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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RC.REV. 690/2015. C.M. No.32162/2015 & C.M. No.32163/2015

KRIPA SHARMA

..... Petitioner

Through Mr. Avadh Kaushik, Adv.

versus

ISHWAR DASS JINDAL

..... Respondent

Through None.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

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13.01.2016

This petition is directed against the impugned order dated 15.12.2015 wherein the leave to defend had been granted in favour of the tenant and he had been permitted to contest the petition by filing his written statement. The main ground which had weighed in the mind of the Trial Judge (as is evident from the impugned order) that admittedly one shop on the ground floor which had been got vacated by M/s N.K. Company was an alternate accommodation which was available to the petitioner and which had not been disclosed by her in her petition; only in her reply to the application seeking leave to defend she had admitted this fact but had stated that she had made a baithak/guest house in that accommodation.

This alternate accommodation which was available to the petitioner on the ground floor (which as per the petitioner is the only commercial area) is available to her and this has been correctly noted by

the Trial Judge. Moreover, it is also an admitted fact that the second and third floor of the property (the landlady is residing on the first floor) has also been rented out by the petitioner.

The eviction petition has been perused. The petitioner is a widow. She has in her grounds of eviction detailed that her bonafide requirement has been detailed in the Annexure annexed along with the petition which in turn discloses that the property owned by her i.e. property bearing No. 10286/87, First Floor, Gali Pathshala, East Park Road, Manak Pura, Karol Bagh, New Delhi comprises of the ground and three more floors; except the ground floor, other floors are residential. There are two shops on the ground floor both of which are under the possession of the tenants. The shop in possession of the present tenant has been highlighted in the site plan. Attention has also been drawn to the site plan. Her submission is that the petitioner wants to start a business to maintain her family and she has no funds to purchase a new property and as such this shop on the ground floor is required by her bonafide for running this business.

In the application seeking leave to defend, it had been disclosed by the tenant that there is another shop on the ground floor which had been vacated by one M/s N.K. Company and which is in possession and control of the petitioner. This fact was admittedly not disclosed in the eviction petition. It had come to light in the application seeking leave to defend and in her reply (filed by the landlady) to this application seeking leave to defend, it was admitted that M/s N.K. Company had vacated this premises but the contention of the landlady is that this shop vacated by M/s N.K. Company is now being used by for a baithak/guest

house.

Admittedly this shop is on the ground floor; it has been depicted as a room in the site plan. It opens out into the back side of the property in front of which there is a gali. The dimensions of the gali have not been noted but a perusal of the site plan show that it is not so narrow that a business cannot be run from this shop which has been vacated by M/s N.K. Company who was also admittedly using it for commercial purpose i.e. for running a shop.

In this view of the matter, this Court is of the view that the impugned order suffers from no infirmity as there is an alternate accommodation available with the petitioner which can be used for a commercial purpose.

The judgments relied upon by the learned counsel for the petitioner reported as (1997) 11 SCC 411 Raj Kumar Khaitan and Others Vs. Bibi Zubaida Khatun and Another as also 2013 (2) RCR (Rent) 120 Shri Gurcharan Lal Kumar Vs. Srimati Satyawati and Others are not applicable to the factual matrix of the case as the impugned order has not gone on the premise that the nature of the business has not been disclosed by the petitioner; the impugned order had noted that there was a concealment of fact and the fact that M/s N.K. Company has vacated the premises on the ground floor of the same property which was a commercial shop was an alternate accommodation which could be used by the landlady for running her business.

Triable issues had arisen and the matter was thus rightly sent for trial.

The petition is without any merit. Dismissed. Needless to state that any observation made in this order will not influence the final judgment.

INDERMEET KAUR, J

JANUARY 13, 2016

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