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

+ CM (M) 735/2012

KANTA KAPOOR

..... Petitioner

Through: Mr. Sunil Dutt Dixit, Advocate with
Ms. Neha, Adv.

versus

SHYAM AHUJA @ SHYAM SUNDER AHUJA & ORS

..... Respondents

Through: Mr. S.P. Singh Chaudhari, Advocate
with Mr. Y.R. Sharma, Adv. &
Mr. Uddhav Pratap, Adv.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

% **07.03.2018**

The eviction petition (RA 157/1997, old No.E.157/1997) was instituted by the predecessor-in-interest of the petitioner on 15.10.1997 seeking an order of eviction against the respondents in respect of premises described as shop No.1, double storey, New Rajinder Nagar Market, New Delhi on the ground under Section 14 (1)(j) of the Delhi Rent Control Act, 1958. The case was instituted on 15.10.1997. It was put to trial upon the respondents resisting the allegations to the effect of they having caused substantial damage to the tenanted premises. In the course of the trial Kanta Kapoor, the predecessor-in-interest of the petitioner appeared as her own witness (PW1). On the other hand, the first respondent examined Shyam Ahuja (RW1). The additional rent controller (ARC) by judgment dated 07.07.2005 upheld the case of the petitioner (concededly the landlord) and

granted to the respondents (concededly, the tenants) a period of one month to restore the premises to original shape in terms of statutory requirement of Section 14(10) of the Delhi Rent Control Act, 1958. The respondents challenged the said order in appeal (RCT No.78/2009, and old No.350/2005) which came to be allowed by the rent control Tribunal by its judgment dated 17.04.2012, thereby setting aside the order of the ARC and dismissing the eviction petition. The said judgment dated 17.04.2012 of the rent control Tribunal is under challenge by the petition at hand.

The contention of the petitioner landlord has been that the suit shop is one of the several shops of the aforementioned market which was developed and allotted by the land and development office in the Ministry of Urban Development of the Government of India, New Delhi, such shops having in their front a *varandah*, covered by roof, for the passage of public at large. It is the case of the petitioner that the respondent tenant has unauthorizedly covered the said *varandah* by erecting walls, by masonry work, putting up a shutter in front abutting the pavement adjoining the public road and thereby has caused substantial damages to the tenanted premises. Though questions have also been raised before the authorities below and also before this court as to whether a case for eviction on these facts can be made out under Section 14 (1) (j) of the Delhi Rent Control Act, 1958, the reasons why the eviction petition has been dismissed by the rent control tribunal in appeal primarily are that the ARC had fallen into error by reaching conclusions on the basis of contradictory stands taken at different stages by the respondent tenant, which, in the opinion of the additional rent control tribunal, was

incorrect.

In the view of the rent control tribunal the proper course for the landlord in such fact situation was to examine an architect and prove the damages which also should be of such extent as can be termed as substantial and one that would diminish the value and utility of the premises. Concededly, the petitioner did not have the premises examined or inspected by an architect, leave alone any such independent evidence being brought on record to prove any damage in the nature of cracks in the walls having occurred due to the masonry work of the walls allegedly covering *varandah* in front and putting up of a shutter there against.

For the reasons indicated hereinafter, it would not be proper for this court to make any comment either way on the necessity or otherwise of evidence in the nature searched for by the rent control tribunal in the judgment under challenge. In the opinion of this court, the core question here would be as to what was the extent of the premises which was initially let out to the respondents. It is from that perspective that the court would be able to appreciate as to whether the tenant has unauthorizedly indulged in illegal coverage of public space and thereby adversely affecting the rights and interest of the landlord qua the premises which are held by him under leasehold rights granted by the land and development office of the Govt. of India and in the result he having suffered substantial damage to his interest, as is the case attempted to be made out.

In the course of hearing, the learned counsel for the petitioner places reliance on communications dated 21.01.2005 received from the Land and Development Office of the Govt. of India wherein exception was taken to

unauthorized coverage of a certain portion statedly in the premises in question requiring it to be removed and another letter dated 12.05.2005 rejecting the request of the landlord for conversion of the said shop from leasehold to freehold on the ground that there has been an encroachment on public land, which had not been removed. He submitted that since these communications came at the fag end of the proceedings before the ARC they could not be placed as part of the evidence on the eviction petition. His submission is that these communications, read with rent agreement (Ex.PW-1/1) which was already proved before the ARC, would clinchingly show that there has been unauthorized coverage of public land.

The request of the petitioner at this stage of these proceedings is for the matter to be remitted to the ARC so that further evidence can be brought on record. On being asked, the counsel for the respondent submitted no objection to such prayer.

Thus, the impugned judgments of the ARC and of the rent control tribunal are set aside. The eviction petition of the petitioners is revived on the file of the additional rent controller, who shall give one opportunity to the petitioner to lead further evidence.

The parties are directed to appear before the concerned additional rent controller for further proceedings in above light on 5th April, 2018.

The petition and the application filed therewith stand disposed of in above terms.

R.K.GAUBA, J.

MARCH 07, 2018

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CM (M) 735/2012

Page 4 of 4