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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 27th April, 2018

+ R.C. REV. 5/2011 and CM No. 17571/2013

MIRAJUDDIN & ORS

..... Appellants

Through: Mr. Saif Islam Israili and Mr.
M. Mohsin Israili, Advs.

versus

KABIR UL HAQUE (SINCE DECEASED) THR.LRs.

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The eviction petition in which the impugned order dated 21.09.2010 was passed by the Additional Rent Controller was instituted on 30.09.2005 by Kabir-Ul-Haque, an ordinary resident of Kanpur in Uttar Pradesh. He had presented the said eviction petition (E-210/2009) against the petitioners in respect of premises described as first floor of property bearing municipal no. 6394, Gali Ishwari Prasad, Bara Hindu Rao on the ground of *bona fide* need of the same for residence of self and members of the family under Section 14 (1) (e) of Delhi Rent Control Act, 1958 claiming to be the owner-cum-landlord qua the petitioners in respect of the said premises.

2. Having regard to the nature of the case, the special procedure in Section 25 B, Delhi Rent Control Act, 1958 was invoked and in response to the summons served on the petitioners they moved an application seeking leave to contest. The consideration of the said application took five years before the Additional Rent Controller, it eventually leading to the order dated 21.09.2010 whereby the contentions in the application of the petitioners were repelled and in the result the eviction order was granted.

3. The above-said eviction order was challenged by the petition at hand instituted on 10.01.2011. Notice was issued to the respondent. Pertinent to note here that on 25.04.2011 it was reported that the respondent had refused to receive the paper book tendered to him. Be that as it may, he appeared through counsel on 26.07.2011. Thereafter, the matter remained pending for quite some time, the respondent taking no interest in expeditious hearing. He died on 31.03.2016, this leading to application (CM No. 18358/2014) being submitted for substitution by his legal heirs under Order XXII Rule 4 of the Code of Civil Procedure, 1908. The said application was allowed by order dated 29.09.2016. Pertinent to note here that as per the application under Order XXII Rule 4 CPC, the respondent is survived by his wife Nargis Jamal, his son Sameer and his daughter Mrs. Mariyam Fatima.

4. It may be noted here that the respondent in the eviction petition had described himself to be a resident of 95/94, Munna Lal Street, Parad, Kanpur in the State of Uttar Pradesh. The description of the legal heirs i.e. the widow, son and daughter of the respondent indicates

that they are residents of 14/4 Civil Lines, Kanpur, U.P. In spite of being served, the legal heirs have chosen not to appear or to contest the revision petition by making any submissions on any of the effective dates on which the matter came up before the Court.

5. It is against the above backdrop that it needs to be noted that the respondent had prayed for eviction on the ground of *bona fide* need stating that he required the subject premises “*for his residence as well as for residence of his family members dependent upon him for residence*”, describing his family to include himself, his wife and his daughter Mrs. Mariyam Fatima. Noticeably, he did not mention the members of the family dependent for residence to include the son. Further, in the eviction petition it was stated that the respondent was residing on rent in Kanpur in the above-mentioned property 95/94, Munna Lal Street, Parad, Kanpur, U.P. There was no reference to the property of Civil Lines to which reference later came to be made. He indicated his desire to “*shift to Delhi*” and settle in his own house here, adding that the premises in Kanpur where the respondent ‘*was working*’ had been demolished by the authorities of Kanpur.

6. Though in the application for leave to contest, the petitioner had questioned the maintainability of the petition for eviction, denying the relationship of landlord and tenant between the parties, such plea having been rejected by the additional rent controller with reference to a decision of civil court in suit no. 523 decided on 09.03.2005, the impugned order denying leave to contest rejecting the other contentions cannot be upheld for the reason that in the eviction petition there is no clarity as to why a person settled in Kanpur, U.P.

had the desire or reason to shift to Delhi. The eviction petition vaguely referred to premises where the respondent was working at that time having been demolished by authorities of Kanpur. It would not specify as to what was the connection of the respondent with the premises which had been demolished and as to how such demolition had brought about a situation where he would be compelled to shift his house from city of Kanpur in U.P. to Delhi with his family. The petition would also not give the particulars of the family or the nature of the avocation in which the members thereof were then engaged. The plea of the respondent that he desired to shift to Delhi, in these circumstances, could not have been accepted on its face value. It required to be tested and, for this reason, the petitioners should have been granted the leave to contest.

7. For the foregoing reasons, the petition is allowed. The impugned order is set aside. The proceedings in the eviction case of the respondent before the additional rent controller stand revived. The said matter shall be taken up by additional rent controller for further proceedings in accordance with law on 29th May, 2018. The parties are directed to appear before the additional rent controller on the said date. Needless to add, the petitioners will be obliged to submit their written statement on the date fixed above.

8. The petition and the pending application stand disposed of in above terms.

R.K.GAUBA, J.

APRIL 27, 2018/nk