

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

% *Date of Judgment: 26.04.2013*

+ RC.REV. 159/2013

RAJINDER KUMAR & ORS Petitioners
Through Mr. Harish Malhotra, Sr. Adv.
with Mr. Tanuj Khurana, Adv.

versus

KRISHNA KUMARI Respondent
Through Nemo

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

CM No. 6623/2013 (Exemption)

1 Exemption allowed subject to all just exceptions.

RC.REV. No. 159/2013 & CM No. 6622/2013 (stay)

2 The petitioners are aggrieved by the finding returned in the impugned order vide which their application seeking leave to defend in the pending proceedings under Section 14 (1)(e) of the Delhi Rent Control Act, 1958 (DRCA) filed by the petitioner had been dismissed.

3 Record shows that an eviction petition had been filed by the

respondent against the petitioners under Section 14 (1)(e) read with Section 25-B of the DRCA. The tenanted premises had been described as one shop situated on the ground floor of Kucha Chaudhary, Chandi Chowk, Delhi-110006. The property is stated to be owned by the respondent. It was earlier owned by Memo Devi who had by Will bequeathed it to her husband and after his death Kanwar Gopal became the owner of the property. Shri Kanwar Gopal had executed a deed of lease/surrender of life interest in favour of the respondent and the respondent thereafter became the owner of the property. The fact that the respondent is the owner and landlord of this disputed property is not in dispute. Learned counsel for the respondent has in fact conceded that he is not assailing this finding returned in favour of the respondent.

4 Eviction petition has disclosed that the shop has been required bonafide by the respondent for running of her business along with her husband and they having no other reasonably suitable commercial accommodation for running a business. It has been stated that the husband of the respondent was earlier doing a business in partnership with his son but due to differences, the said partnership was dissolved and the respondent and her husband now having no source of income

require this shop for running their business. The earlier business being run was of a photo studio.

5 Leave to defend was filed. Triable issues were sought to be raised by the petitioner. The arguments of the petitioners however did not find favour with the trial Court. His application seeking leave to defend having been declined, he has now approached this Court.

6 On behalf of the petitioners, arguments have been addressed at length. Attention has been drawn to the dissolution deed executed between the husband of the respondent and their son Sanjeev Gupta. This document is dated 31.03.2008 and seeks to dissolve a partnership which was earlier subsisting between the respondent, her husband and their son. This document shows that the business being run under the name and style of 'Sonu Colour Lab' was being run w.e.f. April, 2000. Counsel for the petitioner points out that this document had been executed in the year 2008 and in terms of the averments made in the petition, the dissolution of the partnership was necessitated because of differences between the father and son but thereafter in a property purchased by the son in December, 2010, the father Suresh Chand Gupta was a witness to this document; submission being that the dissolution

deed is in fact a sham document which had been created only to build up a ground for eviction of the petitioner; there is no real difference between the father and the son. The second argument of the learned counsel for the petitioners is also based on the bonafide need alleged to have been described by the respondent. Submission being that the husband of the respondent has a slip disc; he has undergone a heart surgery; he is presently a resident of Noida and it would be almost impossible for him to do the business from Chandni Chowk (where the disputed premises are located) which is probably one of the most crowded parts of Delhi; it is reiterated that this ground has been artificially created. Further submission being that the respondent merely seeks eviction of the petitioner in order that she could sell this property at a higher rate as admittedly she had also earlier at one point of time sold her shop and this present petition has been filed only for this reason.

7 Record has been perused. The bonafide need has been depicted in para 18(a) of the eviction petition. The petition has been filed by the wife of Suresh Chand Gupta who is the owner and landlord of the suit property. The suit property is a shop in Kucha Chaudhary which is a commercial and premium business centre of Delhi. Presently, the

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petitioner who is the tenant in the suit property is also carrying on the business of photography and a photo studio lab from the said premises. He is in fact a cousin of the respondent. In a large part of his application seeking leave to defend, it has been stated that the suit property is not owned by the respondent but in terms of a partition deed/family settlement, the property had fallen to his share. The trial Court has noted that there is no such partition deed on record. However before this Court this argument as noted supra has not been taken up and it has been stated by learned senior counsel for the petitioners that he is not disputing the status of the respondent as a landlord/owner.

8 Record also shows that the parties i.e. husband of respondent and their son Sanjeev since 2002 were running a photo studio lab under the name and style of 'Sonu Colour Lab'. This partnership stood dissolved in the year 2008. This document is a part of the record. Eviction petition has been filed in the year 2011 i.e. three years later. It is not as if the document i.e. dissolution deed is alleged to be a forged document. It has recorded the reasons for the dissolution which is the differences between the parties. Parties are still living in the same household. They are sharing separate kitchens and separate floors but they are living in the

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same building. The differences and divide which happens at one point of time in a family can well be ironed out at a later stage. Keeping in view the relationship of the parties, merely because a property has been purchased two years later after the dissolution of the partnership between the parties i.e. in December, 2010 which document was witnessed by his father would not necessitate the impression that the dissolution deed is itself a forged document and especially so when this is not even the plea in the application seeking leave to defend.

9 It is an admitted case of the parties that the respondent and her husband along with their son were carrying on this business of a photo studio in Chandni Chowk. It is the case of the petitioner himself (averments made in the application seeking leave to defend) that in 1998, the husband of the respondent closed down this business in Chandni Chowk and bought a shop in Sector-27, Noida from where he and his son were carrying on their business of “Novelty Studio”; the parties were living at the upper floors of the said building.

10 Corresponding para of the reply where the allegations are that the husband of the petitioner is suffering from a serious ailment have also been perused. It has been denied that the husband of the petitioner is a

chronic patient of a heart ailment and is suffering from ill-health; merely because at one stage he was suffering from a heart ailment and a slip disc does not take away his right from carrying out an independent business, also considering the fact that he is only 66-67 years of age.

11 It is also an admitted position that except the shop in dispute, the other portions of the property (shop No.35 at Chandni Chowk and its upper floors which were being used as a residence by the petitioner and her family) had been sold in the year 2003. The respondent and her family are presently residents of Sector-12, Noida. Their son is also carrying on their business from Noida, in a shop at Sector 27. Both father and son were earlier also carrying on the same business. The father is more experienced in his business acumen and keeping in view the fact that he is no longer in the partnership business, his need to carry on an independent business has been clearly established; it stands substantiated.

12 The averments made in the application seeking leave to defend appear to be largely whimsical. In fact the petitioner is the cousin brother of the respondent himself. The running of photo studio appears to be the family business of the parties as the petitioner is also carrying

on the same business from the disputed shop.

13 In Ragavendra Kumar Vs. [Firm Prem Machinery and Co.](#) reported in [2000]1SCR77 the Supreme Court has held that it is the choice of the landlord to choose the place for his business which according to him is most suitable for him. He has complete freedom in the matter. In Prativa Devi (Smt.) Vs. [T.V. Krishnan](#) reported in (1996)5SCC353 it was held that the landlord is the best Judge of his requirement and Courts have no concern to dictate to the landlord as to how and in what manner he should live. The bona fide personal need is a question of fact and should not normally be interfered with.

14 The defence raised by the tenant is only moonshine, sham and not being a triable issue, the application for leave to defend was rightly dismissed. Impugned order in these circumstances decreeing the petition in favour of the landlord calls no interference. Petition is without any merit. Dismissed.

INDERMEET KAUR, J.

APRIL 26, 2013

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