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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RC.REV. 501/2015 & C.M. No.19893/2015

TALIM AHMED

..... Petitioner

Through Mr.V.K.Khurana and Mr.Ishu Arora,
Advocates.

versus

MUKESH KUMAR

..... Respondent

Through Mr.Ankur Singhal, Advocate.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

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15.03.2016

Petitioner is aggrieved by the order dated 09.7.2015 vide which in the pending petition under Section 14(1)(e) of the Delhi Rent Control Act (hereinafter referred to as the DRCA). The application filed by the tenant seeking leave to defend had been dismissed.

Learned counsel for the petitioner/tenant is aggrieved by the said finding. The record discloses that the eviction petition had been filed by the landlord Mukesh Kumar qua shop No.553, in property no. 553, Chirag Delhi, New Delhi. The area of the suit property measured 11 feet x 9 feet. The bona fide need of the landlord has been disclosed in para 18 (a). This need has been described as the need of the landlord to get the shop evicted. As per him he is working in a rented accommodation at 399, Chirag Delhi and he is paying rental of Rs.4,500/- for the business which he is running. Further averments in

this paragraph is that this property is required by the petitioner for running his business as the business of the petitioner is growing and the petitioner has to visit different sites. His father is an educated person and being retired can look after the business of the petitioner. The accommodation is accordingly required by him. In the affidavit filed by the landlord a somersault has been taken. This has been brought to the notice of this Court by learned counsel for the petitioner (in this affidavit sworn by the landlord) it has been stated that the shop in question is required for the bona fide need of the landlord to settle his son Vipin; this does not find mention in the eviction petition. This affidavit annexed with the eviction petition is contrary to the averments in the petition.

At this stage, learned counsel for respondent-landlord points out that this is not the affidavit which has been filed in the Trial Court. This has been brought to the notice of this Court at the time when the Court was dictating the order.

This question is kept open and the Trial Court will deal with it accordingly. Learned counsel for the petitioner submits that even otherwise a triable issue has arisen for the reason that in the application seeking leave to defend a specific averment has been made by the tenant in para 7 wherein he stated that accommodation at 399, Chirag Delhi is owned by the landlord and apart from this he also has two other shops. In this paragraph, it has also been specifically stated that no document by way of rent receipt or rent agreement has been placed on record by the landlord to substantiate his submission that this accommodation at 399, Chirag Delhi is in fact a tenanted

accommodation. The corresponding paragraph of the reply filed by the landlord to this application seeking leave to defend has also been perused. Nowhere has it been explained as to whether this property i.e. at Shop No.399, Chirag Delhi is rented or owned; a simplicitor denial has been given. It appears to be evasive; whether this accommodation is owned by the landlord or whether it is a rented accommodation; is under a cloud; admittedly, no document of tenancy has been filed by the landlord before the Trial Court; this does raise a triable issue.

The impugned order decreeing the eviction petition is thus recalled. Leave to defend is granted to the petitioner-tenant. Written statement be filed by the petitioner-tenant in two weeks with advance copy to the petitioner who may file replication before next date.

Trial Court record be sent back.

Parties to appear before Trial Court on 25.4.2016.

With these directions, petition disposed of.

INDERMEET KAUR, J

MARCH 15, 2016

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