

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RC.REV.No.90/2014 & C.M.Nos.3602/2014 (Stay), 3603/2014**
(Exemption)

% **17th October, 2014**

SH. S. PARAMJIT SINGH & ANR. Petitioners
Through: Mr.Vikas Sharma, Advocate.

VERSUS

SH. KHAZANCHI RAM MITTAL Respondent
Through: None

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. No one appears for the respondent inspite of two calls. Counsel for the petitioners presses for disposal of this petition on account of the urgent *bonafide* necessity of the petitioners. I have therefore heard the counsel for the petitioners and have perused the record.

2. By this petition the petitioners, of whom the petitioner no.2 is the owner/landlady, impugns the judgment of the Additional Rent Controller dated 26.11.2013 by which the Additional Rent Controller has allowed the leave to defend application filed by the respondent/tenant in a petition for

eviction for *bonafide* necessity filed under Section 14(1)(e) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act').

3. At the outset, on the request made on behalf of the petitioners, this petition is treated as a petition under Article 227 of the Constitution of India because in the present case Section 25B(8) of the Act for filing of the present petition will not apply, inasmuch as, a petition can be filed under Section 25B(8) of the Act only when leave to defend is refused and not when the leave to defend is granted.

4. The petitioners filed the *bonafide* necessity eviction petition under Section 14(1)(e) of the Act with respect to the suit/tenanted shop being one shop on the ground floor bearing no.2614 B, Mandirwali Gali, Shadipur, New Delhi.

5. Father of the petitioner no.1 was the original owner of the suit/tenanted property and had let out the same to the respondent. After the death of the father Sh.Balbir Singh, the property devolved upon his two sons namely petitioner no.1 Sh.Paramjit Singh and his brother Sh.Manjeet Singh in terms of a registered partition deed dated 26.6.2003 the petitioner no.1 and his brother Sh. Manjeet Singh partitioned the property whereby the portion which fell to the share of petitioner no.1 was numbered as 2614 B,

and the portion which fell to the share of the brother of the petitioner no.1 was numbered as 2614 A. Three shops on the ground floor fell to the share of petitioner no.1 and of which one shop is the tenanted shop with the respondent. The portion of the property which fell to the share of petitioner no.1, ie 2614 B, was sold by him by registered sale deed dated 01.8.2003 to his wife and who is the petitioner no.2.

6. The case of the petitioners was that their family comprises of themselves i.e husband and wife and their three sons. One son is living abroad and the other two sons of the petitioners are doing business of manufacturing of decorating glasses and also trading in glass sheets and mirrors in the name of M/s Glaziers from the two shops out of the three shops which fell to the share of petitioner no.1. and then transferred to the petitioner no.2 under the registered sale deed dated 01.8.2003.

7. The petitioners claim that they need the third shop, and which is a tenanted shop, on account of the fact that the sons of the petitioners do not have a godown for storing their goods/products. The petitioners also claim that the petitioner no.1 is not only an LIC agent but he is also a home and auto loan counsellor but he does not have an office and therefore he needs an office for his professional job including also for dealing with /entertaining

his clients. The petitioner no.1 is said to be on the panel of the State Bank of India at Delhi with respect to home and auto loan counselling.

8. A reading of the impugned judgment as also the pleadings before the Additional Rent Controller ie the eviction petition, leave to defend application and reply thereto, shows that there is no dispute with respect to relationship of landlord and tenant between the parties. Ownership of the petitioner no.2 has also been admitted. Therefore, in my opinion, the first requirement that the petitioner no.2 is the owner/landlady of the suit/tenanted property stands satisfied.

9. The other requirements which the petitioners have to meet in order to succeed in the *bonafide* necessity eviction petition are that the petitioners have to show that the petitioners need the suit/tenanted premises *bonafidely* and for their own use and/or the need of their family members/sons. These aspects in my opinion stand very much satisfied because the petitioners are not shown to have any other suitable alternative accommodation/shop, except the tenanted/suit shop from where the petitioner no.1 can carry on his profession and for the sons for godown of their goods. The respondent was not justified in contending that there were a total of seven shops belonging to the petitioner no.2, inasmuch as, in terms of the partition deed only three

shops fell to the share of the petitioner no.1 and other shops fell to the share of the brother of the petitioner no.1 namely Manjeet Singh. Out of the three shops which fell to the share of the petitioner no.1, in two shops the sons of the petitioners are carrying on their manufacturing/trading activities and the manufacturing is being carried on from a hall in the back portion of the suit/tenanted property. Therefore the sons of the petitioners definitely do require an area to be used as a godown for their goods/products. Also, as stated above since the petitioner no.1 is a professional; he being a home and auto loan counsellor on the panel of State Bank of India and also an LIC agent; surely he is entitled to have a place for his office/professional work where he can entertain his clients. Therefore, there is also a *bonafide* need of the tenanted shop with respect to the need of the petitioner no.1 for his professional work.

10. At this stage, I may note a very surprising observation of the Additional Rent Controller because the Additional Rent Controller in the impugned judgment dated 26.11.2013 specifically observes in the last few lines of para 11 that the respondent has not raised any triable issue, yet the Additional Rent Controller observes and grants leave to defend only because it is observed by the Additional Rent Controller that she was not satisfied

with the *bonafide* need of the petitioners. I have really failed to understand this conclusion made in the impugned judgment by the Additional Rent Controller because once no triable issue is raised, surely, the *bonafide* necessity eviction petition has to be decreed, and especially in view of the observations made above showing that there is a need of the tenanted/suit shop as a godown for the sons of the petitioners as also for the use of the petitioner no.1 for his professional work. Therefore the Additional Rent Controller could not have passed the impugned judgment granting leave to defend while simultaneously observing that triable issue did not arise.

11. In view of the above, this petition is allowed and the *bonafide* necessity eviction petition is decreed with respect to one shop on the ground floor of property no.2614 B, Mandirwali Gali, Shadipur, New Delhi (as shown in the red colour in the site plan filed with the eviction petition). The respondent will be entitled to the statutory period of six months for vacating the suit/tenanted shop. Parties are left to bear their own costs.

VALMIKI J. MEHTA, J

OCTOBER 17, 2014
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