

\$~24

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

+ RC.REV. 520/2015 & C.M. No.21503/2015

RAMESH CHAND KHANDELWAL

..... Petitioner

Through Mr.Siddharth Aggarwal, Advocate.

versus

ROOP SINGH & ORS

..... Respondents

Through Ms.Suman N. Rawat, Advocate.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

%

02.02.2016

Petitioner is aggrieved by the order dated 30.3.2015 vide which in a pending petition under Section 14(1)(e) of the Delhi Rent Control Act the eviction petition had been decreed in favour of the landlord/respondent.

His submission is that triable issues had arisen. Trial Court did not consider the same in the correct perspective. His submission is that the suit property is located on the ground floor but the first floor of the property is lying vacant and unutilized; infact, in the first floor of the property a business was being run by the landlord at one stage but thereafter it was closed and since then it is lying vacant and unutilized. To support his submission that triable issues have arisen he has placed reliance upon an order passed by a Coordinate Bench of this Court in CM(M) 1164/2009 Nitin Garg Vs. Narsh Kumar Arora on 23.10.2009 as also in another judgment reported as 2014 (1) RCR(Rent) 18 Chaman

Lal Vs. Batuk Prasad Jaitly.

Per contra learned counsel for the respondent has disputed this submission. Her submission being that no triable issue has arisen and the landlord-respondent was not running any business in the first floor or in the second floor of the premises.

The Court while adverting to the submission and counter submission of the parties and arriving at a finding as to whether a triable issue has arisen has to consider the pleadings of the parties which includes the application seeking leave to defend, the reply to the said application as also the contents of the eviction petition. The documents annexed thereto are also relevant.

In the application seeking leave to defend the tenant has categorically stated that the first floor of the premises was being utilized by the landlord for a commercial purpose at some stage but now it is lying unutilized. In reply filed to this application seeking leave to defend (besides the fact that there is no para wise reply), the entire body of the reply does not at any point controvert the stand of the petitioner that the first floor was not utilised for a commercial purpose. It also does not specifically controvert the stand of the tenant that the first floor is now lying unutilized and vacant. The contents of the reply filed by the landlord show that the landlord is living on the second floor and he also intends to use the first floor as his residence; it is only an intention and not an actual user.

In view of the aforementioned factual matrix, this Court is of the view that triable issues have arisen. The impugned order is set aside.

Written statement be filed by the petitioner / tenant within three

weeks (from today) with advance copy to the landlord/respondent who may file rejoinder before next date.

Parties to appear before Trial Court on 22.02.2016.

Learned counsel for the respondent states that the rent is not being paid in the intervening period even at the admitted rate. Arrears of rent at the admitted rate of rent shall be cleared by the petitioner/tenant in two weeks.

Petition disposed of.

INDERMEET KAUR, J

FEBRUARY 02, 2016

ndn