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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 18th April, 2018

+ RC. REV. 111/2016 and CM APPL.5721/2016,
CM APPL.12186/2017

BATLIBOI LIMITED

..... Petitioner

Through: Mr. Ravi Gupta, Senior Advocate with
Mr. Akshay Ringe,
Ms. Megha Mukerjee,
Mr. Sachin Jain, &
Mr. Siddharth Joshi, Advocates

versus

KIRAN SHARMA

..... Respondent

Through: Mr. Amit Swami, Advocate with
Ms. Smarika Azad, Advocate

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The respondent is the landlord qua the petitioner in respect of property described as N-197-A, Greater Kailash Part-I, New Delhi, it having been let out in the year 1976 by his mother. He had filed a case (E. No.26/2015) for eviction on 08.04.2015 on the ground of *bona fide* need under Section 14 (1) (e) of Delhi Rent Control Act, 1958. Having regard to the nature of ground invoked, the procedure under Section 25-B of Delhi Rent Control Act, 1958 was applied. In response to the special summons served on the petitioner (tenant), it submitted an application for leave to contest. The said application was considered by the additional rent controller (ARC) but dismissed by

order dated 15.10.2015, resultantly granting an order of eviction in favour of the respondent. It is the said order, the correctness, legality and propriety whereof is questioned by the petition at hand.

2. Though a number of grounds have been taken in the application for leave to defend, having heard the learned counsel on both sides and having gone through the record, this court finds that a case of grant of leave is made out on the issue of alternative accommodation, there being lack of clarity in the pleadings of the respondent – rather there being a possibility of an attempt to suppress faces.

3. For aforementioned purposes, it is not necessary to narrate the facts in entirety. Suffice it to note here that the case from which the present proceedings arise is third in a series of litigation initiated by the respondent to seek eviction of the petitioner, the first one being an eviction case, also on the ground under Section 14 (1) (e) of the Delhi Rent Control Act, 1958, brought before the rent controller in September, 1997 by the petitioner and his sister Ms. Usha Devi. Both the petitioner and his sister had conceded in the said case that the tenancy, being at the rental of Rs.1265/- per month, was protected under Delhi Rent Control Act, 1958. The petitioner therein had described himself to be then a resident of Sri Lanka, though he had also given his local address (42, Birbal Road, Jangpura Extension, New Delhi-110014), his sister being described as a resident of Kuala Lumpur in Malaysia. The said eviction petition came to be dismissed in default on 14.09.2000. Concededly, there was no effort made for its restoration. Instead, the respondent filed a civil suit in 2013 in the

court of District Judge for South-East District, seeking decree of possession and recovery of rent and *mesne* profits. Prior to filing of the said suit, a legal notice dated 06.06.2012 had been served on the petitioner (tenant) on instructions of the respondent and at his instance. In the said legal notice, he was described as a resident of Kuala Lumpur, Malaysia with permanent address being as that of the said property. In the said legal notice it was, *inter alia*, stated that the respondent is a resident of Malaysia and none of the legal heirs of Mrs. Sumitra Devi Sharma (the late mother of the respondent) are residing in India, the tenant (the petitioner) taking advantage of this and enjoying the prime property at a meager rent of Rs.1265/- per month. By the legal notice, the tenant was called upon to execute a fresh lease deed at a rental of Rs.1,00,000/- per month for the period of one year, the existing tenancy having been terminated on 30.06.2012.

4. The civil suit, however, was dismissed on 02.02.2015, concededly with adverse finding on issue of jurisdiction of the civil court, the tenancy apparently being protected by Delhi Rent Control Act, 1958. The petition from which the present proceedings arise was filed after dismissal of the suit as aforesaid.

5. It may be mentioned here that in the civil suit filed in 2013, and in the eviction petition from which the present proceedings arise, the respondent described himself as resident of Kuala Lumpur, Malaysia, the address of the subject property being his permanent address,

reference being made (for correspondence purposes) to the chamber of the counsel representing him.

6. Upon being served with the summons under Section 25-B of the Delhi Rent Control Act, 1958, the petitioner submitted an application for leave to contest, one of the grounds taken therein being that the property at Jangpura Extension, to which the reference was made in the first eviction case was under use and occupation of the respondent – this, in the context of averments made in the eviction case that the respondent and his daughter Sarita wants to “*settle in Delhi*” and therefore require the premises for bona fide residential use, he also being obliged to accommodate his brother and sister and their family members (concededly they not being ordinary residents of India) on their visits to India, there being no other residential accommodation available except the subject property.

7. In the above fact - situation, the availability or non-availability of the Jangpura Extension property is crucial to the just decision of the case. In answer to the application for leave to contest, the respondent has come up with bald averment that no such property at Jangpura Extension “*was ever owned by the petitioner*”. There is no explanation offered in this respect with reference to the pleadings in the first eviction case, the dismissal in default whereof was suffered on 14.09.2000.

8. Thus, tribal issues do arise and, therefore, the eviction case cannot be disposed of in the manner done by the additional rent

controller by depriving the petitioner (tenant) to prove its contentions in above nature.

9. For above reasons, the petition and the applications filed therewith stand allowed. The impugned order dated 15.10.2015 is set aside. Leave to contest stands granted to the petitioner. The proceedings before the Rent Controller consequentially stand revived. They shall be taken up by the Rent Controller for further proceedings in accordance with law on 14th May, 2018, when the parties are directed to remain present.

10. Needless to add, the petitioner (shown as respondent in the eviction case) will be obliged to submit the written statement on the afore-said date fixed for first appearance.

11. *Dasti.*

R.K.GAUBA, J.

APRIL 18, 2018

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