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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RC.REV. 417/2018 and CM APPL. 35355/2018**

NARESH KUMAR KAPIL & ANR Petitioners
Through: **Mr.A.S.Kulshrestha, Advocate**

versus

RAKESH KUMAR JAIN Respondent
Through:

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER
% **31.08.2018**

Initial submissions have been made on behalf of the petitioner.

Vide the present petition, the petitioner assails the impugned order dated 2.5.2018 of the learned Pilot Court, North District, Tis Hazari Courts in Eviction Petition No. 822/17 vide which the eviction petition was allowed and the application filed by the petitioner herein seeking leave to defend the said petition was declined.

During the course of the submissions that have been made on behalf of the petitioner it is sought to be contended that the initial sale deed of the property placed on the record dated 12.5.97, described the tenanted portion as one small shop vide Clause 3(iv) thereof in the tenancy of Naresh Kumar Kapil and Azad Kumar Kapil, i.e., the respondents to the Eviction petition No.822/17, i.e., the petitioners herein. It has been submitted that in the eviction petition that has been filed, the description of the occupation had been specified as shop

with the mezzanine and basement situated on the ground floor of the property and it has thus been contended that the eviction petition was filed in relation to the property other than that let out to the respondents.

In reply to a specific court query and as borne out through the affidavit of the respondents to the eviction petition, i.e., the petitioners herein seeking leave to defend, it is apparent that no such contention disputing the tenanted premises was urged through the affidavit filed by the respondents, i.e., the petitioners herein seeking leave to defend. The contention thus now raised that the petition was in relation to the description other than the tenanted premises cannot be accepted.

The other contention raised on behalf of the petitioners herein that they were tenants under the landlady Smt. Narmada Devi and reliance is also placed on a rent receipt to contend that the petitioner of the eviction petition was not in any manner connected with the present petition.

Further, It has been contended that the rent was being collected by an agent of the landlady and there was an ambiguity about the ownership as a consequence of which the petitioners herein did not make the payment of any rent. The property had devolved upon Smt. Narmada Devi after the death of her husband Sh. Ganga Ram and that there was an agent of the landlady named Radhe Shyam to whom the rent was paid. The said Radhe Shyam also expired in the year 1988, thereafter the landlady had been receiving the rent in person by the year 1991. It has also been submitted by the petitioners herein that they are not aware whether the said Radhey Shyam was the adopted

son of Smt.Narmada Devi and they are also not aware of any relationship of Smt. Narmada Devi with Mr. Manoj Kumar Sharma nor they are aware whether Manoj Kumar Sharma had obtained any letter of administration from the Court of law or any succession certificate in respect of the suit property . The impugned order brings forth to the effect that a sale deed dated 16.5.1997 was executed in favour of the petitioner of the eviction petition and that the same was a registered sale deed registered on 16.5.1997 thereafter the property had also been mutated in the MCD records and that the previous owner of the property to whom the rent was being paid by the respondent to the eviction petition, i.e., the petitioner herein is also indicated to have let out the mezzanine and basement to the petitioners herein for commercial purposes.

Taking the totality and the circumstances of the case into account there is no infirmity in the impugned order. The petition and the accompanying applications are declined.

ANU MALHOTRA, J

AUGUST 31, 2018/SV