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* **THE HIGH COURT OF DELHI AT NEW DELHI**
+ R.C.REV. 537/2012

RAMESH CHAND

..... Petitioner

Through: Mr.Ashok Mahipal, Adv.

Versus

PAWAN KUMAR & ANR.

..... Respondent

Through: Mr.R.K.Jain, Adv.

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

ORDER

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08.10.2012

This revision petition under Section 25-B(8) of the Delhi Rent Control Act (for short the 'Act') is filed against the order of Sr.Civil Judge-cum-Rent Controller, North dated 19.10.2011, whereby the leave to defend application filed by the respondents, in the eviction petition filed against him by the petitioner, was allowed.

The respondents are the tenants under the petitioner in respect of a shop in property bearing No. 1113, First Floor, Kucha Natwan, Chandni Chowk, Delhi. Their eviction was sought by the petitioner from the tenanted premises on the ground of bona fide requirement for setting up his business of gems and jewellery. It was averred that he has no other reasonably suitable accommodation for this purpose and the suit premises was more suitable for setting up of his business. It was his case that he is residing at 317, Lal Darwaja, Sita Ram Bazar, Delhi, which is a residential property and in any case, could not be used for running the business of gems and jewellery.

The respondents filed leave to defend application, which was allowed

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by the learned ARC vide the impugned order. The same is under challenge in the instant petition.

The grounds on which the leave to defend came to be granted was that the petitioner has not mentioned in the eviction petition that the space adjacent to the tenanted premises, which was claimed to be as kitchen, is not sufficient for him and could not be considered as reasonably suitable accommodation for his business. Learned counsel for the petitioner has assailed this observation of the learned ARC, stating that there existed a kitchen adjoining the tenanted premises, and this is also so shown in the site plan that was filed by the petitioner.

Learned counsel appearing for the respondents, on the other hand, submitted that it was nowhere disclosed by the petitioner that this space was available with him or that the same was not reasonably suitable for running his business. It was also his submission that when there was no residence of anyone on the first floor of the suit premises, which comprised of the tenanted room and the said alleged kitchen, this was a triable issue that the said space, which was lying vacant for several years, was not reasonably suitable for carrying on the business of the petitioner. This was not disputed by the learned counsel for the petitioner that this space, which is shown as kitchen, is lying locked for considerable time, and is not being used as a kitchen by the petitioner or anyone. It is not that the petitioner may not require the suit premises for his bona fide requirement for setting up the business for himself and that the said space shown as kitchen, may not be a suitable accommodation for his business, but this all is a matter of trial and need to be examined and evaluated by the Rent Controller. I do not see any infirmity or illegality in the impugned order of the ARC observing that

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the triable issue was raised by the respondents/tenants, which required adjudication by way of evidence, and thus, could not be decided merely on the basis of the affidavits of the parties. There being no infirmity or perversity in the impugned order, the petition is hereby dismissed.


M.L. MEHTA, J.

OCTOBER 08, 2012/_{akb}