

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

% RC.REV. NO. 79/2010

+ Date of Decision: 20th October, 2011

MADAN CLOTH HOUSE ...Petitioner

**! Through: Mr. Ravi Gupta, Sr. Advocate
with Mr. Anurag Jain, Advocate**

Versus

\$ PRADIP KUMAR Respondent

**Through: Mr. Anil Kumar Gupta, Mr. Piyush
Gupta & Mr. Vineet Jain, Advocates**

CORAM:

*** HON'BLE MR. JUSTICE P.K.BHASIN**

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

ORDER

P.K BHASIN,J:

This revision petition is under Section 25-B(8) of the Delhi Rent Control Act, 1958(in short 'the Act') and has been filed by the petitioner-tenant against the order dated 7th November, 2009 passed by the Additional Rent Controller whereby his application for leave to contest the eviction petition filed by his landlord, respondent herein, under Section

14(1)(e) of the Act to have the possession from him of one shop inclusive of godown, bearing Municipal No. 2/11, situated at Chhota Bazar, Shahdara, Delhi-32 (hereinafter to be referred as the 'tenanted shop') has been dismissed and an eviction order has been passed .

2. The facts entitling the respondent-landlord to secure the eviction order were pleaded in detail in para no. 18 of the eviction petition and the relevant averments only are re-produced below:

- (i) *That the petitioner is the Owner of the tenanted shop. The petitioner purchased the said property constructed on an area measuring 53 (fifty three) Sq.yards, consisting of a shop inclusive of a godown which is more particularly shown red in the site plan attached, from its previous owner, Smt. Usha Devi Chawla, vide a Registered Sale Deed dated 15th February, 1985, which was duly executed and registered with the Sub-Registrar of Properties.*
- (ii) *That after the purchase, the respondent was informed, who attorned in favour of the petitioner herein and since then he is paying the rent to the petitioner and rent up till the period ending on October 2008 has been received by the petitioner.*
- (iii) *That the petitioner does not have any shop for running his business. He has his wife and two minor children to support.*
- (iv) *That the petitioner does not have any shop with him and is using his father's shop for maintaining his family. The respondent was asked to vacate the premises enabling the petitioner to do his independent business in his own shop. Though considering the hardship of the petitioner, the respondent agreed, but is not vacating the tenanted premises/shop, on one pretext or the other, hence this petition.*

- (v) *That the petitioner needs the tenanted shop for his own bonafide use for carrying on the business by himself.*
- (vi) *That the petitioner has no other shop except the tenanted shop. Neither the petitioner, nor any person of his family, which consists of he himself, his wife and two children, has any other shop, either on rent or on ownership for carrying on the business. The petitioner, therefore, requires the tenanted premises/shop for his own bona fide use for carrying on his own business.*
- (vii) *That the present petition is maintainable in view of the latest judicial pronouncement made by the Apex Court, which is reported as 148 (2008) Delhi Law Times 705 (SC). Thus, the respondent is liable to be evicted on the ground of personal bona fide necessity."*

3. The petitioner-tenant had sought leave to contest the eviction petition on various pleas which have been noticed, dealt with and rejected by the learned Additional Rent Controller in the impugned order. The relevant parts from that impugned order where the pleas, which only were urged before this Court, were dealt with are also re-produced below:-

- 5. *In the leave application the respondent applicant has raised the following grounds:*
 - i) *the petitioner is not the owner of the property in question.*
 - ii) *the petitioner holds ownership rights and interest in a number of other properties in Delhi comprising of similar premises with commercial potential. Further, even in the property where the suit premises is situated there are a number of shops and commercial premises available with the petitioner as well as in occupation of other tenants but the petitioner has singled out the respondent only.*
 - vi) *the petition has been filed only in respect of part of the actual tenanted premises in occupation of the respondent*

right from the inception of the tenancy and the site plan filed by the petitioner does not correctly depict the tenanted premises. The respondent has filed his own correct site plan.

- vii) *the petitioner is already engaged in running his shop in the same property dealing in utensils etc. and hardly has any time to run any other business from the tenanted premises.*

13. (f) *Petition has been filed only in respect of part of the actual tenanted premises in occupation of the respondent.*

This objection appears in para 10 of the application in hand and is reproduced in para 10 of the affidavit in support of the application. The petitioner has categorically stated in the petition that the premises in question is constructed on an area measuring 53 sq. yards and consists of a shop inclusive of a godown. This is the Premises which had been purchased by the petitioner from its earlier owner Smt. Usha Devi Chawla vide registered sale deed dated 15/2/1985. Copy of the sale deed is also there on record file, perusal of which reveals that it reflects the measurement to the tune of 53 sq. yards and bears number 2/11. The respondent, since the very inception of the tenancy in the year 1962, had been inducted in respect of the premises bearing no. 2/11; undisputedly. In the given circumstances it was incumbent upon the respondent applicant to clearly specify

- (i) *as to how much was the measurement of the tenanted area at the time of inception of the tenancy in the year 1962,*
- (ii) *if the petitioner had not purchased the entire premises bearing no. 2/11 what happened to the remaining portion thereof and,*
- (iii) *in the absence of both these things, it was for the applicant to explicitly make it clear as to how; when and where from the alleged area in access of the area shown in the sale deed and forming the premises in question; came from.*

14. *The application in hand is totally silent on these aspects. It is also worth mentioning that paras 10 of the application and affidavit; are totally silent as to how much is the measurement of the property in question if not as per the*

specification and description as disclosed by the petitioner. Even it is assumed for a moment that the area of the premises in question is in access of the area as disclosed by the petitioner, the same is of no avail for the respondent applicant as he has nowhere agitated that the said alleged access area is not the part of the premises in question or is not owned by the petitioner herein or that the respondent applicant claims title or adverse possession etc. in respect thereof. Thus it is clear that this objection is an effort to create vagueness and ambiguity and does have no substance therein. Decided accordingly.

15. (g) *Petitioner is already dealing in utensils etc. and hardly has any time to run any other business.*

The petitioner has categorically stated in his petition that neither he nor any other member of his family (consisting of himself, wife and two minor children) is having any other shop either on rent or of their own and that the premises in question is their bona fide requirement. He has also categorically disclosed that he was presently using his father's shop for maintaining his family. The respondent has nowhere denied the aforesaid fact that the petitioner has been using his father's shop, or is not having any other property in the name or possession of the petitioner or any other family member. Moreover it is for the petitioner to manage his own business in the way he likes and the respondent has no locus to dictate; decide or assume that he would be having paucity of time in running the business from the tenanted premises. The objection appears to have been raised merely for the sake of objection and does have no substance and is accordingly decided.

16. *It is thus clear that the application in hand is devoid of merits and deserves dismissal. Ordered accordingly.*

4. Feeling aggrieved, the petitioner has invoked the revisional jurisdiction of this Court under Section 25(8) of the Act.

5. At the time of preliminary consideration of this revision petition, its notice was directed to be issued to the respondent – landlord limited only

to the extent of the plea raised by the petitioner – tenant that the eviction petition was liable to be dismissed since it had been filed in respect of only a part of the tenanted premises in his possession inasmuch as part of the tenanted premises were sold to the mother and grandmother of the respondent herein by its previous owner while the remaining part was sold to him. Accordingly, submissions were advanced from both the sides only on this limited aspect of the matter.

6. It was contended by learned counsel for the petitioner – tenant that the respondent had purchased a part of the tenanted premises from the erstwhile owner Smt. Usha Devi vide sale deed dated 15-2-85, photocopy of which had been annexed with this petition and vide sale deed dated 21-1-85, copy of which had also been placed on record, the part of the tenanted premises was sold by Smt. Usha Devi to the mother and grandmother of the respondent and these two sale deeds clearly establish that the tenanted premises, which earlier was exclusively owned by Smt. Usha Devi and as one unit had been let out to the petitioner herein, had now become the property of two individuals and it was, therefore, obvious that the respondent had filed the eviction petition only in respect of that part of the tenanted premises which had been purchased by him and, therefore, it being a case of partial eviction of a tenant the eviction petition

itself was not maintainable. In any event, counsel contended, leave to defend should have been granted to the petitioner.

7. On the other hand, learned counsel for the respondent fully supported the order of the learned Additional Rent Controller and submitted that no doubt the respondent and his mother and grandmother had separately purchased the tenanted premises in parts vide separate sale deeds but since the areas purchased by them were not specifically described in the sale deeds the respondent alone could file the eviction petition in respect of the entire tenanted premises no. 2/11.

8. After having gone through the impugned order and submissions made by counsel of both the parties I have come to the conclusion that the impugned order does not suffer from any irregularity. The two sale deeds, referred to above, clearly show that the erstwhile owner Smt. Usha Devi had sold part of the property no. 2/11 to the respondent herein and part to his mother and grandmother without indicating as to which particular area of the premises was being sold to the respondent herein and which part to his mother and grandmother. The respondent had filed the eviction petition in respect of the property no. 2/11, which is the tenanted premises,

and that he could legally do and consequently it cannot be said that this is a case of partial eviction.

9. This revision petition thus being devoid of merits is dismissed.

P.K. BHASIN,J

October 20, 2011 /sh