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

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RC. REV. No.142/2013

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**17<sup>th</sup> September, 2014**

M/S. ROXY DRYCLEANERS

.....Petitioner

Through: Mr. P.P.Ahuja, Advocate.

**VERSUS**

SAMEER WASON & ANR.

..... Respondents

Through: Mr. P.K.Rawal and Mr. Harish  
Kumar, Advocates.

**CORAM:**

**HON'BLE MR. JUSTICE VALMIKI J.MEHTA**

To be referred to the Reporter or not? **Yes**

**VALMIKI J. MEHTA, J (ORAL)**

1. By this petition under Section 25-B(8) of the Delhi Rent Control Act, 1958 (in short 'the Act'), the petitioner /tenant impugns the judgment passed by the Additional Rent Controller on 31.10.2012, by which the Additional Rent Controller has decreed the *bonafide* necessity eviction petition filed under Section 14(1)(e) of the Act by the respondents/landlords with respect to the tenanted premises being shop no. 53(new), Old Rajinder Nagar Market, New Delhi.

2. The facts which were pleaded by the respondents/landlords were that the tenanted shop/suit premises were required for the *bonafide* need of the respondent no.2 herein, and who was the petitioner no.2 before the Additional Rent Controller. The need which was pleaded was that the respondent no.2 does not have any other commercial premises in Delhi and he wants to start his own business in the suit/tenanted property. It was pleaded that the respondent no.1 herein, petitioner no.1 before the Additional Rent Controller and the co-landlord, was already carrying on his business from one other shop in the property in which the tenanted premises were situated, and therefore, the *bonafide* necessity eviction petition was only with respect to the *bonafide* need of the respondent no.2 herein to start his business.

3. In a *bonafide* necessity eviction petition under Section 14(1)(e) of the Act, three aspects have to be seen by the court. First is whether the respondents/landlords are the owners/landlords of the suit premises or not. Secondly, whether there exists a *bonafide* need of the landlord, and thirdly whether the landlord has any other suitable alternative premises so as not to require the suit premises.

4. As per the case of the petitioner/tenant itself in the leave to defend application, originally the petitioner firm was a partnership firm which got dissolved and rights in the dissolved firm with its tenanted premises thereafter came to be vested with one of the partners Sh. Gurbachan Singh. Sh. Jitender Pal Singh is the son of Sh. Gurbachan Singh, and the present proprietor of the petitioner firm, and who is hence the present tenant in the tenanted premises. It is further pleaded in the leave to defend application that Sh. Gurbachan Singh himself was tendering rent to the respondents/landlords. Accordingly, it was pleaded that there was no partnership firm and the tenancy rights now solely vest with Sh. Jitender Pal Singh who is now the sole proprietor of the petitioner firm. In the leave to defend application it was further simultaneously pleaded, and which is an alternative plea to the aforesaid plea of Sh. Jitender Pal Singh being the sole proprietor of the petitioner firm, that the eviction petition is bad for non-joinder of necessary parties because the legal heirs of the other partners, who have since died, have not been sued as respondents in the eviction petition in spite of the fact that there are other eviction petitions filed and in which the other legal heirs of the other partners have been brought on record. It is also pleaded that there was a subsequent event during the pendency of the eviction petition that the respondents/landlords got possession of one shop

bearing no. 53-A in the same property, and this subsequent event as pleaded should satisfy the *bonafide* need in the eviction petition and which was accordingly prayed that the same be dismissed. Finally, it was argued that the respondents/landlords have been taking different stands in different eviction petitions with respect to the area and extent of the tenanted premises, and therefore, the eviction petition is bound to be dismissed.

5. So far as the aspect of respondents/landlords being the owners/landlords are concerned, the admitted position which appears on record is that the suit premises were originally owned by Sh. C.R.Wason, grandfather of the respondent no.1 and father of respondent no.2. After the death of Sh. C.R.Wason all the legal heirs executed a relinquishment deed in favour of their mother and widow of Sh. C.R.Wason namely Smt. Shanti Devi and whose name was accordingly mutated on 18.3.1967 as per the perpetual lease deed dated 23.8.1974 executed by L&DO in favour of said Smt. Shanti Devi, (widow of Sh. C.R.Wason). Smt. Shanti Devi had executed a Will in favour of the respondents/landlords and consequently the respondents/landlords became owners as per the Will and their names have been mutated qua the suit property with the L&DO as also the MCD. The respondents therefore are clearly the owners/landlords of the suit premises.

In fact, the petitioner/tenant himself admits that respondent no.1 has been accepting rent from his father and that the respondent no.2 used to issue rent receipts in the name of the petitioner/tenant. Petitioner himself has deposited rent under Section 27 of the Act stating that he is the tenant. Accordingly, in my opinion, the respondents have sufficiently shown and proved that they are owners/landlords of the suit premises. Also, it is not the case of the petitioner/tenant that if the respondents/landlords are not the owners of the suit premises then who else is. Therefore, I hold that the Additional Rent Controller has rightly arrived at a conclusion that the respondents are the owners/landlords of the suit/tenanted premises.

6. The related issue which is argued on behalf of the petitioner/tenant is that eviction petition is bad for non-joinder of necessary parties because the legal heirs of other deceased partners of the petitioner firm, and which was originally a partnership firm, have not been made respondents in the eviction petition. In this regard, the admitted position which appears on record is that the petitioner firm is represented by Sh. Jitender Pal Singh as its sole proprietor and who admits to be in possession of the tenanted premises. Sh. Jitender Pal Singh himself admits that he has deposited rent under Section 27 of the Act. Thus only Sh. Jitender Pal Singh

as per the case of the petitioner is the sole tenant and if that be so the petitioner is estopped from taking up a mutually destructive plea that he is not the sole tenant and that allegedly legal heirs of other deceased partners ought to have been sued as respondents in the eviction petition. One thing is very clear that the petitioner now itself claims to be the sole proprietor firm of Sh. Jitender Pal Singh and the sole tenant as per its own pleadings and once that is so, and no other person is shown to have offered to pay rent to the respondents/landlords, only the petitioner in law would have deemed to have taken over the tenancy rights and no other legal heirs of the other partners can claim tenancy rights because they are deemed to have impliedly surrendered their rights in the suit premises in view of the ratio of the judgment of the Supreme Court in the case of ***Pushpa Rani and Others Vs. Bhagwanti Devi and Another 1994 Supp (3) SCC 76***. Therefore, I hold that the petition is not bad for non-joinder of necessary parties, inasmuch as, only such persons who continue as tenants on the death of the original tenant by showing interest in the tenanted premises by paying rent can claim tenancy rights and not any other person who does not exercise tenancy rights by paying/offering rent. In the present case, since only Sh. Jitender Pal Singh has offered rent, and no other person has shown any interest in the tenancy premises by offering rent to the respondents/landlords, such other persons

are deemed to have surrendered their tenancy rights in view of the ratio of *Pushpa Rani's case (supra)*. I therefore hold that the petition is not bad for non-joinder of necessary parties.

7. So far as the aspect that the respondent no.2 did not have any shop/commercial premises from where he can carry on business is concerned, this was an undisputed position as on the date of filing of the eviction petition, but, the issue which is strenuously argued before me is that whatever need was there of the respondent no.2, the same stood satisfied because during the pendency of the petition one shop bearing no. 53-A was got vacated from another tenant in a petition filed by the respondents/landlords under Section 14(1)(a) of the Act for non-payment of the rent and the need of the respondent no.2 hence stood satisfied because of the availability of the shop no. 53-A. This is a crucial issue to be decided in the present case.

8. Since this event of respondents/landlords getting possession of shop no. 53-A was a subsequent event happening after the expiry of the 15 days statutory period prescribed for filing the leave to defend application, the petitioner/tenant was allowed to file an additional affidavit to bring on record this fact. The respondents/landlords admit having received

possession of the shop no.53-A, but, it was stated that this shop was adjacent to the shop in which respondent no.1 was carrying on his stationary business and since the respondent no.1 was forced on account of lack of space to store his books outside the shop from where he was carrying on his business, the shop no.53-A which was got vacated for non-payment of rent, was got merged with the shop in which the respondent no.1 was already carrying on his business. Once these specific facts were stated by the respondents/landlords in the reply to the additional affidavit of lack of adequate space in the existing shop of the respondent no.1, in my opinion, the petitioner/tenant was bound to file a rejoinder-affidavit if it was disputing this fact. Not only no such rejoinder-affidavit was filed, but, even in this petition it is not the case of the petitioner/tenant that the shop which was got vacated from the tenant has not been got merged with the shop in which respondent no.1 is carrying on business on account of lack of space and because of which the books of respondent no.1 were not being stored by the respondent no.1 outside his shop. Therefore, in my opinion, no illegality has been committed by the respondents/landlords by taking a shop which was got vacated; not for bonafide necessity but for non-payment of rent; by merging the same into the shop in which the respondent no.1 is already carrying on business since the existing shop with the respondent no.1 was

insufficient with respect to the business which was being carried out by the respondent no.1.

9. In view of the above, I do not find any merit in the petition and the same is therefore dismissed.

10. It will be open to the respondents/landlords to file a suit for mesne profits for the period of the stay of the petitioner beyond the date of passing of the eviction order in view of the ratio of the Supreme Court in the case of *Atma Ram Properties (P) Ltd. Vs. Federal Motors Pvt. Ltd. (2005) 1 SCC 705*.

**SEPTEMBER 17, 2014**  
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**VALMIKI J. MEHTA, J.**