

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RC REV No.68/2013 and C.M. No.2713/2013 (stay)**
% **21st July, 2014**

SHYAM SUNDER Petitioner
Through: Ms. Beenashaw N. Soni, Advocate.

VERSUS

INDER PAL CHAUHAN Respondent
Through: Mr. Manu Sishodia, Advocate.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This petition under Section 25B(8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act') is filed against the impugned judgment of the Additional Rent Controller dated 10.9.2012 by which the Additional Rent Controller has dismissed the leave to defend application which was filed by the petitioner herein, respondent before the Additional Rent Controller.

2. The eviction petition for *bonafide* necessity had been filed with respect to the tenanted shop in question which is part of property no.8795,

Shidipura, Karol Bagh, New Delhi. The respondent/landlord claims that he needs this shop for carrying on of business by his 24 year old son who is just 10th class pass and hence due to his less education, he is not able to get any job/service. The case of the respondent/landlord is that by a registered sale deed dated 13.6.2001 the properties bearing Municipal nos.8791 to 8795, Shidipura, Karol Bagh, New Delhi were purchased by the respondent/landlord and his brothers. There was an oral partition whereby property no.8795 fell to the share of the respondent/landlord and the properties nos.8791 to 8794 have fallen to the share of the brothers of the respondent/landlord. The respondent/landlord also pleaded that he had no other alternative suitable accommodation for carrying on the business/shop for his son, and therefore eviction was prayed of the present petitioner from the suit premises.

3. To the extent, that there is a relationship of landlord and tenant between the parties, the same is not disputed before me, however, it is very strenuously urged that respondent's son is already carrying on various businesses at different places and therefore he does not need the shop premises for carrying on his business.

4. Let us examine each of the businesses which the son of the respondent/landlord is said to be carrying on so as to determine whether

there are any bonafides in these pleas of the petitioner/tenant.

5. The first business which is said to be owned by the son of the respondent/landlord is the business in the name of M/s. Super Enterprises and which is said to be carried out in the building bearing no.M-107, Sector-5, Bawana Industrial Area, Delhi. In this regard, the respondent/landlord has pleaded that the business was not of the son but was of his wife, and which business has been closed way back in the year 2004. In this regard, the Additional Rent Controller has rightly noted that if for the sake of argument the property belonged to the wife of the respondent/landlord, however, the business cannot be said to belong to the son of the respondent/landlord. I may note that the respondent/landlord was personally present in the Court at the time of hearing and I informed him that if the business is open and of his son and not his wife, this Court will prosecute him for perjury and other offences, and to which the respondent/landlord categorically once again reiterates the fact that the business was in the name of his wife and was closed long back, and the closing of the business has been informed to the sales tax department and is so appearing in the record of the sales tax department. I would also like to state that the Additional Rent Controller has rightly noted that in an industrial premises, a shop cannot be carried on, and for which shop premises the area in Karol Bagh (which is one of the

commercial hubs of Delhi) would definitely be the proper premises for running a shop. Surely, a shop cannot be opened and business of a shop cannot be carried on in an industrial area. The first argument on behalf of the petitioner of the alternative premises at Bawana Industrial Area and the business of M/s. Super Enterprises being of the son of the landlord is therefore rejected.

6. The second argument which was urged with respect to alternative premises/alternative business available to the son of the respondent/landlord is one business of M/s. Shri Manglam Rashi Ratan Kendra being run in property no.8793, Shidi Pura, Karol Bagh, New Delhi. The third business whose name is not mentioned in the leave to defend application is said to be run in the premises nos.8791 to 8794.

7. Before proceeding further, at this stage, it is necessary to refer to the judgment of the Supreme Court in the case of ***Prithipal Singh Vs. Satpal Singh (dead) through LRs (2010) 2 SCC 15***, and which holds that the period of 15 days provided under Section 25B of the Act for filing leave to defend application is sacrosanct and there cannot be delay of even one day in filing of the leave to defend application. Supreme Court has made it clear that the provisions of Limitation Act, 1963 or the provisions of CPC do not apply to the self-contained exhaustive procedure of leave to defend specified

under Section 25B of the Act. The sequitur of this ratio is that the grounds which have to be taken in the leave to defend application have necessarily to be taken only in the leave to defend application with the necessary details within 15 days and it is not permissible for the tenant after the statutory period of 15 days to keep on filing grounds in the form of additional affidavits or the documents etc etc to urge additional grounds or additional facts other than those as stated in the leave to defend application. Courts do not permit additional ground beyond 15 days because it would amount to destroying the sanctity of the 15 days period as per the ratio of the judgment of the Supreme Court in the case of *Prithipal Singh (supra)*. The ratio in the case of *Prithipal Singh(supra)* is specifically noted above, because, learned counsel for the petitioner tried to argue on the basis of various facts and documents of which there is no reference at all in the leave to defend application and therefore I have not allowed the counsel for the petitioner to raise any of the grounds which are not found existing in the application for leave to defend and the affidavit in support of the application for leave to defend.

8. So far as the aspect that the second business is being run in four shops bearing nos.8791 to 8794 by the son of the respondent/landlord is concerned, the argument is absolutely meritless because the petitioner/tenant

does not dispute in the leave to defend application and the affidavit filed in support thereof that there is partition between the respondent/landlord and his brothers whereby the properties bearing no.8791 to 8794 have not fallen to the share of the respondent but have fallen to the share of his brothers. Once that is so, any alleged business being run by the son of the respondent/landlord in a property which admittedly is not owned by the respondent/landlord is not only without any factual basis but cannot be said to be alternative premises in law of the respondent/landlord. This argument is therefore without any substance, either for the Additional Rent Controller to have considered or for this Court to consider, and the same does not raise any triable issues. Once the division and the partition of property is clear, neither the respondent/landlord nor his son can carry on any business in any of the properties bearing nos.8791 to 8794 as a matter of right and only in such case of the business being carried out as a matter of right, the said premises will amount to alternative suitable accommodation.

9. Learned counsel for the petitioner sought to argue that the petition is not bonafide because what business the son of the respondent/landlord will carry out is not stated in the petition, however, this ground is misconceived inasmuch as it has been held by the learned Single

2013 (134) DRJ 720 that what business is to be set up in the shop is not required to be disclosed by the landlord and once the need is bonafide the landlord can take his decision in time depending upon the finance that may be available with the family.

10. In view of the above, there is no merit in the petition, and the same is therefore dismissed, leaving the parties to bear their own costs.

JULY 21, 2014
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VALMIKI J. MEHTA, J.