



\$~22 & 26

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

Date of Order: 31.10.2023

- + **RC.REV. 578/2019**
 ARSHAD QURESHI & ANR Petitioners
 Through: Mohd. Akram, Advocate
 Petitioner No. 1 in person
 versus
 MOHD KALEEM & ANR Respondents
 Through: Mr Arvind Dhingra, Advocate
 Respondent No. 1 in person (through
 VC)
- + **RC.REV. 68/2021**
 MOHD KALEEM & ANR. Petitioners
 Through: Mr Arvind Dhingra, Advocate
 Petitioner No. 1 in person (through
 VC)
 versus
 ARSHAD QURESHI & ANR. Respondents
 Through: Mohd. Akram, Advocate
 Respondent No. 1 in person (through
 VC)

CORAM:

HON'BLE MS. JUSTICE TARA VITASTA GANJU

[Physical Hearing/Hybrid Hearing (as per request)]

TARA VITASTA GANJU, J.: (ORAL)

1. These petitions have been filed by the landlord in RC.REV. 578/2019 and tenant in RC.REV. 68/2021 impugning the same Order dated 15.05.2019 passed by the learned ARC, Distt. Central, Tis Hazari Courts, Delhi in Petition bearing no. E-692/2018 titled as “*Arshad Qureshi & Anr. vs. Mohd. Kalmeem & Ors.*” [hereinafter referred to as “Impugned Order”].
2. By the Impugned Order, learned ARC has dismissed the Eviction



Petition filed by the landlord and has also dismissed the leave to defend Application filed by the tenant.

3. Learned Counsel for the landlord appears along with landlord in person. Learned Counsel for the tenant appears virtually along with the Respondent No. 1 in RC.REV. 578/2019 and the Petitioner No. 1 in RC.REV. 68/2021.

4. Learned Counsel for the landlord contends that the Impugned Order is premised in view of the fact that there is no second floor in the property as shown with the site plan has, therefore, dismissed the Eviction Order filed.

4.1 Learned Counsel for the tenant relies on e-copy of the Eviction Petition filed at Annexure P-2 of the case file. Paragraphs (1) and (8) of the Eviction Petition read as follows:

*“01 Municipal No. of the premises and name if any :
Property bearing No. 6225-6228, Gali
Jharsayan, Quresh Nagar, Sadar Bazar,
Delhi-110006, as shows in Red Colour site
plan attached.*

*08 Detail of accommodation Available together with particulars
as regards ground area, garden and outhouses if any plan to be
attached:*

*Property bearing No. 6225-6228, Gali
Jharsayan, Quresh Nagar, Sadar Bazar,
Delhi-110066, as shown in Red in the site
plan attached with the petition.”*

4.2 However, paragraph 20 of the Eviction Petition reads as follows:

“Relief claimed

(i) It is therefore, most respectfully prayed that an order of the eviction for the second Floor of Property bearing No. Property bearing No.6225-6228, Gali Jharsayan, Quresh Nagar, Sadar Bazar, Delhi- 110006, as shown in Red Colour site plan attached with the petition.

(ii) Any other or order(s), which this Hon'ble Court may deem fit and



proper in the facts and circumstances of the case may kindly be passed accordingly.”

5. Learned Counsel for the Respondent/landlord submits that inadvertently on account of typographical error of the office of the counsel for the Petitioner, in para 20 of the Eviction Petition it was mentioned that the Order of Eviction be passed for the second floor of the property but in fact paragraph 1, 8 and site plan did in fact not show any such floor at all. It is contended that the landlord should not be made to suffer on account of a mistake of his Counsel.

6. Learned Counsel for the tenant on the other hand contended that the Impugned Order records that both the Respondents have been served on 29.04.2019. However, service was effected on the tenant(s) on 03.05.2019. Thus, the leave to defend filed on 15.05.2019 was within statutory period of 15 days. It is contended that the Impugned Order suffers from infirmity on this account.

7. In view of the fact that both the parties are aggrieved with the Order dated 15.05.2019 passed by the Trial Court, this Court considers it expedient and in the interest of justice to set aside the Impugned Order giving the parties liberty to present their case once again before the concerned Court.

8. Accordingly, with the consent of the parties, following directions are passed:

- (i) The Impugned Order dated 15.05.2019 is set aside.
- (ii) The landlord is given the liberty to file a fresh Eviction Petition. The tenant is also given the liberty to file his leave to defend/contest the matter in accordance with law, if such Eviction Petition is filed.

9. Both the Petitions as well as all pending Applications are disposed of



in the foregoing terms.

10. All rights and contentions of both the parties are left open to be agitated before the appropriate Forum.

TARA VITASTA GANJU, J

OCTOBER 31, 2023

g.joshi

Click here to check corrigendum, if any