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

+ **RC.REV. 414/2017**

NOOR JAHAN

..... Petitioner

Through: Mr. Ankur Gupta & Mr. Dhananjay
Kumar Mishra, Advs.

Versus

DAYA WATI & ORS

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **04.09.2017**

CM Nos.32103-04/2017 (Both for exemptions)

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

RC.REV. 414/2017 & CM No.32102/2017 (for stay)

3. This Rent Control Revision Petition under Section 25B(8) of the Delhi Rent Control Act, 1958 impugns the order [dated 2nd March, 2017 in Case No.E-61/2017 of the Court of Commercial Civil Judge (CCJ)-Cum-Additional Rent Controller (ARC)] of dismissal of the application filed by the petitioner for leave to defend the petition under Section 14(1)(e) of the Act filed by the respondent and the consequent order of eviction of the petitioner from one room on the first floor of House No.1910-11, Gali Kallu Wali, Chowk Suiwalan, Darya Ganj, New Delhi.
4. The counsel for the petitioner has been heard and copies of the trial court record filed along with the paper book perused.
5. The eight respondents, of which respondent no.1 is the widow of Sh. Mam Chand, respondents no.2 and 8 are sons of Sh. Mam Chand, respondents no.3 to 5 are the widow and sons of pre-deceased son of

Sh. Mam Chand and respondents no.6 and 7 are the sons of another pre-deceased son of Sh. Mam Chand, instituted the petition for eviction from which this petition arises *inter alia* pleading i) that the petitioner is an old tenant in one room on the first floor of house No.1910-11, Gali Kallu Wali, Chowk Suiwalan, Darya Ganj, New Delhi with common latrine on the ground floor of house No.1910-11, Gali Kallu Wali, Chowk Suiwalan, Darya Ganj, New Delhi; ii) that the said property devolved upon the respondents on the death of their husband / father/father-in-law/grandfather Sh. Mam Chand; iii) that with the passage of time, the family of the respondents had grown; iv) that the respondent no.2 Ashok Kumar is married and has his wife and two children aged about 8 and 4 years; v) that the respondent no.8 Pramod is 28 years of age and his marriage is held up due to paucity of accommodation; vi) that all the respondents are living in property No.1910-11, Gali Kallu Wali, Chowk Suiwalan, Darya Ganj, New Delhi ad-measuring 29 sq. yds. and having four stories of one room on each floor; vii) that the ground floor of the said property consists of three shops, all occupied by tenants; viii) that the first floor as aforesaid is in the tenancy of the petitioner; ix) that the second, third and fourth floors of the property are in occupation of the respondents; x) that for the 11 members of the family of the respondents, the accommodation of three rooms on second, third and fourth floors was insufficient and the respondents required the accommodation in the tenancy of the petitioner for their own requirement.

6. The petitioner did not file the application for leave to defend within the prescribed time.

7. Though the learned ARC in the impugned order has held that the

leave to defend having not been filed within the prescribed time, the petition for eviction had to be allowed in terms of dicta in *Prithipal Singh Vs. Satpal Singh (Dead) through his LRs* (2010) 2 SCC 15 but has nevertheless also proceeded to consider the application for leave to defend on merits and has not found the same to be disclosing any such fact which would disentitle the respondents / landlords from obtaining an order of eviction under Section 14(1)(e) of the Act.

8. Though there is no justification for the leave to defend having not been filed within the prescribed time, with the only argument of the counsel for the petitioner being, that the petitioner is an illiterate lady and does not understand the law but the counsel for the petitioner is unable to explain that if it is so, how did the petitioner file the leave to defend belatedly. Be that as it may, I proceed to also consider the leave to defend on merits.

9. The only ground taken in the application for leave to defend and urged by the counsel for the petitioner today is, that Sh. Mam Chand, being the predecessor of the respondents, had vide Ikrarnama, copy of which is at page 37 of the paper book, sold the premises in the tenancy of the petitioner to the husband of the petitioner.

10. A perusal of page 37 of the paper book shows the document therein to have been purportedly executed by Sh. Mam Chand and agreeing to sell the said premises to Rehmanullah, husband of the petitioner, for total sale consideration of Rs.45,000/- out of which Rs.30,000/- was received at the time of signing of the document and the balance Rs.15,000/- was to be received in instalments.

11. The respondents, it is informed on enquiry, had no occasion to file reply to the leave to defend since the same was filed belatedly.

12. Even if the plea of the petitioner, of Sh. Mam Chand, predecessor of the respondents having agreed to sell the property to the husband of the petitioner was to be believed, the same still does not disentitle the respondents from an order of eviction under Section 14(1)(e) of the Act.

13. Ikrarnama / Agreement to Sell is of 19th March, 2004 and is unregistered. The same can neither be construed as a document of title in favour of the husband of the petitioner nor as a document of delivery of possession of the premises in the tenancy of the petitioner in part performance of the Agreement to Sell. Post the amendment of the Indian Stamp Act, 1899 and the Registration Act, 1908 with effect from September, 2001, there can be no delivery of possession of premises in part performance of Agreement to Sell without a registered document. Thus the possession of the husband of the petitioner / petitioner of the premises, in law, notwithstanding the Agreement to Sell if any, continued to be as a tenant and the respondents are entitled to exercise their statutory rights under the Rent Act for eviction of the petitioner. If at all the petitioner has any claim against the said premises on the basis of Ikrarnama / Agreement to Sell, the remedy of the petitioner was to seek specific performance of the Agreement to Sell and which has not been claimed.

14. There is no merit in the petition.

Dismissed.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 04, 2017/‘gsr’..

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