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

+ RC.REV. 466/2017

HAKIM ALI & ANR

..... Petitioners

Through: Mohd. Shariq, Adv.

Versus

SAMAR BEGUM

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **17.10.2017**

CM No.37419/2017 (for exemption)

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

RC.REV. 466/2017 & CM No.37418/2017 (for stay)

3. This Rent Control Revision Petition under Section 25B(8) of the Delhi Rent Control Act, 1958 impugns the order [dated 28th April, 2017 in E No.941/2014 of the Court of Additional Rent Controller (ARC) (Central), Tis Hazari Courts, Delhi] of dismissal of the application of the petitioners for leave to defend the petition for eviction under Section 14(1)(e) of the Act filed by the respondent and the consequent order of eviction of the petitioners from shop No.655, Chhatta Chuhia Mem, Bazar Chitli Qabar, Jama Masjid, Delhi-110006.

4. The counsel for the petitioners has been heard.

5. Need to detail herein the requirement, pleading which the petition for eviction was filed, and the grounds on which the petitioners sought leave to defend is not felt as the only argument of the counsel for the petitioners is that the respondent is not the owner of the property and has played a fraud in becoming the owner of the property vide registered sale deed dated 20th September, 1973 in her favour. It is argued that the learned ARC has erred in law in holding that the respondent is the owner, because of the petitioners admittedly paying rent to the respondent. It is argued that payment of rent only establishes the relationship of landlord and tenant and did not make the respondent the owner of the property. It is contended that though it was not known to the petitioner at the stage before the ARC but the petitioner has now learnt that the Ministry of Home Affairs, Office of the Custodian of Enemy Property for India has issued notices to Arif Parvez and Yashar Arafat, both sons of Mohd. Yahya who were also claiming to be the owners of the property and copy of which notice is now filed as Annexure P-6 at page 105 of the paper book of this petition.

6. As far back as in ***Shanti Sharma Vs. Ved Prabha*** (1987) 4 SCC 193 it was held that ownership under Section 14(1)(e) of the Act is not required to be absolute and only something more than the title as a tenant. Merely because the aforesaid Arif Parvez and Yashar Arafat also claim to be the owners of the property and may be challenging the title of the respondent to the property, does not entitle the petitioners who are admittedly tenants under the respondent, to resist eviction sought by the respondent.

7. Though the counsel for the petitioners has argued that the document dated 28th March, 2016 is not a notice but a final order but a perusal of the same shows the Custodian of Enemy Property for India to have conveyed that the property is not covered under the Enemy Property Act, 1968 and that the Custodian of Enemy Property has no concern with the dispute of civil nature raised by the said Arif Parvez and Yashar Arafat to the title of the respondent.

8. No merit is thus found in the petition.

9. The counsel for the petitioners at this stage states that he also wants to argue that the respondent has perpetuated a fraud on the ARC.

10. There is admittedly a registered sale deed of the property in favour of the respondent and the aforesaid Arif Parvez and Yashar Arafat only appear to have approached the Office of the Custodian of Enemy Property for India and it is not as if they have instituted any proceedings to challenge the title of the respondent. The allegation of fraud is made as loosely as can be, and without any legal basis.

11. Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

OCTOBER 17, 2017

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