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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RC.REV. 181/2016 & CM APPL Nos.10288/2016, 24568/2018

SURINDER KAUR

..... Petitioner

Through : Mr.Puneet Sharma and Mr.Arun
Khatri, Advocates.

versus

RAVI BERRY & ORS

..... Respondents

Through : Mr.Shiv Charan Garg and Mr.Imran
Khan, Advocates.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

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20.02.2019

Petitioner assails the impugned order dated 06.12.2016 passed by the learned Trial Court whereby the leave to defend application of the respondent was allowed in Eviction Petition No.204/2013 filed by petitioner herein in respect of second floor of property bearing No.20UB, Jawahar Nagar, Delhi.

It is the case of the petitioner/landlord the subject property bearing No.20UB, Jawahar Nagar, Delhi consists of ground floor, mezzanine floor, first floor and second floor. The respondents are tenant in respect of second floor consisting of two rooms, kitchen and toilet etc. There is a shop on the ground floor portion in occupation of M/s.Dhara Boutique and the relations between the proprietor of said firm and petitioner are not cordial and various complaints, time and again, have been lodged for the alleged threats extended to petitioner herein. The mezzanine floor is having height of 6 feet, hence is not habitable; and qua the first floor it is urged same is not in ownership and possession of the petitioner since the year 1994 as

was sold by the husband of the petitioner. The learned counsel for the petitioner argued a Memorandum of Understanding was entered into between the petitioner with her son whereby the entire ground floor was given to her son and is in his possession.

It is further the case of the learned counsel for the petitioner the application for leave to defend was allowed primarily on following grounds; *a)* the learned Trial Court held there is nothing on record to show the petitioner had received any threat from the proprietor of M/s Dhara Boutique; *b)* the petitioner has in her possession the rooms on the ground floor, mezzanine floor and first floor is factually incorrect as on record there exists two complaints against M/s.Dhara Boutique and secondly the learned ARC has it failed to examine the law concerning the mezzanine floors having height of 6 feet and it is without any kitchen and toilet, hence not habitable; and *c)* he also failed to examine the first floor premises since was sold in the year 1994 and the sale deed year 1994 was also on record.

The learned counsel for the respondent though has disputed the averments made on behalf of the petitioner herein, but has fairly conceded for setting aside the impugned order passed by the learned Trial Court and that the learned ARC to decide the application for leave to defend afresh after considering the entire material and documents filed on record by both the parties.

Both the parties to appear before the learned Trial Court/ Successor Court on 28.02.2019 at 02.00PM for further directions.

Since the matter pertains to the year 2016, the learned Trial Court shall endeavour to decide the leave to defend application within

four week from the first date of appearance of both the parties. Both the learned counsels assures they shall not seek adjournment.

The Registry shall communicate forthwith the copy of this order to the learned Trial Court/Successor Court for information.

In view of above, the petition and pending application(s) stands disposed of. No order as to costs.

YOGESH KHANNA, J.

FEBRUARY 20, 2019

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