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HIGH COURT OF DELHI : NEW DELHI

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R.C.R. No.7 of 2008

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Date of decision: 25.01.2008

Shri Gokal Chand

.....Petitioner

Through: Mr. L.D. Adlakha & Ms.Ripu Adlakha,
Advocates

versus

Smt. Usha Kalra

..... Respondent

Through: Mr.S.K. Sharma & Mr.Vijender Katoch,
Advocates

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not? No
3. Whether the judgment should be reported in the Digest? No

VIPIN SANGHI, J

CM No. 1259/2008

Allowed, subject to all just exceptions.

RC.R. No. 7/2008 & CM No.1258/2008

1. This petition under Article 227 of the Constitution of India has been preferred against the order passed by the Additional Rent Control Tribunal, Delhi in RCA No.107/2005 dated 15.10.2007 whereby the learned Additional Rent Control Tribunal has dismissed the appeal

filed by the petitioner-tenant against the order of eviction passed by the learned Additional Rent Controller, Delhi dated 4.2.2005 in eviction petition bearing number E-194/2002 on the ground of misuser of the tenanted premises by the petitioner-tenant.

2. Admittedly, the respondent is the landlady of premises bearing No.A-35, Transit Camp, Govindpuri, New Delhi and the petitioner was the tenant on a monthly rent of Rs.2000/- exclusive of water and electricity charges. The case of the respondent/landlady was that the premises were let out for residential purpose and that the petitioner had, after the expiry of the contractual tenancy which was for a period of 11 months, started using the same for a commercial purpose of running a denting and painting workshop of vehicles. The respondent relied on a rent agreement dated 20.5.1998 Ex.PW-1/1 which was in two pages. The first page was on a stamp paper of Rs.5 and the second page is typed on a plain sheet. Clause 3 of the rent agreement Ex.PW-1/1 stipulates the purpose of letting as residential. This clause is contained on the first page of the Agreement Ex.PW-1/1 which is Non Judicial Stamp paper of Rs.5/-.

3. The contention of the petitioner was that an agreement was got executed by the respondent/landlady by use of coercion on 20.5.1998. At that time the petitioner was already a tenant in the premises and that in that agreement, the purpose of letting was recorded as commercial and he was using the premises for commercial

purposes. However, the agreement produced by the respondent/landlady Ex.PW-1/1 was not the one signed by the tenant on 20.05.1998 and the original agreement had been held back, wherein the purpose of letting had been recorded as commercial. Though the date of the agreement is shown as 20.5.1998, it is not disputed by the respondent/landlady that the date mentioned on the stamp paper on its reverse is 21.5.1998. The first page of the agreement Ex.PW-1/1 does not bear the signature of the petitioner/tenant. The petitioner disputes his signature on the second page which is the only page signed by the parties. The courts below have rejected the contention of the petitioner that since the stamp paper bears the date 21.5.1998 whereas the agreement bears the date 20.5.1998, it is proved that the said agreement is forged and fabricated. The reasoning given by the Tribunal while rejecting this argument reads as follows:

“Possibility of typing mistake while typing the first page wherein, the date of execution has been given as 20.5.1998 on the stamp paper which was purchased on 21.5.98 can not be ruled out. It is also not unusual that the date of execution of an agreement on an earlier date may also be reflected in an agreement executed on subsequently. “

4. Submission of learned counsel for the petitioner is that it was not the case of the respondent/landlady that though the agreement was executed on a subsequent date, it was ante dated as 20.5.1998. In fact the positive case of the respondent/landlady was that the agreement was executed on 20.5.1998 itself. For this the

petitioner referred to the averment made by the respondent/landlady in an earlier suit filed by her for seeking relief of mandatory and permanent injunction against the petitioner/tenant, wherein the respondent/landlady made the following averments: -

“3. That the defendant entered into a rent agreement with the plaintiff on 20.5.1998 and took the premises in dispute on rent at the monthly rent of Rs.2,000/- exclusive of electricity and water charges.

4. The defendant took the premises w.e.f. 20.5.1998 and the premises was let out to the defendant only for residential purpose.”

5. He further submits that the same averment has been repeated in the eviction petition.

6. From the aforesaid it is evident that positive case of the respondent/landlady was that rent agreement was executed on 20.5.1998 itself. The stamp paper of the agreement produced by the respondent/landlady admittedly bears the date 21.5.1998. Consequently, the reasoning given by the learned Tribunal as aforesaid cannot be accepted, since it was not the respondent's case that the agreement was executed subsequent to 20.5.1998, though it was dated 20.5.1998. The stand of the respondent/landlady is that the stamp paper whereon the agreement was executed on 20.5.1998 was procured and produced by the petitioner/tenant, and the landlady is not aware how a stamp paper with that date could have been procured on 20.5.1998 or earlier. If that was the explanation of the

respondent/landlady, it was for the respondent to establish on record that stamp paper was in fact procured on or before 20.5.1998 and not on 21.5.1998, though its date of purchase was recorded as 21.05.1998. No evidence has been led by the respondent in support of this stand. Consequently, in my view Ex.PW1/1 could not have been taken as the basis to conclude that the purpose of letting was residential.

7. The petitioner has also not produced any agreement to show that the purpose of letting was commercial. Therefore, one would have to examine whether the eviction order & appellate order can be sustained on the basis of other independent evidence. I find that the learned Rent Control Tribunal while passing the impugned order has not merely relied on Ex.PW1/1 and, even apart from that evidence, he has furnished sufficient reasons to sustain the conclusion that the purpose of letting was residential and not commercial. It appears that the Tribunal during the course of its proceedings gave another opportunity to the petitioner to place on record any document which may establish that the suit premises was used by him for commercial purpose prior to 20.5.1998, in view of the petitioner's stand that he was a tenant in the suit premises prior to the said date and right from the inception of the tenancy he had been using the property for commercial purpose. However, the petitioner failed to produce any such document. Surely, had there been any truth in the

claim of the petitioner that the premises was being used for commercial purposes even prior to 20.05.1998, he would have produced some evidence in support of the same. The failure and inability of the petitioner to produce any evidence in this respect is telling. Commercial user of a premises, carried out in broad daylight cannot remain unnoticed and triggers various other developments. Firstly, there would either be a licence under the Shops and Establishments Act, or a challan by the MCD. The electricity/water meter would either be commercial, or would have misuser charges levied, if a residential meter installed in the premises is being used for commercial purposes. There would be entries made in the inspection register by the MCD maintained for property tax assessment. There would be assessments of property tax as a commercial property. Then, there would be bills/invoices for purchase of raw materials, and those raised on the clients/customers. There would be customers who would have got their vehicles repaired by the petitioner at the workshop in the premises. If the petitioner is an income tax assessee, there would be income tax returns. There could be sales tax returns, and other statutory records pertaining to the workers employed by the petitioner. There might also be letterheads/visiting cards showing the address of the workshop as that of the premises. None of these was produced. This leads me to infer that the eventual finding of the Tribunal that the purpose of letting was not commercial is correct and

does not call for interference in these proceedings. The Tribunal also takes note of the fact that the premises in question was allotted in lieu of demolition of a jhuggi as a part of resettlement scheme. Therefore, by its very nature, the suit premises was a residential property. Learned counsel for the petitioner states that no evidence was led on this aspect by the respondent/landlady. While that may be the case, it is equally true that even the petitioner did not led any evidence to show that the premises could be used for commercial purpose under the terms of allotment. The Tribunal observed, and in my view rightly so, that there was nothing on record to establish the plea of the petitioner that the suit premises was let out for commercial purpose. Since the petitioner had not stopped the misuser despite the service of the notice, Ex.PW1/7, he was rightly held to be liable for eviction.

8. In view of the aforesaid, I find no merit in the petition. Dismissed. However, the eviction order shall not be executed for a period of one month from today.

January 25, 2008
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VIPIN SANGHI, J.