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

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Judgment delivered on: 05.09.2019

+ RC.REV. 278/2019 & CM APPL. 20875/2019

SHAKUNTALA DEVI

..... Petitioner

versus

SURESH KUMAR TANWAR

..... Respondent

Advocates who appeared in this case:

For the Petitioner: Ms. Jaya Tomar, Advocate

For the Respondent: Mr. S.C. Singhal, Advocate

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 15.3.2019 whereby the application seeking leave to defend filed by the petitioner / tenant has been dismissed by the learned Rent Controller.

2. Subject eviction petition was filed by the respondent /landlord, seeking eviction of the petitioner/tenant from the property bearing No.WZ-845, Nangal Raya, New Delhi, comprising of one room, Varandha, Bathroom, toilet, Kitchen and open courtyard, more particularly as shown with the red colour in the site plan attached to the eviction petition.

3. Petition was filed contending that the premises was required for bona fide use of the son of the respondent / landlord. It was contended that the son and his wife did not get along with the respondent's wife and accordingly, respondent wanted to settle his son in a separate accommodation.

4. Leave to defend application was filed, contending that there were several premises available to the respondent / landlord, which were lying vacant and there was no need for additional premises.

5. It was contended by the Respondent / landlord that no premises was available and that all the properties owned by the respondent / landlord were occupied by the one tenant or the other.

6. Subsequently, an application was filed by the petitioner, contending that two properties adjoining to the tenanted premises i.e. properties No. WZ-844 and 842, which were identical in nature had fallen vacant and had been let out by the respondent. Said application was allowed by the Rent Controller because vacation and the subsequent renting out of the two premises had taken place after the leave to defend application was filed.

7. The grievance raised by counsel for the petitioner /tenant is that even though the said application was allowed, taking on record the subsequent event, the Rent Controller while considering the application for grant of leave to defend failed to take into account the

said subsequent event.

8. Learned counsel submits that after the filing of the eviction petition properties No. WZ-844 and 842, which are identically situated to the tenanted premises had fallen vacant and the same could have been used by the respondent to settle his son, but on the contrary they were rented out, which showed that there was no *bona fide* necessity of the respondent/landlord.

9. Learned counsel appearing for the respondent /landlord submits that the respondent/landlord needed to augment his income as also needed the tenanted premises for settling his son.

10. It is not in dispute that additional accommodation i.e. properties No. WZ-844 and 842, which are identical to the tenanted premises had fallen vacant and were not occupied by the respondent / landlord either himself or for settling his son and have been subsequently rented out. This, *prima facie* shows that the need of the respondent / landlord was not immediate.

11. If the need was immediate or bonafide, the respondent/landlord would have first occupied the said premises and settled his son and thereafter would have sought eviction of the petitioner/tenant for augmenting his income.

12. It is further seen from the eviction petition that no such ground of augmenting of income has been taken by the respondent/landlord.

13. In view of above, I am of the view that the petitioner / tenant has raised a triable issue and has disclosed such facts which if establish would disentitle the respondent / landlord from obtaining an order of recovery of possession of the tenanted premises.

14. I am of the view that the Rent Controller has erred in not granting leave to defend to the petitioner / tenant. Accordingly, the impugned order dated 15.3.2019 passed by the learned Rent Controller is set aside and the petition is allowed.

15. Leave to defend application filed by the petitioner / tenant is allowed. He is granted leave to defend the Eviction Petition.

16. List the matter before the concerned Rent Controller on 17.10.2019. The petitioner / tenant shall file her written statement within 30 days from today.

17. *Dasti* under the signatures of the Court Master.

SEPTEMBER 05, 2019

ssn

SANJEEV SACHDEVA, J