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

+ RC.REV. 587/2019

NIRMAL BARUTA

..... Petitioner

Through: Mr. Jai Sahai Endlaw & Mr. Karan
Kumar, Advocates.

versus

HARPREET SINGH

..... Respondent

Through: Mr. R.S. Kela & Mr. Bharat Gupta,
Advocates.

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Reserved on: 05th December, 2022

Date of Decision: 19th December, 2022

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J:

1. The present revision petition has been filed by the Petitioner, landlady, who is the exclusive owner of property bearing no. T-73, Ground Floor, Rajouri Garden, New Delhi-110027 ('tenanted property'), impugning the judgment dated 20.08.2019 passed by the Court of the Rent Controller (West), Tis Hazari District Courts, Delhi ('Trial Judge'), whereby the Petitioner, landlady's, eviction petition has been dismissed holding that the need of the landlady for the tenanted property is doubtful.

2. According to the Petitioner, landlady, she is presently residing at first floor of House No. S-3B, Janta Market, Rajouri Garden, New Delhi, 110027 ('present residence') along with her husband and her then newly married son

and his wife.

3. In the eviction proceedings before the Trial Judge, the Petitioner, landlady, had made the following averments:

3.1. She stated that her current residence comprises of one drawing room, one dining room, one bedroom, kitchen, bath and WC and is therefore, insufficient to accommodate the present family of the Petitioner comprising of 04 adults. She stated that the only bedroom is occupied by her son and daughter-in-law. Respondent stated that she herself along with her husband have shifted to the drawing room, which they have converted into a makeshift bedroom. She further, stated that she has a married daughter who lives in Lucknow and there is no accommodation to offer the daughter for overnight stay when she visits her.

3.2. She further stated that her present residence is located at a busy market area due to which there is heavy noise throughout the day and the family has to keep the doors and windows of the house closed at all times to keep the noise at bay. She states that in contrast, the tenanted property is situated in a residential area and the neighborhood is far more suitable for the residence of the landlady and her family.

3.3. She further stated that her present residence is jointly owned by her husband, his brother and three nephews, wherein the husband of the Petitioner has 20% ownership rights. On the other hand, the tenanted property is absolutely and exclusively owned by the landlady herself and therefore, she wants to shift to the tenanted property.

3.4. She stated that the tenanted property is located on the ground floor and since she has developed an orthopedic problem and has been diagnosed with advanced medical compartment osteoarthritis in her right knee and

related ailments, she has been advised by the doctors to modify her lifestyle and not to climb stairs, ramps, sit on the floor, prolonged sitting and standing or any such other activity, which may put further strain on her knees and her legs. In support of her medical condition, she filed prescriptions issued to her by the Out Patient Department ('OPD') of All India Institute of Medical Sciences (AIIMS) Hospital.

4. Therefore, the landlady in the aforesaid facts, filed the eviction petition under Section 14(1)(e) of the Delhi Rent Control Act, 1958 ('the Act'), for recovery of the tenanted property for her *bona fide* residential need.

4.1. The eviction petition was resisted by the Respondent, tenant, who opposed the prayers made by the landlady on the ground that her need was not *bona fide* and she had other reasonable, alternate and suitable accommodation available to her.

5. The Trial Judge in the impugned judgment has returned a finding that the Petitioner is the landlady with regard to the tenanted property and there is no dispute raised by the Respondent, tenant, in this regard.

5.1. The Trial Judge, while examining the issue of *bona fide* need of the landlady, has only dealt with the plea of the medical condition of the landlady as regards her inability to climb stairs and therefore, her requirement to shift to a ground floor premises. The Trial Judge after examining the four medical prescriptions issued by AIIMS hospital, held that the said prescriptions are not sufficient to conclude that the Petitioner is altogether incapable of climbing stairs. In the said view of the matter, the Trial Judge held that the 'need' of the landlady for the tenanted property on medical grounds is doubtful. No other plea of the landlady for her *bona fide*

need was adjudicated in the impugned judgment.

6. Learned counsel for the Petitioner, at the outset, states that the matter may be remanded back to the Trial Judge for reconsideration in view of the fact that the specific pleas of the landlady with respect to her requirement of additional accommodation on the grounds of her family member i.e., daughter and her then new wed son and daughter-in-law, has not been deliberated upon by the Trial Judge.

6.1. He, further, submits that the finding of the Trial Judge with respect to the medical condition of the landlady is in teeth of the medical prescriptions issued by AIIMS hospitals, which were duly placed on record. He more specifically relied upon the prescription dated 16.10.2014 which categorically advised the landlady not to climb stairs, ramps or sit on the floor or have prolonged sitting or standing. He states that the veracity of the medical prescriptions issued by AIIMS hospital is not disputed by the Respondent, tenant. He further relied upon the statement of the Respondent, tenant, in his cross-examination wherein the tenant admitted that he had never seen the landlady except during the trial and therefore, the learned counsel stated that the challenge raised by the tenant to the medical condition of the landlady was a bald denial and was raised only to deny her the relief in the present proceedings.

7. In reply, learned counsel for the Respondent, tenant, states that while it is correct that the tenant does not dispute the genuineness of the medical prescriptions issued by the AIIMS hospital to the landlady, he states that the tenant had specifically averred in his examination-in-chief that these medical prescriptions were 'procured' by the landlady from her doctor friend. He further states that no evidence of a doctor was led by the landlady nor was

any medical record from the hospital produced other than the medical prescriptions. In these facts, he states that the evidence placed on record by the landlady was not sufficient to hold that she requires a ground floor premises for her residence and cannot be accommodated on the first floor.

7.1. He states that it is an admitted fact that the first floor of the tenanted property is lying vacant and the landlady therefore, has sufficient alternate accommodation available with her. He states that the tenant had in his defense raised the objection with respect to availability of other reasonable alternate suitable accommodation as well, though, there is no adjudication on the said pleas by the Trial Judge. He, therefore, states that there is no infirmity in the eviction order.

8. I have considered heard the learned counsel for the parties and perused the paper book. In order to determine the correctness of the view taken by the Trial Judge, it would be apposite to first deal with the scope and ambit of Section 25B of the Act, which has been explained by the Supreme Court in its recent decision of *Abid-Ul-Islam v. Inder Sain Dua*, (2022) 6 SCC 30, wherein at paragraph 23, the Supreme Court has held as under:

*“23. The proviso to Section 25-B(8) gives the High Court exclusive power of revision against an order of the learned Rent Controller, being in the nature of superintendence over an inferior court on the decision-making process, inclusive of procedural compliance. Thus, the High Court is not expected to substitute and supplant its views with that of the trial court by exercising the appellate jurisdiction. Its role is to satisfy itself on the process adopted. **The scope of interference by the High Court is very restrictive and except in cases where there is an error apparent on the face of the record, which would only mean that in the absence of any adjudication per se, the High Court should not venture to disturb such a decision. There is no need for holding a roving inquiry in such matters which would otherwise amount to converting the power of superintendence into that of a regular first appeal, an act, totally forbidden by the legislature.**”*

(Emphasis Supplied)

It can thus be seen, that the Supreme Court has held that the High Court while exercising the revisional powers under the Act, is empowered to interfere and set aside the order of the Trial Judge if there is an error apparent on the face of record due to the absence of adjudication *per se*.

9. In the facts of the present case both the landlady and the tenant admit that their respective pleas have not been adjudicated upon by the Trial Judge. The landlady's contention that her plea for *bona fide* need on account of paucity of accommodation at her present residence due to her son's marriage and for the overnight stay of her married daughter have not been adjudicated, is correct. Similarly, the tenant's plea as regards the availability of alternate suitable accommodation has also not been adjudicated upon by the Trial Judge.

10. The order of the Trial Court suffers from an error apparent on the face of record in view of non-adjudication of the specific pleas of the landlady as regards the paucity of accommodation at her present residence. In the present proceedings, there is no dispute with respect to the relationship of landlord and tenant. The essential condition for succeeding in a petition filed under Section 14(1)(e) of the Act, requires the Trial Judge to satisfy itself that the landlady requires the *bona fide* premises for herself. In this case, in addition to the plea of medical condition, the landlady has specifically raised the issue of paucity of accommodation at her present residence due to her son's marriage and absence of any room for her visiting married daughter. The Trial Judge having failed to adjudicate on the said specific pleas of the landlady, failed to exercise its jurisdiction and committed an error and the eviction order is liable to be set aside on this ground of this jurisdictional

error alone.

11. With respect to the plea of medical condition of the landlady as regards the medical advice received by her to not climb stairs, I have perused the evidence led by the parties. The landlady brought on record the medical prescriptions issued by AIIMS hospital, veracity whereof is not disputed by the tenant. In these proceedings as well, the learned counsel for the Respondent, tenant, fairly admitted that there is no dispute on the authenticity of the said documents.

11.1. With respect to the contention of the learned counsel for the Respondent, tenant, that the said prescriptions have been procured by the landlady through a doctor friend, this Court finds that the said allegation of the tenant is unsubstantiated. There was no such suggestion made to the landlady when she stepped into the witness box. No details of the alleged doctor friend were stated by the Respondent, tenant, in his evidence. Further, the prescription has been issued by AIIMS hospital and not by a private doctor. The AIIMS hospital being one of the most premiere and reputed hospital in the city, the allegation of the tenant that the genuine prescriptions placed on record by the landlady were procured by a family doctor is merely a bald allegation and cannot be countenanced. The Trial Judge has also not accepted the said plea of the tenant and has accepted the medical prescriptions to be genuine.

11.2. However, the Trial Judge in his deliberations at para 9B(iii) at sub paragraphs, (a), (b), (c), (d) and (e), while accepting the said prescriptions to be genuine has observed that *'the medical terminology used in this prescription has not been explained by the Petitioner'*. The Trial Judge has made this observation for three out of four of the prescriptions. In the

opinion of this Court, if the Trial Judge required clarification on the medical terminology, it should have called upon the parties to assist the Court and thereafter, on the basis of the clarification received adjudicated on the plea of the landlady. It, therefore, appears to this Court that the Trial Judge has rejected the plea of medical condition pleaded by the landlady on account of its finding quoted above without being fully cognizant of the medical condition of the landlady and this has resulted in miscarriage of justice.

12. In view of the finding returned on the medical requirement, the Trial Judge observed that there was no need to delve further into the other aspects of the matter. Therefore, in the impugned judgment, the Trial Judge has not adjudicated on the plea of insufficiency of the accommodation of the landlady at her current residence, her need for additional accommodation for the married daughter and her plea that her present residence is a joint property owned by her relatives; as well as her plea that her existing residence is located in a commercial area and a noisy neighborhood which is not conducive for a peaceful residence.

13. This Court, therefore, finds merit in the submissions of the learned counsel for the Petitioner, landlady, that the impugned order be set aside and the matter may be remanded to the Trial Judge for deciding the matter afresh from the stage of final arguments for all the pleas raised by the landlady for her *bona fide* need. Needless to state, the plea of reasonable alternate accommodation raised by the tenant shall also be adjudicated upon by the Trial Judge.

14. In view of the aforesaid findings of this Court, the impugned judgment dated 20.08.2019, is set aside and the matter is restored to its original number and remanded back to the Court of the Rent Controller

(West), Tis Hazari District Courts, Delhi for final arguments.

15. The Registry is directed to have this order placed before the Trial Judge on 09.01.2023 so that a date for hearing can be fixed in this matter. It is further noted that the present eviction petition was filed on 23.03.2015 and considering that one of the pleas raised by the landlady is with respect to her medical condition, this Court requests the Trial Judge to hear the final arguments and pass the final judgment not later than three months from 09.01.2023. The parties are directed to remain present before the Trial Judge on 09.01.2023.

16. The Trial Judge shall pass the final judgment without being influenced by any observation made in this judgment.

MANMEET PRITAM SINGH ARORA, J

DECEMBER 19, 2022/msh/aa

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