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

% *Decided on: 27.10.2021*

+ RC.REV. 160/2021 &CM APPL. 38022/2021

RAJIV KUMAR AGGARWALPetitioner
Through: Mr Manoj Gupta, Mr R.P.
Raikwar and MsPriyadarshni,
Advocates.

versus

KAMLESH AGGARWAL & ORS. Respondents
Through: Mr Vikram Aggarwal, son of R-1
in person.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

The hearing was conducted through video conferencing.

1. The petitioner impugns the eviction order dated 12.03.2021 passed by the learned Additional Rent Controller, Tis Hazari Courts, Delhi apropos property bearing number 1233, Ground Floor, Mahal Sarai, Kashmere Gate, Delhi-110006. The tenancy is stated to have commenced in 1947 at a monthly rent of Rs.6.50. The property devolved upon the landlady through successive purchase and inheritance. She sought eviction of the tenant for the *bona fide* need of herself, her two sons and two daughters. She had disclosed that she has another property: bearing number 1219/35, Mahal Sarai, Kashmere Gate, Delhi which had a shop admeasuring

8'- 6x6 – 0 on the ground floor and a small kothari, one room 12.8" x 6', kitchen, toilet and a chajja at the first floor; that her son, a practicing advocate at Tis Hazari Court, Delhi, did not have a chamber of his own and needed the tenanted premises for starting his law office. On the second floor, there are two rooms, a chajja, another small room, which will be used for his residential purposes. She stated that she had no alternate property available with her at the time of filing the eviction petition.

2. The landlady's tenanted property i.e. 1219/35, Mahal Sarai, Kashmere Gate, Delhi was vacated pursuant to subsequent orders passed in another eviction proceedings and keys of the same were handed over in this court on 06.10.2021 in CONT.CAS(C) 512/2021 (*Kamlesh Aggarwal v. Smt. Sudha & Ors.*). The said order dated 06.10.2021 reads thus:-

"...1. The tenant is present in person. She does not have a counsel. Mr. Rizwan, Advocate, who is present in the court, is appointed as her counsel for a day. Photocopy of the Aadhar Card of the tenant has been taken. She has been identified as a tenant by the landlady.

Keys of the tenanted premises have been handed over by the tenant to the landlady, who too is present in the court. The keys have been accepted on the assurance of the tenant that the premises is in good repair and does not contain anything illegal.

In view of the above, the petition has become infructuous and is disposed-off accordingly..."

3. The petitioner/ tenant has impugned the eviction order on the ground that at the time of filing of the eviction petition the

property bearing number 1219/35, Mahal Sarai, Kashmere Gate, Delhi was available to the landlady. The said contention is incorrect and untenable, in view of the preceding paragraph showing that the said property was made available to the landlady only three weeks ago.

4. The other ground raised by the tenant is that the first floor of the property bearing number 1233, Mahal Sarai, Kashmere Gate, Delhi-110006 is available with the landlady and it could very well be utilized for satisfying her and her sons *bona fide* needs, as may be. It is to be noted that the landlady had already disclosed that the first floor of the said property is in a dilapidated condition and was not useable. The impugned order has dealt with the issue as under:-

“...30. The respondents submitted that petitioner has not disclosed about her alternative suitable accommodation as she has one property bearing 1219, Mahal Sarai, Kashmere Gate, Delhi-110006 which is measuring about 75 Sq. Yards and consisting of ground, first and second floor. They have also mentioned that said property lying vacant for the last several years. Moreover, Ld. Counsel for the respondents argued that petitioner and her family members are residing in a posh locality. So, after vacation, they will not occupy the tenanted premises which is located in commercial place in the vicinity of busy market.

31. I am not satisfied with the arguments of the Ld. Counsel for the respondents as petitioner has disclosed that she owns property bearing no.1233, Mahal Sarai, Kashmere Gate, Delhi (tenanted ground floor) and property no.1219/35, Mahal sarai, Kashmere Gate, Delhi in para 18(a) (x) of her petition. It is further specified in her petition that first floor of the property no.1233, Mahal

Sarai is not habitable and cannot be used for residential purposes. Petitioner also filed the four coloured photocopy of photographs of first floor of property no.1233, along-with her reply to the leave to defend application of the respondents. Those copy of photographs clearly shows that first floor of property is in a dilapidated condition and wholly inhabitable.

32. As far as property no.1219/35, Mahal Sarai, Kashmere Gate is concerned, the petitioner clearly mentioned in para 18(a) (xii) of her petition that property no.1219/35 will be used by her son Mr. Vikram Aggarwal who is advocate by profession, after getting vacant possession of the same. The property will be used for office purpose as well as residential purpose at second floor.

33. Thus, it is apparent that property no.1219/35 at present not at the disposal of the petitioner. Nothing has been brought on record by the respondents which shows that petitioner is in actual possession of property no.1219/35.

34. Furthermore, the argument that tenanted premise of petitioner and her family members at Kohat Enclave is more suitable has no basis as the petitioner is the best judge of his needs and requirements.

35. In this regard, reliance is also placed upon the decision of the Hon'ble High Court passed in the case of Mohd. Naseer Vs. Mohd. Zaheer and Anr. RC Rev. No. 267/2016 dated 03.11.2016 in which the following was held :-

"19. ...Mere raising of baseless contentions against the landlord cannot be a ground for being granted leave to defend to the petitioners. It cannot be said that the petitioners have given facts or particulars which require to be established by way of evidence. The petitioners have merely made allegations for the sake of making allegation. There is no merit in the said plea of the petitioner.

20. *The trial court has rightly concluded that the petitioners have failed to place on record any material to raise a suspicion that the respondents are having a vacant space on the ground floor of the suit property which can be used by them to open his workshop for industrial tools.*

36. *In the present case, bald assertions have been made by the Ld. Counsel for the respondents that the petitioner has other alternative accommodations which can be used by the petitioner for her residential purpose.*

37. *Even if it is presumed that the petitioner has other premises available for her requirements as stated in the petition, even then the choice is left to the landlord/petitioner to decide as to which of these premises she should occupy and the tenant does not have any say in this matter. In the case of Ravichandran and Ors. Vs Natrajan Nadar and Ors. (2004) 1 MLJ 458, the following was held:*

"Even assuming that other premises are available, then the choice is left to the landlord to decide as to which //26// non-residential premises he should occupy, and the tenant cannot have any say in the matter. If the landlord is able to show the bonafide, then the tenant cannot dictate terms to the landlord that he should occupy some other building and not the one mentioned in the petition."

39. *In view of the settled legal position, it is not for the respondents to dictate to the petitioner that she should manage her family in any other accommodation, even if they are indeed available with the petitioner. The tenanted premises belongs to the petitioner and it is for the petitioner to see which of her property is suitable for her family for residential purpose. It is the case of the petitioner that the tenanted premises is suitable for her*

family for residential purpose. It is the right of the petitioner to look after her family's comfort. If the tenanted premises is suitable as per her needs, she has every right to possess the said premises and the respondents cannot contend that she should manage her family otherwise. While deciding the question of bonafide requirement of the landlord, it is quite unnecessary to make an //27// endeavour as to how else the landlord could have adjusted.

44. The net result is that petitioner has been able to establish that the tenanted premises is required bonafide by her for her family for residential purposes and that they have no other reasonably suitable alternative accommodation for this purpose. The respondents have failed to raise any reasonable triable issue. The applications for leave to defend are dismissed.

42. Since the applications seeking leave to defend have been dismissed, the petitioner is entitled for an eviction order. Accordingly, eviction order is passed in favour of the petitioner and against the respondent no.1 to 5 directing all the respondents to vacate the tenanted premises bearing no.1233, Ground Floor, Mahal Sarai, Kashmere Gate, Delhi-110006 shown in red colour in the site plan filed by the petitioner, in terms of Section 14 (1) (e) r/w Section 25-B of the Delhi Rent Control Act. The landlady however shall not be entitled to obtain possession thereof before the expiration of a period of six months from the date of this order...”

5. The tenant's sole ground for impugning the eviction order, has been duly dealt with by the learned Rent Controller as noted in the preceding paragraphs. The first floor of the property 1233, Mahal Sarai, Kashmere Gate, Delhi-110006 was not habitable, hence, it was not an alternate accommodation available to the landlady. Photographs filed by the landlady in the learned Trial Court

showed that the said property was in dilapidated condition; the learned Trial Court was satisfied with the same and has so held. The petitioner/tenant has chosen not to file the said photographs in the instant petition. Be that as it may, the status of the said property not being in a habitable condition, is not in dispute.

6. As noted above, property bearing number 1219/35, Mahal Sarai, Kashmere Gate, Delhi whose possession was not available with the landlady at the time of filing of the eviction petition or when the leave to defend application was being considered, was not a triable issue. Neither of the two grounds raised by the tenant constituted a triable issue.
7. In view of the above, this court finds no reason to interfere with the impugned order. The petition is without merit and is accordingly dismissed.
8. The order be uploaded on the website forthwith.

NAJMI WAZIRI, J

OCTOBER 27, 2021/rd