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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ RC.REV. 489/2018 & CM APPL. 42632-42633/2018
SHIV KUMAR GUPTA Petitioner
Through Mr. R.K. Bindal, Adv.

versus

BAL KRISHAN (DECEASED) THR LRS Respondent
Through None.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA
ORDER
% **12.10.2018**

CM APPL. 42632/2018 & CM APPL. 42633/2018

Exemptions are allowed subject to all just exceptions.

Applications are disposed of.

RC.REV. 489/2018

Submissions have been made on behalf of the petitioner.

The petitioner assails the impugned order dated 20.08.2018 of the Court of the learned ARC-2/Central/THC, Delhi in case no. E-84/16 New No. 80086/16 whereby the application seeking leave to defend the eviction petition filed by the respondent to the eviction petition arrayed also as the respondent to the present RC.REV. 489/2018, was allowed and it was held that there were triable issues between the parties, which could not be decided without allowing evidence to be led with the directions to the petitioner herein to file the written It has been submitted on behalf of the petitioner that the observations in the impugned order observing to the effect

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statement within a period of 30 days from the dated 20.08.2018 with advance copy being supplied to the petitioner with a liberty being granted to file replication, as well.

It has been submitted on behalf of the petitioner that the observations in the impugned order observing to the effect that there were no properties declared by the petitioner in the impugned eviction petition are erroneous and that furthermore, even if the properties mentioned by the respondent are owned by the petitioners, the same did not suffice to meet the bonafide needs of the petitioner to the eviction petition.

Without any observations on the merits or demerits of the eviction petition pending before the learned ARC-2/Central/THC, Delhi, it is essential to observe that in the application filed by the respondent to the eviction petition, there are details submitted in relation to the stated alternative accommodation available with the petitioner of the eviction petition and as rightly observed by the learned Trial Court, the landlord had admitted that some of the properties were owned by them. Furthermore even as per the reply that has been filed by the petitioner to the application seeking leave to defend, the averment in relation to the properties for example read to the effect: -

“iv. Sub-para (iv) is wrong, uncalled-for, baseless and is denied. It is denied that the property No.6960, Ghas Mandi, B.H. Rao, Delhi-06 is of 160 sq. yards or having a carpet area of 5800 sq. feet comprising four storeys. MrRakesh Kumar Gupta has admittedly died much earlier, so no question of his occupation in the same at all arises.”

which makes it apparent that the observations of the learned Trial Court to the effect that triable issues in relation to the availability of an alternative accommodation arise with the petitioner were clearly brought forth cannot be faulted.

However as has been contended on behalf of the petitioner by the learned counsel for the petitioner that the observations in the impugned order to the effect : -

“but no such properties was disclosed by the petitioner in his main eviction petition.”

are erroneous and has to be accepted to the extent of the properties depicted in the eviction petition vide para 18 (a) (v) which reads to the effect : -

“(v) That all the above named petitioner and the owners/landlords and the members of the family-, as enumerated above, of the petitioner/owners/landlords have no other reasonably suitable alternative accommodation available with them, for residential pui-poses, except a built up jointly owned double-storeyed House bearing No.5001, Mandi Ghas, Pahari Dhiraj, Delhi - 110 006, which is in dilapidated condition and totally insufficient for all the family members, and the'- petitioner.' along with the owners/landlords. Mr Devinder Kumar Gupta, and Mr Kishan Kumar Gupta have two small houses of around 100 sq. yards each being No.WZ-106/79 and WZ-106/80 at Rajouri Garden Extension, New Delhi -1.10 027, being situated in an unauthorized colony which- is- not at

all' reasonably suitable for them for residential purposes of the family as enumerated above. Besides, this, two small rooms have been vacated by Mr Som Dutt Sharma' in' the suit premises on the first floor which too are not suitably sufficient for the huge residential requirement of the petitioner's landlord's long family and their dependents. The residential accommodation available with the petitioner/ owners/ landlords is grossly insufficient for their residential use.”

which is apparently on the record of the eviction petition and the learned Trial Court shall take the same into account at the time of disposal of the eviction petition.

With these observations, the petition is disposed of.

Copy of this order be sent to the learned Trial Court.

ANU MALHOTRA, J

OCTOBER 12, 2018/MK