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

+ RC.REV. 52/2016

ASHOK MITTAL

..... Petitioner

Through Mr.Shalabh Gupta, Advocate.

versus

BIRMA DEVI @ BRAHMO DEVI & ORS

..... Respondents

Through Mr.Harsh Vardhan and Mr.Syeed
Ahmed Imran, Advocates.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **16.05.2016**

C.M. No.3243/2016 (for condonation of delay)

In view of the averments made in the application, the delay of 30 days in refiling this petition is condoned. Application disposed of.

REV. 52/2016 & C.M. No.3242/2016 (stay)

Petitioner is aggrieved by the order dated 14.7.2015 wherein his application seeking leave to defend in a pending eviction petition stood dismissed. Submission is that the petitioner/tenant who all along submitted that there is no relationship of landlady and tenant between the parties and this has not been considered by the Trial Judge in the correct perspective.

Record shows that an eviction petition had been filed by the

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landlord under Section 14(1)(e) of the DRCA qua a shop measuring 8 x 17 sq. feet in the ground floor of property No.98-E, Hari Nagar Asharam, Delhi. The landlady was Virma Devi (petitioner no.1).

Leave to defend application had been filed by the tenant. His submission was that there was no relationship of landlady and tenant between the parties. He had become the owner of the suit property by virtue of certain documents executed by the landlord in his favour. Admittedly, these documents have been filed along with the application seeking leave to defend. These documents enlisted are the registered General Power of Attorney (GPA) dated 01.3.2002 followed by other documents of the same date i.e. the Special Power of Attorney (SPA), receipt of Rs.80,000/- as also an affidavit; submission being that all these documents reflect that the tenant had purchased this property from the landlady (Virma Devi) for a sum of Rs.80,000/-. Attention has also been drawn to the agreement to sell dated 01.3.2012 which was thereafter entered into between the parties. This document was notarized. This was followed by a possession letter of the same date. The tenant had also placed on record conversion charges paid for by him in the year 2010 to the MCD qua this property.

In the reply filed by the landlord to this application it had been stated that certain blank documents had been got signed by the tenant from the landlady which had later been filled. Relevant would it be to note that the landlady and did not dispute her signatures on the said documents. Learned counsel for the tenant submits that the signatures

of the landlady on these documents had not been refuted. That apart learned counsel for the petitioner/tenant has also drawn attention of this Court to another document which is dated 02.3.2015 i.e. the document of the cancellation of the SPA which had been executed by the landlady in favour of the petitioner. Attention has been drawn to the contents of this document. By virtue of this document the landlady had categorically stated that the earlier SPA executed by her in favour of the petitioner/tenant now stands cancelled. While signing this cancellation deed she stated that she had executed the SPA dated 01.3.2012 qua shop this property which now she wishes to cancel for the personal reasons. Learned counsel for the petitioner additionally submits that this document was executed after the leave to defend had been filed by the tenant.

Noting all these facts, the Trial Court has committed a clear illegality by decreeing the petition of the landlord under the summary procedure. Whenever any interest in immovable property actually stood transferred in favour of the tenant for the purpose of title may not be inferred but the question as to whether a triable issue had arisen or not definitely deserves to be answered in favour of the tenant. The tenant had raised a triable issue. All these aforementioned documents executed on 01.3.2012 were, at the cost of repetition, are not in dispute qua the factum of the signatures of the landlady appended on these documents which were followed by a subsequent deed of cancellation of the SPA wherein it was categorically stated that she had executed an SPA on 01.3.2012 which she now wishes to cancel.

Impugned order in this background is liable to be set aside. Accordingly impugned order dated 14.7.2015 is set aside. Leave to defend is granted in favour of the tenant. Petitioner-tenant is directed to file written statement within three weeks from today with advance copy to the respondent-landlord who may file replication before next date by the ARC.

List before concerned ARC on 11.7.2016.

Petition disposed of.

INDERMEET KAUR, J

MAY 16, 2016
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