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

RC.REV. 469/2017

ABDUL REHMAN & ANR

..... Petitioners

Through: Mr. Mohit Chaudhary and Mr. Imran
Ali, Advs.

Versus

MOHD USMAN

..... Respondent

Through: None.

AND

+ RC.REV. 470/2017

MOHD FAROOQ

..... Petitioner

Through: Mr. Mohit Chaudhary and Mr. Imran
Ali, Advs.

Versus

MOHD USMAN

..... Respondent

Through: None.

AND

RC.REV. 468/2017

MAQBOOL HASAN

..... Petitioner

Through: Mr. Mohit Chaudhary and Mr. Imran
Ali, Advs.

Versus

MOHD USMAN

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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23.10.2017

CMs No.37703/2017, 37704/2017 & 37706/2017 in RC.REV. 469/2017

CMs No.37708/2017, 37709/2017 & 37711/2017 in RC.REV. 470/2017 &

CMs No.37643/2017, 37644/2017 & 37716/2017 in RC.REV. 468/2017

(all for exemption)

1. Allowed, subject to just exceptions.
2. The applications are disposed of.

RC.REV. 469/2017 & CMs No.37702/2017 (for stay) & 37705/2017 (for condonation of 57 days delay in re-filing), RC.REV. 470/2017 & CMs No.37707/2017 (for stay) & 37710/2017 (for condonation of 57 days delay in re-filing) & RC.REV. 468/2017 & CMs No.37642/2017 (for stay) & 37645/2017 (for condonation of 57 days delay in re-filing)

3. These three Rent Control Revision Petitions, under Section 25B(8) of the Delhi Rent Control Act, 1958 of different tenants, impugn the separate orders, all dated 25th April, 2017 in (i) E No.133/2017 (Regd. ID No.129/2017), (ii) E No.132/2017 (Regd. ID No.128/2017) & (iii) E No.134/2017 (Regd. ID No.130/2017) and all of the Court of Pilot Court (Central District), Tis Hazari Courts Delhi of dismissal of the application filed by each of the petitioner/s for leave to defend the petition for eviction filed by the same respondent against each of the petitioner/s and the consequent order of eviction of each of the petitioner/s from the portion in his/their respective occupation on the ground floor of property No.1658, Gali Takhat Wali, Suiwalan, Daryaganj, Delhi.

4. These petitions are taken up together as the respondent in each of the petitions is the same and the requirement pleaded is on the same facts and the counsel for all the petitioners has raised the same arguments on behalf of all the petitioners.

5. The counsel for the petitioners on enquiry states that the three petitioners occupy the entire ground floor of the property.

6. The respondent instituted the petitions for eviction *inter alia* pleading (i) that the respondent, along with his brother purchased the aforesaid property bearing No.1657-1658, Gali Takhat Wali, Suiwalan, Daryaganj,

Delhi from its previous owner by way of sale deed dated 30th June, 1994; (ii) that after the death of brother of the respondent, the respondent purchased the share of his said brother from his legal heirs vide sale deed dated 3rd September, 1997, making the respondent sole and absolute owner of the property; (iii) that the property is mutated in the records of the Municipal Corporation of Delhi in the sole name of the respondent; (iv) that each of the petitioner/s is an old tenant, since the year 1939, on the ground floor of the property; (v) however fresh agreements were entered into by the respondent with the petitioner/s/their predecessor; (vi) that the premises in tenancy of each of the petitioners is required by the respondent for his own residence; (vii) that the premises were let out and are being used for residential purposes by the petitioner/s; (viii) that the respondent is in possession of the first and second floors of the said property which bears Municipal No.1657; (ix) that the third floor and fourth floor of the property are also in possession of old tenants; (x) that the respondent is a chronic heart patient and underwent open heart surgery in June, 2006 and is still in regular medical supervision and treatment; (xi) that the respondent is also a patient of Thyroid, Diabetes and Hypertension and is under medical treatment therefor; (xii) that the doctors have advised the respondent not to climb the stairs and to remain on the ground floor; (xiii) that since the respondent is not having any portion on the ground floor, the respondent is compelled/forced to take the risk of his life and climb to the first floor of the property; (xiv) that besides the respondent, his family consisting of his wife and two married sons, their wives and grandchildren, are also residing on the first and second floors of the property and the married daughter of the

respondent also visits and stays with the respondent as per custom; (xv) that the other friends, well-wishers and relatives of the respondent also visit him in the premises; (xvi) that the respondent does not have any other reasonably suitable accommodation for his residence, though has two shops; (xvii) that the respondent requires the premises in the tenancy of each of the petitioner/s for his residence.

7. The first contention of the counsel for the petitioner/s is that the petitioners have constructed their respective portions with their own funds, in terms of an arbitral award and the petitioner/s had agreed to pay Rs.100/- per month each to the respondent as licence fee and the status of the petitioner/s with respect to the premises is not as a tenant but as a licensee and the license coupled with a right to carry on construction of permanent nature, is irrevocable.

8. The counsel for the petitioners in this regard seeks to draw attention to a copy of the said award at page 350 of the paper book subject matter of RC. REV. No.469/2017 and has asked me to read from para 3 thereof onwards.

9. However the very first paragraph of the said document to which attention is drawn is as under:

*“An application has been received through Mohd. Usman s/o Mohd. Aman r/o 1658, Gali Takhat Wali, Suiwalan, Daryaganj, New Delhi-2, on 16.9.2001 September, 2001, regarding dispute between the **landlord and the tenant** on the construction of the house, which case is pending trial between both the parties in the court of law, for quite some time. Now both the parties are interested for amicable compromise/settlement through the Mohalla Sudhar Sewa Samiti.”*

(emphasis added)

10. It is the duty of the counsel to, while asking the Court to straightway come to a particular paragraph of a document, purportedly to save time of the Court, make a fair disclosure before the Court. The attempt to not allow the Court to see first paragraph one of the document which clearly provides the relationship between the parties as of landlord and tenant is nothing but an attempt to, instead of saving the time of the Court, hoodwinking the Court into having notice of the petition issued. No other paragraph of the said document which may negate the relationship from that of landlord and tenant to that of licensor and licensee has been shown. Rather, some of the subsequent paragraphs of the document also are found to describe the respondent as landlord and the petitioner/s as tenants.

11. The said plea of the petitioners/tenants to seek leave to defend is thus false and contrary to the document cited by the petitioners/tenants themselves.

12. Such conduct of the tenants, to, in the application for leave to defend, take all kinds of pleas in an attempt to get the leave to defend and to thereafter delay the eviction from the property has to be deprecated.

13. Though the aforesaid conduct of the petitioners/tenants does not entitle the petitioners to further hearing but I may record the other arguments urged by the counsel for the petitioners/tenants.

14. The counsel for the petitioners/tenants has next contended that the petitioners/tenants in the application for leave to defend have disclosed alternate residential properties available to the respondent/landlord.

15. However, on enquiry as to where the respondent/landlord is residing, the counsel for the petitioners/tenants admits that the respondent/landlord is residing on the upper floors of the same property. Once that is so, a landlord who has sued for eviction of tenant from the property where he is residing, to make himself more comfortable or to fulfil his requirement for additional accommodation, cannot be asked to go and occupy another property or to split up his family with some members of the family continuing to reside where they have been residing and the other members of the family being asked to go and occupy another property, even if any available. In spite of the Supreme Court in *Sarla Ahuja Vs. United India Insurance Company Ltd.* (1998) 8 SCC 119, *Ragavendra Kumar Vs. Firm Prem Machinery & Co.* (2000) 1 SCC 679 and *Anil Bajaj Vs. Vinod Ahuja* (2014) 15 SCC 610 having unequivocally ruled on this aspect, such contentions continue to be urged.

16. The next argument of the counsel for the petitioners/tenants is that the need of the respondent/landlord is not *bona fide*. It is stated that the respondent/landlord, even if requires any accommodation on the ground floor, can at best evict one of the petitioner/s and cannot seek eviction of all the petitioner/s from the entire ground floor. It is stated that the respondent/landlord has 14 rooms in his possession on the upper floors of the property.

17. I have enquired the total size of the property from the counsel for the petitioners/tenants.

18. Though the counsel for the petitioners/tenants is not aware of the same but draws attention to the site plan filed by the respondent/landlord and in which the dimension of the entire property is disclosed as 18'-8" X 42'-0". That would make the total size of the property to be of 89 sq. yds. and it can well be gauged that the rooms, even if 14 available in the property, would be of less than 100 sq. ft. being the minimum habitable size prescribed under the Delhi Building Bye-Laws, 1983 for the city of Delhi. It has been held in *Subhash Chander Marwah Vs. Jagjit Singh Sood* (1988) 35 DLT 258 and *Benson Shoes Vs. Chunni Lal Takkar* (2010) 167 DLT 678 that a room below the habitable size prescribed cannot be considered as habitable alternative accommodation and merely because the landlord has large number of non-habitable rooms cannot deprive the landlord from seeking eviction of the tenant.

19. Moreover, in the present case, the need pleaded by the respondent is of requirement of the ground floor, on account of his inability to climb to the upper floors and thus the number of rooms on the upper floors is irrelevant.

20. As far as the argument of the need pleaded of the respondent being satisfied with eviction of either of the petitioner/s and the other two petitioner/s being not required to be evicted is concerned, considering the total size of the property and the layout of the construction as evident from the undisputed site plan at page 361 of the paper book subject matter of RC.REV. No.469/2017, to ask the landlord to share the said ground floor with the other two petitioners would be nothing but asking the landlord to live without privacy. Even otherwise, once the respondent/landlord himself resides on the ground floor, he cannot be asked to live in seclusion, with his

other family members residing on the upper floors of the property.

21. The next argument urged is of the petitioners having disputed the medical record filed by the respondent/landlord along with the petition for eviction in support of the ailments which he claimed to be suffering from.

22. However, on enquiry, as to the age of the respondent/landlord, the counsel vaguely states that he would be about 70 years of age. The counsel for the petitioners/tenants at this stage states that as per the medical record, the age of the respondent/landlord would be 59 years.

23. The counsel when asked whether he is relying on the medical record or disputing the same, states that though the petitioners/tenants admit that the respondent/landlord has undergone an open heart surgery in the year 2006 but the medical record does not say that the respondent/landlord is required to stay on the ground floor or that the respondent/landlord is advised not to climb the stairs.

24. Judicial notice can be taken of the anxiety from which a person admittedly afflicted from such diseases suffers. If the respondent/landlord feels that it is for his good that he should not climb stairs and should reside on the ground floor, it is not in the domain of the petitioners/tenants to dispute the same.

25. No other argument has been urged.

26. There is no merit in the petitions. The orders of dismissal of the applications filed by the petitioner/s for leave to defend and of eviction of each of the petitioner/s is found to be in accordance with law.

27. Dismissed.

28. The counsel for the petitioner/s, at this stage states that he withdraws all these petitions and the petitioner/s will abide by the order of eviction passed against each of them and do not want to challenge the same and confine the relief in these petitions to grant of time of 12 months to vacate the premises from which they have been ordered to be evicted.

29. On enquiry, it is stated that each of the petitioner/s is in possession and control of the portion from which he/they has/have been ordered to be evicted and none else besides the petitioner/s is in control and possession of the said portion of the property and the petitioner/s are in a position to give undertaking in the usual form to this Court.

30. Issue notice, limited to the aforesaid aspect, to the respondent by all modes including *dasti* and through the counsel for the respondent before the Trial Court returnable on 1st November, 2017.

RAJIV SAHAI ENDLAW, J.

OCTOBER 23, 2017

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