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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RC.REV. 455/2015 & C.M. No.17558/2015 (stay)

MOTIYA RANI KATARIA & ANR

..... Petitioners

Through Mr. J.S. Bakshi, Mr. A.S. Bakshi and
Ms. Chaitanya Jain, Advs.

versus

RAJINDER TALWAR & ORS

..... Respondents

Through Mr. Puneet Taneja, Mr. Rajesh
Mahindroo and Ms. Shaheen, Advs.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

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09.03.2016

The petitioner is aggrieved by the order dated 01.08.2015 vide which in a pending eviction petition under Section 14 (1)(e) of the Delhi Rent Control Act (DRCA), leave had been granted to the tenant.

The submission of the learned counsel for the petitioner is that no triable issue had arisen and the finding of the Trial Judge on this count returned to the effect that this is a petition seeking additional accommodation and enough alternate accommodation is available with the petitioner on the ground floor itself in the form of property No. 1977 is a perverse finding as it is against the facts. It is liable to be set aside.

Eviction petition discloses that the this petition had been filed by the landlady under Section 14 (1)(e) of the DRCA. An earlier eviction petition had been filed which was a joint petition under Section 14 (1)(e) and Section 14-D of the DRCA. That petition had been

withdrawn. In this petition, the rented premises had been described as shop No. 1978, ground floor, Bank Street, Karol Bagh specifically shown in red colour in the site plan. Further contention in the eviction petition is that the petitioners are residents of property No. 1977-78, Gali No. 40, Hari Singh Nalwa, Naiwalan, Bank Street, Karol Bagh. The shop in dispute (with the tenant) is required bonafide by the landlady for the use of petitioner No. 1 who is the widow of Dharam Veer Kataria aged 68 years and suffering from various old age ailments including hypothyroidism, diabetes, heart problem and would require this shop in dispute for the purpose of her residence as it is on the ground floor. She has no other reasonably suitable accommodation available with her.

In the application seeking leave to defend, the vehement contention of the tenant was that the landlord has not come to the Court with clean hands. She has sufficient accommodation on the first, second and third floor. She has not disclosed the facts correctly. Submission being that the site plan filed along with the eviction petition is incorrect and is contrary to the site plan which she had filed in an earlier suit for permanent injunction which she had filed wherein she has stated that she is the owner and landlady of property No. 1978-79, Bank Street, Karol Bagh, New Delhi. This averment does find mention in this suit which is suit No...../2006 titled “Umesh Kataria Vs. Sushma Talwar” wherein contention of petitioner No. 2 is that he is the owner and landlord of property No. 1977-78, Bank Street, Karol Bagh, New Delhi. This finds mention in the address memo.

In the application seeking leave to defend, the triable issue sought

to be raised by the tenant was that property No. 1977 which is adjoining to shop No. 1978 is also owned by the landlord and this was vacant and deliberately not disclosed by the petitioner.

Reply was filed to this contention of the tenant wherein the landlord had stated that this property i.e. property No. 1977 was co-owned by Darshan Lal (brother of deceased Dharamveer Kataria) and Darshan Lal in his lifetime on 07.03.2000 had sold this property vide a registered sale deed to his son. Attention has been drawn to the aforementioned registered sale deed. Submission being that the contention of the tenant that this property was in occupation of the legal heirs of Dharamveer Kataria is a wrong contention and no triable issue arises on this point.

In the application seeking leave to defend, another specific averment had been taken by the tenant which was to the effect that in the year 2006, a suit for permanent injunction had been filed by Umesh Kataria (son of Dharamveer Kataria) (petitioner No.2) wherein it has specifically been stated that he is the owner of property No. 1977-78, Bank Street, Karol Bagh. This finds mention in the memo of parties as also in the affidavit by way of evidence filed by Umesh Kataria in the said suit. Although in one part of the affidavit, this property has been described as property No. 1978-79, Bank Street, Karol Bagh (instead of property No. 1977-78), but the counsel for the petitioner agrees that this could only be a typographical error.

Thus this averment which is contained in the plaint filed by Umesh Kataria in 2006 that he is the owner and landlord of property No. 1977-78, Bank Street, Karol Bagh is clearly contrary to the reply

which he had filed in the pending eviction petition (to the application seeking leave to defend) wherein he had stated that this property No. 1977, Bank Street, Karol Bagh had been sold by his uncle Darshan Lal to his son and he is not in possession of the property. This reflects upon the dishonest conduct of the petitioner. A party who does not come to the Court with clean hands is also not entitled to a discretionary relief.

The impugned order, in this background, holding that the triable issues have arisen is an order which suffers from no infirmity. Petition is without any merit. Dismissed with costs quantified at Rs.10,000/-

INDERMEET KAUR, J

MARCH 09, 2016

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