender @ Rajender Kumar Vs. Raj Bala in R.C. Rev.

No.346/2012 decided on 16.12.2013.

Arguments heard.

The eviction petition discloses that the suit property is the first floor in property bearing No.33, Sundar Nagar, New Delhi. The landlord has disclosed that his family comprises of himself, his wife, one married son and one daughter. His son is dependent upon him for his residence. The close relations of the petitioner visit him. There is no room for accommodating his guests. His son-in-law who is a resident of Guwahati also visits them but due to paucity of accommodation there are embarrassed. Presently, he has only four bed rooms besides a drawing-cum-dining room which are situated on the ground floor; this accommodation is not sufficient for him. The petitioner requires two bed rooms for himself and his wife, two bed room for his son and daughter-in-law, one bed room for his daughter, two bed rooms for their visiting guests, one room as a puja room, one drawing room and one dining room. This is as per his status. The bona fide need of the landlord for the accommodation on the first floor which is presently with the tenant is accordingly made out.

Leave to defend application was filed by the tenant. The

foremost contention as noted by the learned senior counsel for the petitioner is premised on the submission that the need is not bona fide; it is difficult to believe that each married couple requires two separate bedrooms which is the need projected in the eviction petition.

While refuting these arguments, learned counsel for the petitioner has placed reliance upon 68(1997) DLT 369 Sudershan Dutta Vs. Krishan Narain & Ors. His submission is that in that case, the Court also noted that two bed rooms are required by a married couple.

This Court has examined the factual matrix of the present case. The property is admittedly at Sundar Nagar, New Delhi which is on a plot area of more than 800 sq. yards. The accommodation in the occupation of the landlord as detailed by the landlord himself (in the eviction petition) is four bed rooms besides a drawing-dining room on the ground floor; three store rooms, one garage and servant quarters. The submission of the landlord that he requires two bed rooms separately for his wife and for himself as also two bed rooms for his married son and daughter-in-law is difficult to digest. It is not as if

the couples are estranged. The parties have cordial relations. Normally one bed room is required for one couple. This need has been projected only to build up an inadequacy of the living accommodation. The landlord admittedly has four bed rooms. One bed room for himself and his wife; one bed room for his married son; one bed room for his unmarried daughter and another bed room for his guests would be a sufficient accommodation. This Court has been informed that the married son of the landlord has been blessed with a daughter who is two years old. This position presuming it to be correct, the child in her tender years would be sharing the same bedroom as of her parents. That apart the already available accommodation which is four bed room as also separate drawing-cum-dining room three store rooms cannot be said to be an accommodation which is insufficient at this stage.

This Court is the view that triable issue on this count has arisen. Reliance by the learned counsel for the landlord on this judgment of Sudershan Dutta (supra) is misplaced. That was a property at Jawhar Nagar, Delhi where there was no store room. The Court had noted that the size of the bed room is very small and each

married couple had grown up children. It was in this scenario that the Court had noted that each married son requires two rooms; one for himself and one additional room his children as also to store his luggage. Reliance by the learned counsel for the petitioner upon the latter three judgments is also misplaced. Each case is based upon its own factual matrix and none of the facts disclosed in the aforementioned judgments match the situation. In the instant case the accommodation is in a more than 800 sq. yard plot area where there are three store rooms besides the accommodation already noted supra.

Triable issue had arisen. The impugned order is set aside. Leave to defend is granted to the petitioner-tenant. Written statement be filed by the tenant in four weeks with advance copy to the respondent-landlord who may file rejoinder before next.

Needless to state that any observation made in this order will not influence the Trial Judge at the time of passing final judgment.

Parties are directed to appear before concerned ARC on 25.04.2016.

INDERMEET KAUR, J

MARCH 18, 2016
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