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

Decided on: 28th November, 2017

+ CM(M) 384/2016 and CM Nos.14871-14872/2016

SHAMA SOOD AND ANR

..... Petitioners

Through: Mr. Ashwani Kumar Goel, Adv. with
Mr. Rajeev Kumar, Adv.

versus

M/S MADAN LAL SHYAM SUNDER

..... Respondent

Through: Mr. Madhur Sapra, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The petitioners had instituted case (E. No. 15/2014) before the Rent Controller, Central District, Delhi seeking an order of eviction on the ground under Section 14 (1)(e) of the Delhi Rent Control Act, 1958 against the first respondent impleading the said party as the sole respondent on the averments that it was the tenant in the premises in question. Since the ground on which eviction is sought requires the special procedure envisaged in Section 25-B of Delhi Rent Control Act, 1958 to be followed, the appropriate process was issued, in the wake of which an application seeking leave to defend was filed by the second respondent, it clearly not being the respondent of the case and, thus, a stranger to the proceedings, his plea being that the petitioners before the Rent Controller had intentionally instituted a case against a stranger, the tenancy being in favour of the said

party, *i.e.*, the second respondent herein.

2. The Rent Controller, by the impugned order dated 22.02.2016, allowed the said application for leave to defend and directed the second respondent to file written statement. It is the said order the legality of which is questioned by the petition at hand.

3. Having heard the learned counsel for the petitioners and for the second respondent, who only has appeared, the first respondent having chosen to suffer the proceedings *ex parte*, this court is of the view that the impugned order cannot be sustained. The second respondent clearly is not the party against whom the eviction petition was filed. If what is submitted on its behalf is correct, it would have due protection of law and remedies to be pursued in the face of eviction order, if eventually granted on the petition against the first respondent. In such proceedings, the Rent Controller could not have assumed the second respondent to be the defendant in the eviction case so as to grant it leave to defend or even to call it upon to file written statement. The impugned order is, thus, set aside.

4. It was informed at the hearing by the counsel for the second respondent that subsequent to the impugned order, on his application under Order 1 Rule 10 of the Code of Civil Procedure, 1908 (CPC), he has been impleaded as a party to the eviction case. Even the said order cannot stand the scrutiny of law. The second respondent cannot impose himself on the petitioner in a litigation where he has chosen not to seek any relief against him. In the result, the directions of the Rent Controller under Order 1 Rule 10 CPC also will have to be set aside. Ordered accordingly.

5. The rights and contentions of the second respondent are reserved to be agitated at an appropriate stage in an appropriate forum by appropriate procedure.
6. The petition and applications stand disposed of with these directions.
7. *Dasti.*

NOVEMBER 28, 2017

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R.K.GAUBA, J.