

\$~37

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RC.REV. 305/2015 & C.M. No.11331/2015**
MOHAN LAL B MOORJANI

..... Petitioner

Through Mr. Mohit Madan, Adv.

versus

JAI SHANKAR MEHTA & ANR

..... Respondents

Through Mr. Gagan Preet Singh and Mr. Karan
BIr Singh, Advs.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **25.02.2016**

The landlord before this Court is Jai Shankar Mehta. The eviction petition filed by him under Section 14 (1)(e) of the Delhi Rent Control Act (DRCA) had been decreed in his favour. The leave to defend filed by the tenant Mohan Lal B. Moorjani had been dismissed vide order dated 26.02.2015. The petitioner is aggrieved by this finding. Attention has been drawn to the eviction petition as also to the application seeking leave to defend. It is pointed out that in the eviction petition which has been filed on the ground of a bonafide requirement; the accommodation available with the landlord has not been detailed; he is totally silent upon it. The site plan filed along with the eviction also does not disclose that there is a first floor. This information was elicited only when the tenant raised his objection in his leave to defend and in the reply filed by the landlord to the aforementioned application, he admitted that there are two rooms on the first floor but they are in a dilapidated condition. He

has also filed photographs of the said two rooms. A perusal of the photographs shows that there is a pukka cemented construction which appears to have been carried out in part on the first floor. The submission of the learned counsel for the tenant is that this pukka construction was stopped midway deliberately only to build up a ground for additional space, this submission is noted.

This Court notes that in the eviction petition filed by the landlord, he is totally silent on the accommodation which was available with him; he has set up a plea that the shop with the tenant is required to enlarge his residence as there are 9 members in his family and he is falling short of space. His 9 members include the petitioner Jai Shankar Mehta, his brother Vijay Shankar Mehta and their families.

In the application seeking leave to defend, a specific plea has been taken by the tenant that Vijay Shanker Mehta does not live in Delhi but he is a resident of Haridwar and casually comes to Delhi. This averment has not been specifically denied.

In the view of this Court, triable issues have arisen and the Trial Court having decreed the eviction petition ignoring the fact that it is an admitted case of the landlord that there was first floor (which even on the perusal of the photographs) shows that it was a construction which was of cement, mortar and brick which was being carried out; it appears to have stopped midway; why it has been stopped has not been answered by the landlord; this is an accommodation which could be available to the landlord. The triable issue on this count as also the need of the landlord and his family in view of the existing accommodation not having been detailed in the eviction petition but thereafter detailed

in the reply filed to the application seeking leave to defend also in the view of this Court raises a triable issue as there was no reason as to why the accommodation available with the landlord had not been disclosed including the accommodation on the first floor. The specific answer that Vijay Shanker Mehta was in Haridwar was also not specifically denied by the landlord.

The impugned order is accordingly set aside. Leave to defend is granted to the tenant. Written statement be filed by the tenant within four weeks with advance copy to the learned counsel for the landlord who may file replication thereafter.

Parties to appear before the concerned Trial Court on 14.03.2016.

Petition disposed of.

INDERMEET KAUR, J

FEBRUARY 25, 2016

A