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

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Judgment delivered on: 27.02.2020

+ RC.REV. 463/2019 with CM APPLs. 35106/2019, 39285/2019

AQIL BEG (DECEASED) THR LRS

..... Petitioners

versus

MUSHTAQ BEG & ANR

..... Respondents

**Advocates who appeared in this case:**

For the Petitioner: Ms. Shikhaa Kapoor, Advocate.

For the Respondent: None

**CORAM:-**

**HON'BLE MR JUSTICE SANJEEV SACHDEVA**

**JUDGMENT**

**SANJEEV SACHDEVA, J. (ORAL)**

1. Petitioner impugns order dated 05.01.2019, whereby the leave to defend application of the petitioner has been dismissed and an eviction order passed.

2. Respondents had filed the subject eviction petition seeking eviction of the predecessor of the petitioner from premises situated at Ground Floor consisting of three rooms, Duchhati, latrine, bathroom with passage bearing No. 1337 in property No. 1336 to 1343, Ward No. XI, Gali Madarsa Maulana Shah Abdul Aziz, Kalan Mahal, Darya

Ganj, Delhi, more particularly shown in the red colour in the site plan annexed to the eviction petition.

3. During pendency of the proceedings, the original tenant passed away and accordingly, his legal heirs were impleaded as parties.

4. It is submitted by the learned counsel for the petitioners that during the pendency of the eviction petition, a settlement had taken place between the parties and on 08.05.2012, petitioners had handed over part of the tenanted premises to the respondents.

5. Perusal of order dated 08.5.2012 of the Rent Controller shows that petitioner had handed over half portion of the tenanted property and had sought 15 days' time from the Court for vacating the remaining half portion of the tenanted property. However, petitioners had failed to comply with the statement made by them to the Court and did not hand over the remaining portion.

6. Subject eviction petition was filed by the respondents contending that the property bearing No. 1552 to 1559, new number 1336 to 1343 situated in Ward No. XI, Gali Madarsa Maulana Shah Abdul Aziz, Kalan Mahal, Darya Ganj, New Delhi was owned by the parents of the respondents i.e. late Abdullah Beg and late Smt. Amtul Habib, who died on 21.04.1981 and 23.06.1996, respectively leaving behind 6 sons and 3 daughters.

7. It is stated that 2 sons, namely, Bashir Beg and Ishtiaq Beg had

predeceased prior to the filing of present petition.

8. It is contended that one of the deceased son i.e. late Sh. Bashir Beg left behind 5 sons and 2 daughters. One son of Bashir Beg was married having wife, two unmarried sons and two daughters, one married and another unmarried.

9. The other son of late Sh. Bashir Beg was also married and had one married daughter, one unmarried daughter and one unmarried son.

10. The third son of late Sh. Bashir Beg was also married having three minor sons and one minor daughter.

11. Fourth son of late Sh. Bashir Beg was married and had two minor sons.

12. Both the daughters of late Sh. Bashir Beg were married.

13. The other son of late Sh. Abdullah Beg, namely, Mushtaq Beg and Irshad Beg were having three rooms with covered verandah and open court yard. Family members of Mushtaq Beg consists of his wife, unmarried son and two married daughters. The other son of late Sh. Abdullah Beg, namely, Irshad Beg was having two daughters, one is married and another is unmarried but she is residing with her mother separately and used to come and stay with her father.

14. It was contended that Sh. Mushtaq Beg requires at least four rooms and Irshad Beg requires at least two rooms, while they jointly

had only two rooms and a covered verandah on the ground floor and one small room on the first floor in their possession.

15. It is further contended that Ishtiaq Beg, son of late Sh. Abdullah Beg died leaving behind widow and two unmarried sons and one daughter and they were in possession of only two rooms in property bearing No. 1337.

16. Further, it is contended that other sons of Sh. Abdullah, namely, Aziz Beg is in occupation of one room and his married daughter is in possession of one room.

17. Further, it is contended that Sh. Ashfaq Beg, son of late Sh. Abdullah Beg was residing in his self acquired property consisting of two room on the ground floor and three rooms on the first floor and his family comprises of his two married sons, namely, Mohsin Beg & Asim Beg and two married daughters. Family of Mohsin Beg consists of his wife, two unmarried sons, aged 21 and 16, respectively and one unmarried daughter, aged 17 years. Family of Asim Beg consists of his wife, two sons and one daughter. It is contended that Sh. Ashfaq Beg requires seven rooms, but had only five rooms in his possession.

18. Further, it was contended that late Sh. Abdullah Beg was having three married daughters, who are also co-owners of the property and visit the property of and on, and requires three rooms.

19. In all, the petitioners' family comprise of over 42 family

members besides three married daughters of late Sh. Abdullah Beg, who are also co-owners of the property and are stated to come and reside in the subject property occasionally.

20. In the leave to defend application, the petitioners had contended that respondents also owned property bearing Nos. 1440, 1339, 1337, 1338, 1344, 1801, 1791 and 1365 Kalan Mahal, Darya Ganj, Delhi.

21. In response thereto, it was contended by the respondents that properties Nos. 1440, 1344 and 1437, are neither owned nor possessed by the respondent and they have no connection with the same. With regard to property No. 1339, 1337, 1338, it was contended that the same is disclosed in the eviction petition, as already being in possession of some of the respondents. With regard to property No. 1801 and 1365, it is stated that the same are commercial properties.

22. Clearly, the family of the respondents as disclosed in the eviction petition and which is not disputed by the petitioners, comprises of over 42 family members. Respondents have clearly indicated that the accommodation, presently in their possession, was far less than their requirement.

23. Petitioners have not been able to show that sufficient alternative accommodation is available with the respondents to meet their requirement. Even if all the facts, as alleged by the petitioners, in the affidavit in support of the leave to defend application were assumed to be correct, the same do not still satisfy the requirement as projected by

the respondents for their large family.

24. The Rent Controller has correctly held that the affidavit in support of the leave to defend application does not show such facts, which if proved, would disentitle the respondent landlord from an order of eviction and has rightly refused to grant leave to defend.

25. Further reliance is placed by the learned counsel for the petitioner on the Explanation II to Section 2(l) of the Delhi Rent Control Act, 1958, to contend that the widow of the deceased tenant should have been granted protection after the demise of the tenant. Said contention is misplaced.

26. Explanation II to Section 2(l) of the Rent Act stipulates that a family member, who is not financially dependent on the deceased person, on the date of his death acquires such rights as a successor for a limited period of one year. The dependent widow would be protected for her life

27. The right/protection as envisaged by Explanation II to Section 2(l) of the Rent Act implies that the family members of the deceased tenant have to be afforded the same protection as was available to the tenant i.e. not to be evicted from the tenanted premises except in accordance with the provisions of Delhi Rent Control Act.

28. In the present case, on demise of the tenant, the respondents duly impleaded all the legal heirs including the widow and the

children and thereafter, proceed with the eviction petition and the proceedings continued and subject eviction order has been passed in accordance with the Delhi Rent Control Act. This contention is accordingly misplaced.

29. I find no infirmity in the view taken by the Rent Controller that no triable issue arises and that the Petitioners have not been able to show any fact, which if proved, would disentitle the Respondents of an order of eviction.

30. I find no merit in the Petition. The Petition is accordingly dismissed.

31. For the purposes of record, it may also be noticed that petitioners have already been evicted from the tenanted premises through warrants of possession by the execution Court.

**SANJEEV SACHDEVA, J.**

**FEBRUARY 27, 2020**

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