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

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Judgment delivered on: 21.01.2020

+ RC.REV. 127/2018 & CM APPL. 13308/2018

BASANTI DEVI

..... Petitioner

versus

RAM BIRCH

..... Respondent

Advocates who appeared in this case:

For the Petitioner: Mr.Punit Vinay and Ms.Kavita Chhabbra, Advocates.

For the Respondent: Mr.S.P.Rana and Mr.Vijay Dutt, Advocates.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Learned counsel for the petitioner submits that in terms of Section 38 of the Delhi Rent Control Act, 1958 an appeal would lie only on a question of law and since the Rent Controller has returned a finding of fact that there is no relationship of landlord and tenant, he has filed the subject revision petition and not filed an appeal.

2. Petitioner impugns order dated 16.11.2017, whereby the eviction petition filed by the petitioner has been dismissed holding that there does not exist any landlord-tenant relationship between the parties.

3. Perusal of the orders shows that there is complete non application of

mind by the Rent Controller in passing the impugned order.

4. Petitioner had filed the subject eviction petition under Section 14(1)(a) of the Delhi Rent Control Act, 1958 contending that respondent, despite service of statutory notice has failed to pay the arrears of rent as demanded in the notice.

5. Respondent had taken up a plea that there was no relationship of landlord and tenant between the parties and he was not in possession as a tenant but as a prospective buyer who had paid part of the sale consideration to the petitioner and was willing to make payment of the reminder.

6. Learned counsel for the respondent has produced the certified copies of the Trial Court record which have been perused.

7. Rent Controller on 12.11.2017 passed the following order:-

“2. Defending the present petition, the respondent has replied that he was introduced to the possession of the premises by the petitioner, not as a tenant but as prospective buyer who had agreed to purchase the premises at a price of Rs. 4 Lakh and had paid Rs. 3.5 Lakh to the petitioner. The respondent was and is ready and willing to make the payment of remainder i.e. Rs. 50,000/-. The petitioner failed to perform her promise under the Agreement to Sell she made with the respondent on 08.06.2005. Since the respondent has acquired possession under Agreement to Sell in writing and has paid the substantial price, his possession is not that of a tenant but that of a buyer under Agreement to Sell

3. In a suit title, Ram Birch Vs. Basanti Devi bearing Suit No.. 265/2007 - which was instituted on 28.09.2007 and finally disposed off by a judgment dated 23.09.2008 of the Ld. ADJ, Delhi Sh. Lai Singh, - the petitioner herein and the

defendant to that suit had pleaded that the respondent herein had not performed the terms and conditions of Agreement to Sell-dated 08.06.2005 and, therefore, his occupation of the premises is illegal. From the said pleadings, it is manifest that the facts averred in the present petition are in contradiction and inconsistent with the facts which the petitioner has pleaded before other courts and, therefore, no order under Section 15(1) DRC Act is warranted at this stage. Parties need to be heard on the issue of landlord-tenant relationship.”

8. Rent Controller put up the matter for consideration on 16.01.2017. Case was thereafter taken up for consideration from time to time.

9. On 04.02.2017 the Rent Controller records that arguments were heard on the issue of landlord-tenant relationship and learned counsel for the petitioner sought time to withdraw the petition. Thereafter the case was adjourned to 14.02.2017 when arguments were heard and case is put up for orders.

10. Thereafter the case is listed on 23.03.2017, 20.03.2017, 15.04.2017, 20.05.2017, 29.05.2017, 3.6.2017, 14.7.2017, 24.7.2017 when the only order passed by the Rent Controller is that orders could not be passed on account of administrative work.

11. On 23.08.2017 case was taken up for clarification and adjourned to 31.08.2017 and then to 07.09.2017, when statement of the husband of the petitioner was recorded that he wanted time to withdraw the petition and sought an adjournment.

12. On 12.09.2017 petitioner appeared and stated that she did not wish to withdraw the petition. Thereafter case was adjourned to 03.10.2017,

07.11.2017, 14.11.2017 and finally to 16.11.2017, the impugned order is passed dismissing the Eviction Petition.

13. The impugned order only reproduces the order dated 12.01.2017 extracted hereinabove and thereafter records that there is no material on record to suggest that there is any infirmity in order dated 12.01.2017. Further the Rent Controller has recorded that petitioner has failed to satisfy the Court that respondent did not acquire possession of the premises as a tenant and acquired the possession under the Agreement to Sell dated 08.06.2005.

14. Consequently, the Rent Controller has held that landlord-tenant relationship did not exist between the parties and has dismissed the Eviction petition has been dismissed.

15. Perusal of the impugned order dated 16.01.2017 shows there is complete non application of mind and the order is bereft of any reasoning. There is no discussion of the submission of the parties and their respective case and further no reasoning is given by the Rent Controller as to how the Rent Controller has arrived at the finding of fact that relationship of landlord and tenant did not exist between the parties.

16. Rent Controller has merely reproduced order dated 12.01.2017, which only records the contention/defence taken by the respondent that he was introduced in the possession of the premises not as a tenant but as a prospective buyer and passed the order dismissing the eviction petition.

17. There is no admission on the part of the petitioner that respondent had entered into possession as a prospective buyer but the stand of the

petitioner is that respondent was inducted as a tenant in the subject property. Even if a contradiction is noticed by the Rent Controller in the pleadings, Rent Controller was also obliged to permit parties to lead evidence and explain their pleadings and thereafter consider the plea and arrive at a finding of fact rather than accepting the plea of one of the parties on its face value.

18. It is also pointed out by learned counsel for the petitioner that the Suit for permanent and mandatory injunction and declaration filed by the respondent and referred to in order dated 12.01.2017 has been dismissed by judgment dated 23.09.2008 and thereafter no further proceedings were initiated by the respondent.

19. In view of the above, impugned order dated 16.11.2017 is set aside. The eviction petition filed by the petitioner is restored to its original number on the record of the Rent Controller.

20. List the eviction petition for directions before the concerned Rent Controller on 27.02.2020. Parties shall appear before the Rent Controller on the said date.

21. Revision Petition is allowed in the above terms.

22. Order *Dasti* under signatures of the Court Master.

SANJEEV SACHDEVA, J.

JANUARY 21, 2020

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