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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ RC.REV. No.390/2017, CM No.30512/2017 (for stay) and CM
No.30513/2017 (for condonation of 225 days delay in re-filing).
SATYAPAL @ SATPAL & ANR Petitioners
Through: Mr. B.L. Gupta, Adv.
versus
NATHU PRASAD Respondent
Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **25.08.2017**

CM No.30514/2017 (for exemption).

1. Allowed, subject to just exceptions.
2. The application stands disposed of.

**RC.REV. No.390/2017, CM No.30512/2017 (for stay) and CM
No.30513/2017 (for condonation of 225 days delay in re-filing).**

1. This Rent Control Revision Petition under Section 25B(8) of the Delhi Rent Control Act, 1958 impugns the order (dated 20th September, 2016 in E.No.35/14 (New E.No.5460/14) of the Court of Additional Rent Controller) of dismissal of the application filed by the two petitioners namely Satyapal @ Satpal and Jag Rani for leave to defend the petition for eviction filed by the respondent under Section 14(1)(e) of the Act and the consequent order of eviction of the petitioners from House No.848, Block-P4, Sultanpuri, New Delhi – 110 086.
2. The counsel for the petitioners / tenants has been heard and record perused.

3. The respondent / landlord instituted the petition for eviction from which this petition arises pleading (i) that the petitioner no.1 was the tenant under the respondent / landlord with respect to the first floor only of the House No.848, Block –P4, Sultanpuri, New Delhi; (ii) that the father of the respondent / landlord was residing on the ground floor of the said house; (iii) that after the demise of the father of the respondent / landlord, the ground floor was lying locked; (iv) that the petitioner no.2 Jag Rani who is the wife of the petitioner no.1 obtained a decree for permanent injunction against the respondent / landlord with respect not only to the first floor but also the ground floor of the house; (v) that thus the petition for eviction was being filed, impleading both the petitioners as tenants and with respect to the entire house; (vi) that the respondent / landlord is residing in house no. J-1/508, Sangam Vihar, New Delhi owned by the wife of the respondent / landlord and comprising of only two rooms and latrine-cum-bathroom, along with his wife, two sons one of whom was married with a child and one granddaughter being the daughter of the daughter of the respondent / landlord who died in the year 2006; (vii) that the younger son of the respondent / landlord was also of marriageable age but was being not married owing to paucity of accommodation; (viii) that the respondent / landlord required the premises in occupation of the petitioners / tenants for his expanding family; and, (ix) that the father of the respondent / landlord was the owner of house no.D-1/347, Dakshinpuri, New Delhi but the brother of the respondent / landlord was residing therein.

4. The petitioners / tenants, in the affidavit accompanying the application for leave to defend, *inter alia* pleaded (i) that the Rent Act did not apply to the locality where the premises were situated; (ii) that the said premises were owned by the Municipal Corporation of Delhi (MCD); (iii) that the respondent was the owner of property no.D-1/347, Dakshinpuri, New Delhi having a share therein, after the demise of the father of the respondent / landlord; and, (iv) that the respondent / landlord had sufficient accommodation available to him in the Sangam Vihar house.

5. What is of significance is that the petitioners / tenants, in the application for leave to defend, did not dispute that the brother of the respondent / landlord was residing in D-1/347, Dakshinpuri, New Delhi and did not state that the respondent / landlord was in possession of any portion thereof. Similarly it was not stated that the accommodation in the Sangam Vihar house was anything other than as described in the petition for eviction by the respondent / landlord.

6. The learned Additional Rent Controller in the impugned order has on the basis of the Notifications, held the Rent Act to be applicable to the locality and to the premises with respect to which the petition for eviction was filed. Qua ownership, it was held (i) that though the premises in the tenancy of the petitioners were leased by the Government / MCD in favour of the respondent / landlord but the same constitutes ownership for the purposes of the Delhi Rent Control Act being a title better than that of the petitioners / tenants; (ii) that the petitioner no.2 Jag Rani, in the suit filed by her, had claimed to be a tenant under the respondent; and, (iii) that the application for leave to defend did not disclose any such facts as would

disentitle the respondent / landlord to the order of eviction under Section 14(1)(e) of the Act, inasmuch as neither the members of the family of the respondent / landlord were disputed nor the accommodation in possession of the respondent / landlord and his family was disputed nor was any other alternate accommodation available to the respondent / landlord disclosed.

7. Rather today, when I enquired from the counsel for the petitioners / tenants, he states that the petitioner no.1 who is the tenant admits the ownership of respondent and relationship of landlord and tenant with the respondent. It is further argued that that according to the petition for eviction, the tenancy was with respect to the first floor only of the property and not of the ground floor of the property and when according to the petition for eviction the petitioner no.2 was not the tenant and it was only the petitioner no.1 who was the tenant, the filing of the petition for eviction against the petitioner no.2 and the order of eviction with respect to the entire house is bad.

8. I am unable to agree.

9. The respondent / landlord, in the petition for eviction, has abundantly made it clear that though according to him the petitioner no.1 is the tenant and only the first floor was let-out but since the petitioner no.2 was claiming to be the tenant and had also obtained an order of injunction with respect to the entire house, claiming to be the tenant with respect thereto, the respondent / landlord, to avoid any technicalities, was instituting the petition for eviction against both the petitioners and with respect to the entire house.

10. Certainly the respondent / landlord was entitled to accept the stand of the petitioners / tenants and to proceed against the petitioners / tenants as per

their own stand rather than opting to pursue his remedies against the petitioners / tenants partly before the Rent Controller and partly before the Civil Judge and wasting time in adjudication of whether the petitioner no.1 or the petitioner no.2 was the tenant.

11. No other argument has been urged.

12. No error requiring interference within the scope of Section 25B(8) of the Delhi Rent Control Act is found in the impugned order.

There is no merit in the petition.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

AUGUST 25, 2017

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