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

+ RC.REV. 57/2016 & CM No.3268/2016 (for stay)

ALLA NOOR

..... Petitioner

Through: Mr. Amit Dalla, Adv.

Versus

ABDUL JABBAR

..... Respondent

Through: Mr. Saifuddin, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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11.10.2017

1. This Rent Control Revision Petition under Section 25B(8) of the Delhi Rent Control Act, 1958 impugns the order [dated 6th October, 2015 in E No.02/2015 (UID No.02401C0667922015) of the Court of Additional Rent Controller (ARC)-1 (Central), Tis Hazari Courts, Delhi] of dismissal of the application filed by the petitioner 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 petitioner from one room, open space in front of room with common amenities of latrine at ground floor of property No.672, Gali Mem Wali, Bazar Chitli Qabar, Jama Masjid, Delhi.

2. The petition was entertained and vide order dated 29th January, 2016 notice thereof ordered to be issued to the respondent and the Trial Court record requisitioned.

3. The respondent appeared on 18th May, 2016 and since then the petition is being adjourned.

4. The counsel for the petitioner states that the petitioner has already been dispossessed from the premises earlier in his tenancy/occupation in November, 2016 in execution of the order of eviction impugned in this petition.

5. There was no stay of the order of eviction impugned in this petition and thus the respondent was at liberty to execute the same.

6. The counsels have been heard.

7. The counsel for the petitioner has during his arguments not challenged the requirement of the respondent for the premises in the tenancy of the petitioner and has also not argued that any other premises are available to the respondent. However, the counsel for the petitioner on the same being specifically put to him states that one of the sons of the respondent is not residing with the respondent but a perusal of the application for leave to defend shows no such ground to have been urged; in fact, in the leave to defend application also, no facts controverting the requirement pleaded in the petition for eviction were disclosed.

8. The only argument of the counsel for the petitioner/tenant is that the respondent claims to have become owner of the property, accommodation aforesaid wherein was earlier in the tenancy of the petitioner, vide sale deed dated 6th December, 1995; however the said sale deed records the possession of the property conveyed to have been delivered to the respondent; that there is no mention in the said sale deed of the accommodation aforesaid being in the tenancy of the tenant.

9. A perusal of the leave to defend application shows the petitioner to have also pleaded that the respondent, at no point of time since 6th December, 1995, claimed rent from the petitioner.

10. I have enquired from the counsel for the petitioner, whether any other person has since 1995 claimed to be the owner/landlord of the accommodation in the tenancy of the petitioner.

11. The counsel for the petitioner contends and it is also the plea in the application for leave to defend that one Hazi Abdul Menon Qureshi had got served a legal notice dated 7th February, 2000 on the petitioner claiming to have become owner of the premises in the tenancy of the petitioner by virtue of a registered sale deed.

12. I have further enquired from the counsel for the petitioner/tenant, whether the said Hazi Abdul Menon Qureshi has since 7th February, 2000 initiated any proceedings against the petitioner or with respect to the accommodation earlier in the tenancy of the petitioner.

13. The answer is in the negative.

14. The admitted position thus is that since 1995 neither Afaq Ali who has executed the sale deed in favour of the respondent nor anybody else has claimed adversely to the title as owner claimed by the respondent to the accommodation in the tenancy of the petitioner. The claim if any in the legal notice dated 7th February, 2000 of Hazi Abdul Menon Qureshi also cannot be given any credence, for the reason of the said Hazi Abdul Menon Qureshi having not followed up the said claim with any legal proceeding.

15. Per the judgment of the Supreme Court in ***Shanti Sharma Vs. Ved Prabha*** (1987) 4 SCC 193 and consistently followed in ***Swadesh Ranjan***

Sinha Vs. Haradeb Banerjee (1991) 4 SCC 572, ***Sheela Vs. Firm Prahlad Rai Prem Prakash*** (2002) 3 SCC 375 and ***Rajender Kumar Sharma Vs. Leela Wati*** (2008) 155 DLT 383 the ownership within the meaning of Section 14(1)(e) of the Rent Act has to be only a title better than the tenant and this Court in ***Milk Food Ltd. Vs. Kiran Khanna*** 51 (1993) DLT 141 has held that claim for over twelve years of being the owner without any claim or interference from any other person would qualify as ownership.

16. As far as the plea of the petitioner/tenant with respect to the contents of the sale deed in favour of the respondent is concerned, merely because the sale deed records that possession has been delivered would not mean that the portion which was subject matter of sale did not include the accommodation in the tenancy of the petitioner. If the property sold is in possession of a tenant, the possession is still delivered by the vendor to the vendee, though it is constructive possession.

17. There is thus no error in the order impugned, refusing leave to defend to the petitioner.

18. There is no merit in the petition.

19. Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

OCTOBER 11, 2017

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