

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

**SUBJECT : DELHI RENT CONTROL ACT, 1958**

**CM(M) 153/2014**

**DATE OF DECISION : 4th December, 2014**

**KHAJAN SINGH**

.....Petitioner

Through: Mr. S.P. Sharma, Advocate.

**VERSUS**

**DUTT KUMAR MAITY**

..... Respondent

Through: Mr. V.V. Singh, Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE VALMIKI J.MEHTA**

**VALMIKI J. MEHTA, J (ORAL)**

**C.M. No.2720/2014 (exemption)**

1. Exemption allowed subject to just exceptions.  
C.M. stands disposed of.

**C.M.(M) No.153/2014**

2. This petition under Article 227 of the Constitution of India impugns the judgment of the Rent Control Tribunal dated 21.11.2013 by which the Rent Control Tribunal has dismissed the first appeal filed by the petitioner/landlord under Section 38 of the Delhi Rent Control Act, 1958 against the judgment of the trial court/Rent Controller dated 15.4.2013 dismissing the application of the petitioner/landlord under Section 151 read with Section 152 of the Code of Civil Procedure, 1908 (CPC) for filing the amended site plan of the tenanted premises instead of the site plan Ex.PW1/1 filed during the trial of the eviction petition.

3. The only issue before this Court, and which was also the issue before the courts below, was that as per the site plan Ex.PW1/1, tenanted

premises were shown in the first floor whereas the tenanted premises are at the second floor and therefore whether amended site plan can be filed to show the tenanted premises at the second floor instead of the same being at the first floor as per Ex. PW1/1. Effectively an administrative mistake is said to have occurred by referring to the floor of the tenanted premises as first floor instead of second floor.

4. Counsel for the respondent does not dispute that the tenanted premises are at the second floor portion of the property and therefore I fail to understand as to how the landlord cannot be allowed to get the decree including the plan Ex.PW1/1 corrected by filing a fresh site plan to show that in fact the tenanted premises are situated on the second floor. Therefore, to this extent, orders of the courts below are illegal and set aside and the amended site plan showing the existence of the tenanted premises not on the first floor but on the second floor is allowed especially in view of the stand of the respondent/tenant that he is the tenant in the second floor.

5. The next issue which is urged before this Court by the respondent/tenant is that the respondent/tenant is having possession of only one room and not two rooms in the second floor as is the case of the petitioner/landlord. This argument urged on behalf of the respondent/tenant is again without any basis because in the eviction petition it is admitted that the tenancy was of two rooms and not of one room. The site plan filed originally though of the first floor, and which should have been of the second floor, admittedly even as per the respondent/tenant showed two rooms in the tenanted premises with the respondent/tenant. If therefore, the respondent/tenant states that he is only in possession of one room and not two rooms, he will be evicted from the one room and the possession of the second room will be taken from the person who is in possession of the second room in execution of the eviction decree. Respondent/tenant cannot keep on raising frivolous objections to delay and defeat execution of the decree which was passed way back on 24.11.2011.

6. A reading of the aforesaid facts shows that unnecessarily the petitioner/landlord has been denied the possession of the tenanted premises, with respect to which he has successfully obtained an eviction decree way back in the year 2011 i.e over three years back.

7. No other issue or argument was urged before this Court.

8. This petition is therefore allowed with costs of Rs.20,000/- and now the amended site plan filed by the petitioner/landlord will be taken on record which will depict the tenanted premises on the second floor and the petitioner/landlord will be entitled to take possession of the tenanted premises, as shown in the site plan now to be taken on record, existing on the second floor of the property no.5889, Gali no.5, Indra Gali, Subhash Mohalla, Gandhi Nagar, Delhi-31.

Sd/-  
VALMIKI J. MEHTA, J

DECEMBER 04, 2014