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

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Date of decision: 07.03.2017

+ RC.REV. 115/2017

NEELAM BHALLA

..... Petitioner

Through

Dr.Anurag Kumar Agarwal and
Mr.Umesh Mishra, Advocates

versus

JAGDISH KUMAR

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

CM No.9281/2017

Exemption allowed, subject to all just exceptions.

RC.REV. 115/2017

1. The present revision petition is filed by the petitioner under Section 25B (8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as the DRC Act) to impugn the order dated 11.01.2017 by which order the Additional Rent Controller (hereinafter referred as the ARC) dismissed the eviction petition on the ground that there is no municipal identity of the premises and that the petitioner is in defiance of the Municipal Laws. It however permitted the petitioner to again approach the court after due compliance of the Municipal Laws.

2. The petitioner filed the present eviction petition under Section

14(1)(e) read with Section 25 B of the DRC Act regarding municipal premises No. 16-A/1, New Krishna Nagar, New Delhi-110051. It is urged that the property was purchased vide a sale deed dated 24.01.2006 which is duly registered. There are four shops on the ground floor. It is also urged that the petitioner has been paying property tax in respect of the said property from time to time. The respondent/tenant was in possession of one shop out of the four shops and is said to be running a business of property dealing in the name and style of J.K.Properties. The shop, it is stated, is required bona fide by the petitioner for his requirements and hence, the eviction petition was filed.

3. The eviction petition came up for hearing on 09.02.2015 when notice was issued to the respondent returnable for 15.07.2015. Prior to the next date, the petitioner is said to have inspected the file and came to know that the summons sent through registered post and Process Server remained unserved and were returned to the court. The Process Server had visited the tenanted premises and found the shop shut. He has also mentioned that whenever he visited the said shop for service of summons, he found the door of the shop closed. He has also noted that when he reached the other address of the respondent where he resides, the daughter of the respondent said that the father was not at home. Hence, on 14.08.2015 the petitioner moved an application for substituted service under Order 5 Rule 20 CPC praying for service of summons by way of affixation. The said simple application for substituted service was kept pending for a long period. On 10.11.2016 after a lapse of considerable time, the petitioner moved a transfer petition for transfer of the petition. On 14.12.2016, the District Judge directed the ARC to dispose of the said application for substituted service within one month.

Thereafter, the present impugned order has been passed.

4. A perusal of the impugned order would show that the ARC concluded that the premises must be identified by a municipal number. It also noted that a shop's valuation for the purpose of taxation shall be different from that of the property used for residence and also for purpose of prevention of nuisance. It also noted that the approved lay out and drawing/structure must be within the knowledge of the Corporation. It also noted that the premises in the present case is different from the building in which it is situated in nature, structure and usage. Its identity cannot be identified by a sign board alone. It also noted that the property owners in municipal areas are not at liberty to convert/construct properties without intimation and consent of the Government/Municipal Corporation. It concluded that the petitioner is bound to produce the municipal identity of the premises. The petitioner is bound to inform the municipal corporation regarding the existence and nature of the premises and seek approval of its existence. As no municipal identity of the premises which would distinctly and comprehensively establish the identity of the premises was found to exist, the ARC dismissed the eviction petition at the threshold.

5. I may note that the eviction petition has been dismissed without even issuance of the notice to the respondent. Hence I do not feel the need to serve the respondent in the present case.

6. It is manifest from the impugned order that the ARC is extremely concerned with the compliance of the municipal laws. The ARC forgot that the concerned municipal authorities were not before the court. No objection was raised regarding alleged non-compliance of various legal provisions of the DMC Act by the petitioner. There was nothing on record to show that

the petitioner has violated the municipal laws. Further, it was not the duty of the Rent Controller to enforce the concerned municipal laws while adjudicating an eviction petition.

7. Regarding the identity of the premises, the ARC himself has rightly relied upon Section 2(i) of the DRC Act which reads as follows:-

“(i) "premises" means any building or part of a building which is, or is intended to be, let separately for use as a residence or for commercial use or for any other purpose, and includes.-

(i) the garden, grounds and outhouses, if any, appertaining to such building or part of the building;

(ii) any furniture supplied by the landlord for use in such building or part of the building;

but does not include a room in a hotel or lodging house;”

8. The Supreme Court in *Kamla Devi v. Laxmi Devi*, (2000) 5 SCC 646, held as follows:

“10. A combined reading of the definitions of the terms, quoted above, shows that the term “premises” implies the subject-matter of tenancy in respect of which there is jural relationship of landlord and tenant and in respect of which the quantum of rent is agreed to between him.”

9. Hence, the premises for the purpose of the DRC Act means a premises in respect of which there is a jural relationship of landlord and tenant and the quantum of rent is agreed upon. Such a premises could be a part of a building as in the present case. Municipal Corporation does not necessarily allot separate distinct municipal numbers to part of a premises. Neither is there any such mandatory requirement which would make it

mandatory for the petitioner to ensure separate municipal numbers for part of the premises prior to letting the same out. Quite often a landlord may own a large building and choose to let out only a small portion of the building. In such an eventuality, he is not obliged to have the let out portion officially marked and numbered separately from the municipal corporation as a distinct separate number of the property. Quite often, people give private numbers to such portions which are not recognised by the Municipal Corporation. No such requirement is stated in the DRC Act.

10. It may also be noted Section 25B of the DRC Act which deals with eviction petition under Section 14(1) (e) of the Act is a self contained code (*Ref: Precision Steel and Engineering Works Ltd. v. Prem Deva Niranjana Deva Tayal*, AIR 1982 SC 1518). Hence, when dealing with an application under Section 14(1)(e) of the DRC Act, the ARC is obliged to follow the procedure stated in Section 25 B of the Act. He is not to travel to other statutory provisions like the DMC Act, as done in the present case.

11. It is manifest that the impugned order suffers from material illegality and cannot be sustained. The impugned order is accordingly quashed. The matter is remanded back to the ARC for afresh consideration from the stage at which the matter was pending. The ARC may deal with the petition expeditiously keeping in view the time already taken in disposing of the application for substituted service.

12. The petition stands disposed of. All pending applications, if any, also stand disposed of.

13. The parties to appear before the concerned ARC on 20.03.2017.

MARCH 07, 2017/rb

JAYANT NATH, J