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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ CM(M) 393/2016 & CM APPL. 15185/2016  
RAM GOPAL SHARMA ..... Petitioner  
Through Ms. Ashoka Jain, Advocate

versus

NARENDER KUMAR GUPTA ..... Respondent  
Through Mr. S.N. Gupta, Advocate

**CORAM:**  
**HON'BLE MS. JUSTICE ANU MALHOTRA**

**ORDER**

% **15.02.2019**

Vide the present petition, the petitioner has assailed the impugned order dated 01.03.2016 of the learned ARC (Central-01) in eviction petition no. 395/2013 vide which an application under Section 15(2) of the DRC Act as amended filed on behalf of the petitioner of the eviction petition arrayed as respondent to the petition has been disposed of with the directions to the respondent to the eviction petition i.e. the petitioner herein to pay the rent @ Rs. 70 per month along with interest @ 15% for the period w.e.f. 03.08.2009 till the date of the impugned order dated 01.03.2016 within one month from the date of the order and thereafter to deposit rent month by month, by the 15<sup>th</sup> of each month, in the bank account of the petitioner i.e. respondent herein.

The grievance of the petitioner herein arrayed as the respondent to the said eviction petition under Section 14(e) of the DRC Act as amended filed on the ground of bona fide requirement is to the effect that the petitioner herein through his application seeking leave to

defend, had

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contended that there did not exist a relationship of the landlord and tenant between the parties and thereafter leave to defend had been granted on 12.12.2014 to the petitioner herein i.e. respondent in the said eviction petition to contest the eviction petition, and that inasmuch the landlord-tenant relationship between the parties had not been accepted by the petitioner herein, there was no question of grant of inter-alia an order under Section 15(2) of DRC Act. It is essential to reproduce the observations in para 3 of the order dated 12.12.2014 of the ARC (Central-01), Tis Hazari Courts in the para 15 which is reproduced as below:-

*“15. The petitioner has filed on record the documents, by which he is claiming his ownership over the suit property. Petitioner has also filed copy of mutation letter wherein, name of the petitioner has been mutated in the concerned department in respect of the suit property. The petitioner has also served legal notice dated 09.07.2012 upon the respondent which was not replied by the respondent by disputing landlord-tenant relationship, otherwise, he would have filed reply disputing the said notice. Even otherwise, the respondent has nowhere filed even a single documentary evidence to prove his ownership over the suit property. Thus, the respondent is estopped from denying the title of the petitioner u/s 116 of the Indian Evidence Act and the respondent cannot claim his ownership over the tenanted premises without any documentary evidence.”*

It has been specifically observed in the said order dated 12.12.2014 to the effect that the respondent to the eviction petition i.e.

the petitioner herein has been estopped from denying the title of the petitioner u/S 116 of the Indian Evidence Act and the respondent cannot not claim his

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ownership over the tenanted premises without any documentary evidence.

Leave to defend vide order dated 12.12.2014 to the petitioner herein, was granted in relation to the claim of alleged bona-fide requirements of the petitioner of the eviction petition. Taking the said aspect into account the contention raised on behalf of the petitioner herein that no order under Section 15(2) of DRC Act can be granted, cannot be accepted taking into account the provisions 15(2) of DRC Act.

Another contention raised on behalf of the petitioner herein is to the effect that the application under Section 15(2) of the DRC Act dated 05.03.2015 filed by the petitioner of the eviction petition did not specify the period for which the petitioner herein was allegedly in arrears of rent and that thus the impugned order to the effect that the respondent to the eviction petition was directed to pay the rent w.e.f. 03.08.2009@ Rs.70/- p.m. along with the interest @ 15% per annum from 03.08.2009 till the date of the impugned order dated 01.03.2016 within one month from the date of the order and thereafter to deposit rent month by month, by the 15<sup>th</sup> day of each month, in the bank account of the petitioner, could not have been granted.

In reply to a Court query, learned counsel for the respondent states that the petitioner of the eviction petition in relation to the

aforementioned application dated 05.03.2105 under DRC which reads as:-

*“Application on behalf of the petitioner under Section 15(2) of DRC Act*

***MOST RESPECTFULLY SHOWETH:-***

- 1. That the petitioner has filed the present eviction petition*
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*against the respondent and he has been granted leave to contest the petition but he is not paying the rent.*

*3. That the respondent is in arrears of rent since long but the petitioner claims the legally recoverable arrears of rent i.e. three years prior to the filing of the eviction petition upto @Rs.70/- p.m. along with interest.*

*4. That the respondent has made a false claim about his ownership which has been rejected and no appeal against the same has been filed by him. Moreover the respondent is estopped from denying the title and he has also failed to send reply to the notice.*

*It is therefore, respectfully prayed that the respondent may kindly be directed to pay or deposit the arrears of rent @Rs.70/- p.m. with effect from 3.8.2009 i.e three years prior to the date of institution of the petition upto date along with interest @15% per annum and continue to pay or deposit the same by 15<sup>th</sup> day of each English calendar month.”*

Though, it has been stated that the respondent to the said eviction petition was in arrears of rent ‘since long’, but that the petitioner claims the legally recoverable arrears of rent i.e. three years prior to the filing of the eviction petition upto date @ Rs.70 per

month along with interest. In relation to the aspect of use of words 'since long', learned counsel for the respondent to the present petition i.e. the petitioner of the eviction petition has submitted that the rent was not paid by the petitioner herein and that the same had also been specified through legal notice dated 09.07.2012 that had been issued to the petitioner herein but despite service of notice, the respondent to the eviction petition had failed to comply with the same. Copy of the said notice has been filed on record along with the postal

authority receipt showing service upon the respondent. mentioned in para 13 of the order dated 12.12.2014.

A perusal of the copy of the eviction petition indicates that it had been stated therein that the premises had been let out before the intimation of the respondent by previous owner.

The reply of the respondent to the eviction petition is to the effect:-

*19. In reply to para No.19 it is stated that mother of the respondent was owner of the property in dispute and was paying house tax to MCD for the property in her possession. She was not a tenant. The petitioner has not filed the original sale deed and the site plan and withheld the material particulars. It is emphatically denied that the predecessor of respondent attorned in his favour had started paying rent. The will is not admitted as the petitioner has not filed any probate or no objection from other legal heirs of Mr. Ram Shanker and petitioner has no authority or locus standee to file the present petition. It is denied that the petitioner is the sole and absolute*

*owner of the suit property. It is absolutely wrong to say that Smt. Mansa Devi mother of the respondent used to pay the rent to the petitioner and after her death the respondent became tenant but did not pay the rent despite repeated requests and demands. Even otherwise the petitioner has intentionally made vague statement without giving the time and date when the predecessor of respondent became tenant to the petitioner and when he started paying the rent and when she expired and on which dates the alleged demands and request were made to the respondent. It is submitted that the contents of this para as stated are in contradiction with the contents of other paras of this petition and the so called notice, though not required under law but has been sent with ulterior motive and mala fide intention in an effort to take*

*advantage of the law detrimental to the interest of law, justice, fair play and proper adjudication.”*

Para 19 of the eviction petition states to the effect that Smt. Mansa Devi, the mother of respondent used to pay the rent to the petitioner and after her death the respondent became a tenant but did not pay the rent despite repeated requests and demands.

In response to a specific court query to the petitioner about the demise of Smt. Mansa Devi, it has been informed on behalf of the petitioner that the date of demise of Smt. Mansa Devi is 10.10.2010. Taking the said aspect into account and the averments in para 19 of the eviction petition and taking into account the proceedings in the application seeking dismissal of the seeking leave to defend vide order dated 12.12.2014, to which there was no cross objection or any appeal filed, it is apparent that there is no infirmity in the impugned

order dated 01.03.2016.

The present petition and the accompanying applications are declined.

Nothing stated in hereinabove shall amount to any expression on the merits and demerits of the contentions raised in the eviction petition.

**ANU MALHOTRA, J**

**FEBRUARY 15, 2019**

Savita