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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on :- 13th March, 2018

+ RC.REV. 335/2012 & CM No.12519/2012

SARLA DEVI

..... Petitioner

Through: Ms. Amita Gupta with
Mr. Abhimanyu K. Singla,
Advocates.

versus

ADISHWAR KUMAR JAIN

..... Respondent

Through: Mr. Anand Singh with
Mr. Varun Pandey, Advocates.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The respondent is the landlord in respect of the petitioner who has been a tenant in premises described as shop no. 16, IInd floor, property no. 2490/XIII, Teliwara, Sadar Bazar, Delhi-110006. The respondent had filed a case for eviction (E. No.33/2010) on 25.09.2010 against the petitioner on the ground of *bona fide* need under Section 14(1)(e) of Delhi Rent Control Act, 1958. The petitioner upon being served had moved an application seeking leave to contest under Section 25B of Delhi Rent Control Act, 1958. The said application was dismissed and consequently the eviction petition of the respondent was allowed by order dated 29.02.2012 of the Rent

Controller (North), Delhi, which is impugned by the revision petition at hand.

2. The case of the respondent (landlord) is that he is engaged in the business of timber, he having available to him certain portion at the ground floor of the same very property at the second floor of which the tenanted premises of the petitioner (tenant) is situate. His case primarily is to the effect that he needs the tenanted premises for arrangement of an office space where he can conveniently entertain his clients/customers, there being no other suitable alternative accommodation available for the purpose.

3. In the eviction petition, the landlord himself referred to certain other properties owned by him they including the property bearing municipal no.2799, ward XIII, New Qutub Road, now known as Pratap Market, Delhi-110006; property no. 2823, Gali Matkewali, Qutub Road, now known as Pratap Market, Delhi-110006; and four shops in the property no. 2490/XIII (Old), Teliwara, Sadar Bazar, Delhi-110006, i.e. property where his timber business is statedly run from the ground floor, on the second floor of which the tenanted premises is situate. While the other properties are described as not suitable, they being away from the timber business at the ground floor, it was stated that other shops in property no.2490/XIII are in occupation of “old tenants”.

4. The tenant in her application for leave to contest, *inter alia*, pleaded that there are two shops at the first floor, at least one of which has been lying vacant/closed for about 15 years, it being immediately

over and above the ground floor portion where the landlord statedly runs his business, though it also being the case of the tenant that the landlord is in the process of winding up such business. The tenant also pleaded that three other shops at the ground floor were let out to different tenants “about a year back”, this to be read with reference to the date (11.01.2011) when the application for leave to contest was submitted.

5. In the reply to the said averment, the landlord, by his counter-affidavit, stated that both the shops at the first floor are occupied by “old tenants”, he describing them by names as Ashok Kumar and Sanwar Kumar respectively. He also took exception to the reference to three other shops at the ground floor and being described as let out “about a year back”, referring in this context to his income tax records, which according to him would show that the same had not been “let out recently”.

6. Noticeably, the landlord, though stating in the counter-affidavit that the tenant was not correct in pleading that the three other shops had been let out recently, he himself did not give any specific date(s) on which such shops had been let out. The omission is conspicuous. This by itself should permit the tenant to show facts to the contrary at the trial. Further, the documents relied upon by the landlord qua the stated tenancy of the two shops at the first floor of the aforementioned property, give rise to serious doubt as to the existence of a tenant named Ashok Kumar. Copies of rent receipts (seemingly counter foils) maintained by the landlord and placed on record (pages 59 to

67) relate to three tenants including the petitioner herein, Sanwar Kumar, one of the two tenants at the first floor and a person purportedly inducted as tenant his name being Ashok Kumar. What is important to note is that while the other tenants have signed on the rent receipts, the rent receipts in respect of the tenant named Ashok Kumar do not bear signatures of anyone.

7. In the above facts and circumstances, triable issues have been raised, on which account the leave to contest application should have been granted.

8. The petition is, thus, allowed. The impugned order is set aside. The application of the petitioner for leave to contest stands granted. Consequently, the proceedings arising out of the eviction petition of the respondent stand revived before the Rent Controller. The parties are directed to appear before the Rent Controller on 10.04.2018 for further proceedings in accordance with law. Needless to add, the petitioner will be obliged to submit written statement on the date of first appearance as has been fixed above.

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

R.K.GAUBA, J

MARCH 13, 2018

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