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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ RC.REV. 238/2016 & CM No.16391/2016 (for stay)
MADAN LAL Petitioner

Through: Mr. Anil Gahlot, Adv.

Versus

SHYAMVIR Respondent

Through: Mr. Sanjiv Bahl, Mr. Vikrant Arora,
Mr. Eklavya Bahl, Mr. Apoorva Bahl
& Mr. Vinayak Batta, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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21.09.2017

1. This Rent Control Revision Petition under Section 25B(8) of the Delhi Rent Control Act, 1958 impugns the order [dated 18th December, 2015 in E. No.237/2014 of the Court of Additional Rent Controller-02 (ARC), Central District, Tis Hazari Courts, Delhi] of eviction, after full trial, of the petitioner from House No.4394, Katra Lekh Ram, Sadar Bazar, Mohalla Ahiran, Pahari Dhiraj, Delhi]
2. The petition was entertained and notice thereof accepted by the counsel for the respondent appearing on caveat and trial court record requisitioned.
3. The counsels have been heard and the trial court record perused.
4. The counsel for the petitioner has at the outset contended that the respondent is not the owner and there is no relationship of landlord and tenant between the parties.

5. However the counsel for the petitioner admits that the respondent has proved before the trial court the sale deed of the year 1997 of purchase of the property. On enquiry as to how in the face of the said sale deed ownership is denied, it is contended that the earlier chain of document has not been proved. I have enquired from the counsel for the petitioner, whether any other person has claimed adversely to the respondent or anyone else has claimed to be the owner or landlord or claimed rent from the petitioner. The reply is in the negative.

6. A perusal of the trial court record shows the respondent to have not only proved the sale deed but also having applied to the Delhi Municipal Corporation (MCD) for mutation of the property in his name and the property in the records of the MCD having stood mutated in his name.

7. The falsity of the stand taken is also evident from the fact that the petitioner in his written statement as well as evidence has claimed having entered into an oral agreement with the respondent whereunder the respondent is claimed to have agreed to allow the petitioner to become owner of not only the premises in occupation of the petitioner at present but also the remaining portion of the ground floor of the property (at this stage, the counsel for the petitioner states that what was meant by pleading ground floor was only the portion in occupation of the petitioner). Had the petitioner been not satisfied with the title of the respondent, the question of the petitioner entering into any such agreement with the respondent would not have arisen.

8. The inconsistencies in the written statement in this respect and the conduct of the petitioner in pressing with the said stand inspite of the recorded evidence being to the contrary shows how the petitioner, to perpetuate his possession of the premises, is willing to bend all rules of the game and to make false submissions before the Court.

9. The next question to be considered is, whether there is any relationship of landlord and tenant between the respondent and the petitioner.

10. The counsel for the petitioner has argued that the petitioner is not a tenant. On enquiry as to what is the status of the petitioner in the premises in his occupation, it is interchangeably argued, sometimes that the petitioner is in possession under the oral agreement aforesaid with the respondent and sometimes that the petitioner is in adverse possession of the premises. However on enquiry whether the petitioner has declared himself to be the owner at any place or having acquired ownership rights, the answer is again in the negative. In this respect, I may also notice that in the written statement filed by the petitioner, the petitioner has not denied para 3(b) of the petition for eviction in which the respondent has described the petitioner as the tenant, though elsewhere in the written statement has denied being a tenant. Such ambivalent stand of the petitioner again shows the falsity thereof and the preponderance of probabilities to be in favour of the version of the respondent of the petitioner being an old tenant in the premises at the rent of Rs.12/- per month.

11. The name of the father of the petitioner as a tenant also finds mentions in the sale deed in favour of the respondent. The respondent also

examined the witness from the MCD and who has proved as Ex.PW2/C the survey report dated 26th February, 1996 of the MCD for the purpose of assessment of property tax and in the said survey report also under the column “If on rent name of the tenant”, the name of the father of the petitioner finds mention.

12. The counsel for the petitioner of course contends that the said name is merely as occupant, but the document shows otherwise. In the face of the aforesaid evidence, it cannot be said that the order of the ARC is not in accordance with law within the scope of Section 25B(8) of the Act, for this Court to interfere.

13. The next aspect to be considered is whether the respondent has proved *bona fide* requirement of the premises in the tenancy of the petitioner and no other alternate accommodation being available to the respondent.

14. The members of the family of the respondent are not in dispute. The family of the respondent comprises of his wife, his elder married son with wife and two children and younger son who on the date of recording of the evidence was unmarried and is since stated to have been got married and now has a child.

15. The counsel for the petitioner has contended that the respondent, in the petition for eviction had pleaded the need for six rooms and already has seven rooms in his possession.

16. The site plan of the property filed by the respondent is also not in dispute. As per the said site plan, the accommodation in possession of the respondent comprises of two rooms on the ground floor, one room on the first floor and one room on the second floor. The argument of the counsel

for the petitioner is that on the first floor there were two rooms which have been converted into one.

17. I may mention that the dimensions of the two rooms in possession of the respondent on the ground floor and one of which is a tin shed are less than 100 sq. ft. which as per the Delhi Building By-Laws, 1983 is the minimum size for a habitable room. Reference in this regard can be made to *Roshan Lal Vs Madan Mohan Lal Sharma* 1998 (45) DRJ 583 and *Subhash Chander Marwah Vs. Jagjit Singh Sood* (1988) 35 DLT 258. Certainly, the petitioner cannot count such rooms to defeat the requirement for the large family of the respondent.

18. The counsel for the petitioner admits that there is no plea or evidence of any other accommodation available to the respondent or his family members.

19. There is thus no error in the order of the ARC on this ground as well.

20. Resultantly, the petition fails and is dismissed with costs of Rs.30,000/- payable by the petitioner to the respondent within one month of today and which if not paid will be recoverable by the respondent from the petitioner.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 21, 2017

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