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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on :- 23rd February, 2018

+ RC.REV. 169/2016

GYAN PRAKASH

..... Petitioner

Through: Mr. Kapil Gupta, Advocate

versus

INDU KUMAR PRAJAPATI

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The petitioner is aggrieved by the order dated 25.02.2016 of the Additional Rent Controller whereby in the proceedings arising out of his eviction case (eviction petition no. 06/2015) on the ground of *bona fide* need under Section 14 (1) (e) of Delhi Rent Control Act, 1958, the application of the respondent for leave to contest under Section 25 B of Delhi Rent Control Act, 1958 was allowed.

2. The proceedings before the Additional Rent Controller have arisen out of the eviction petition instituted by the petitioner on 03.02.2015 seeking an order under Section 14(1) (e) of Delhi Rent Control Act, 1958 against the respondent in respect of premises described as house No. 893/1C, Block-D, Ratia Marg, Sangam Vihar, New Delhi -110062, built over a plot of land admeasuring 70 square

yards it comprising of three rooms, kitchen and toilet. The petitioner's case before the Additional Rent Controller is that the respondent was initially inducted in August, 2004 as a licensee in respect of one of the said three rooms, though he would himself describe the terms of such license as "rent of Rs. 600/- per month". It is also his case that on the request of the respondent in November, 2005, he was allowed to add one more room to the tenancy. He alleges that the respondent had failed to pay the rent in time which led to some dispute including an incident of assault in October, 2013. It is further his case that on 21.11.2013, it came to light that the respondent had unauthorisedly occupied the entire property that is the third room as well by breaking into the said portion removing all the goods of the petitioner. The petitioner pleaded a case of *bona fide* need of the premises for himself and his family.

3. Upon consideration of the application of the respondent for leave to contest, triable issues have been found by the Additional Rent Controller primarily on two counts. The respondent has questioned the title of the petitioner qua the subject property pointing out that the documents submitted with the petition pertain to another property i.e. D-1-C-843 built over a plot of land admeasuring 90 square yards. If the petitioner can show that the respondent was inducted by him in the premises as a tenant, apparently this ground would be of no consequence in view of the rule of estoppel. But then, it is the other ground which has impressed the Additional Rent Controller which persuades this Court to affirm the order granting leave to contest and

decline the revision petition at hand. The respondent has relied on document purporting to be a receipt dated 20.02.2013 which indicates that the petitioner had taken a total amount of Rs. 5,10,000/- from the respondent on account of his financial needs and it is against such transaction that he had given the possession of the property to the respondent initially by receiving Rs. 2,00,000/- “as security money”. It is the case of the respondent that the property was mortgaged with him and there was a mutual understanding to the effect that the petitioner would sell the property to him for consideration, against which backdrop, the petitioner had already received a total amount of Rs. 5,45,000/-. Even if the claim of the respondent that there was an agreement to sell were to be discarded, the plea about mortgage of the property with the petitioner cannot be short-shrifted.

4. In the given facts and circumstances, the view taken by the Additional Rent Controller that the case requires trial cannot be faulted.

5. The petition is dismissed.

R.K.GAUBA, J.

FEBRUARY 23, 2018

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