

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

+ **RC.REV.No.204/2014 & C.M.Nos.9752/2014 (Stay),
9753/2014 (Exemption)**

% **20th November, 2014**

ASHOK KUMAR Petitioner
Through: Mr. Pramod Gupta, Advocate.

VERSUS

HARISH CHANDER SAHNI Respondent
Through:

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This rent control revision petition filed under Section 25B(8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act') impugns the judgment of the Additional Rent Controller (ARC) dated 19.11.2013 by which the ARC has dismissed the leave to defend application filed by the petitioner/tenant and has decreed the *bonafide* necessity eviction petition

filed under Section 14(1)(e) of the Act with respect to the suit/tenanted premises being two shops admeasuring 200 sq. ft. on the ground floor portion (garage portion) of the property bearing no.A-38, Ground Floor Vishal Enclave, New Delhi-27 as shown in red colour in the site plan annexed with the eviction petition.

2. I must at the outset note that this case has come up for admission on two prior occasions i.e. on 30.5.2014 and on 01.8.2014. On 01.8.2014, it was noted by this Court that this petition impugns the order dismissing a leave to defend application, but neither leave to defend application was filed nor the reply to the leave to defend application was filed before this Court. Obviously, therefore this Court did not have the basic necessary requisite pleadings of the leave to defend application, and therefore this case was adjourned to today. Even today, the petitioner has deliberately not filed the pleadings of the leave to defend application. Be that as it may, since this case has come up on two occasions before and cases cannot come up regularly for admission at the convenience of a litigant, I have asked the counsel for the petitioner to argue the case as per the existing records.

3(i) The eviction petition for *bonafide* necessity was filed by the respondent/landlord pleading that the suit/tenanted premises were owned by the father of the respondent/landlord and who had let out the suit/tenanted

premises to the petitioner/tenant. Father of the respondent/landlord Sh.Pishori Lal Sahni died on 25.7.2006 and between the family members, there was a family settlement on 25.2.2008 as per which the entire ground floor of the property bearing no.A-38, Vishal Enclave, New Delhi-27 came to the share of the respondent/landlord wherein the suit/tenanted premises are located.

(ii) The respondent/landlord pleaded the need of the suit/tenanted premises on the ground that his son Sh. Hirdesh Sawhney was carrying on commercial work from a shop in Khan Market, New Delhi at a monthly license fee of Rs.80,000/-, and due to very high rent/licence fee it was not commercially feasible to continue with the business, and consequently Sh. Hirdesh Sawhney had to close down his business and he surrendered the possession of the licenced/tenanted premises on 31.8.2010 and also simultaneously surrendered his VAT Number with the Sales Tax Office on 19.11.2010. The son Sh.Hirdesh Sawhney is thereafter stated to have taken up a job with the company M/s Swarsudha Cassettes Industries Pvt. India drawing a petty salary of Rs.15,000/- per month. The respondent/landlord therefore pleaded the need of the suit/tenanted premises for the purpose of carrying on business by his son Sh. Hirdesh Sawhney.

4. In a *bonafide* necessity eviction petition under the Act, three aspects are required to be seen for decreeing the petition. Firstly, there must exist a relationship of landlord and tenant between the parties and the landlord must be the owner of the premises. The second ingredient is that the tenanted premises are required for the *bonafide* use of the landlord himself or/and his family members and the third ingredient is that the landlord must not have any other suitable alternative accommodation.

5. Before this Court, two arguments have been addressed on behalf of the petitioner/tenant as under:-

(i) The respondent/landlord is not the owner of the premises and there is a doubt with respect to the family settlement dated 25.2.2008, and therefore the respondent/landlord is not the owner of the suit/tenanted premises.

(ii) There is a doubt that the son Sh. Hirdesh Sawhney is on a job with M/s Swarsudha Cassettes Industries Pvt. India as there is discrepancy with respect to the papers filed showing his employment.

6. Both the arguments urged on behalf of the petitioner/tenant are totally frivolous, and this petition has no merit and accordingly is dismissed. Reasons are given herein under.

7(i) Firstly, the ground that the respondent/landlord is not the owner of the premises is a totally frivolous argument because it is not disputed that the

petitioner/tenant took the suit/tenanted premises from the father of the respondent namely Sh. Pishori Lal Sahni. The respondent being the son of Sh. Pishori Lal Sahni is therefore in any case the co-owner of the suit/tenanted premises and now it is settled law by virtue of a long chain of judgments of various courts including the Supreme Court, thousands in number, which hold that every co-owner has a right to file a petition of eviction of the tenant and it is not necessary that all other co-owners have to be impleaded. It is also settled law that once the other co-owners do not object to the filing of the eviction petition, a tenant has no *locus standi* to question the entitlement of the co-owner to file the eviction petition. Admittedly there is no objection of any of the other co-owners to this eviction petition and no such position exists on record. Also, I do not find any basis for the petitioner/tenant to have any *locus* to challenge the family settlement dated 25.2.2008 inasmuch as no other co-owner is challenging the same.

(ii) The ground urged by the petitioner/tenant that the family settlement of 25.2.2008 records an existing settlement which shows division of portions which already took place on 28.6.2007 and hence the family settlement is to be doubted has no legs to stand upon, inasmuch as surely a family settlement is a family settlement and not a partition deed, and therefore a family settlement only records what had already happened in the past. The language

which is used in the family settlement of what has happened in the past is being recorded in the family settlement is an important ingredient which is found in every family settlement, because otherwise the family settlement will become a partition deed which will be required to be stamped and registered. Therefore, there is no merit in the argument of the petitioner/tenant that the family settlement seems to be a doubtful agreement because it records existing division which already took place on 28.6.2007.

8. The second argument urged on behalf of the petitioner/tenant that there is a doubt with respect to the employment of the respondent's/landlord's son Sh. Hirdesh Sawhney is again an argument lacking any substance. This is because the fact of the matter as to whether the son of the respondent is or is not working in a company is not material and if assuming it is taken that the son of the respondent/landlord is not working, then this argument will in fact completely go against the petitioner/tenant and in favour of the respondent/landlord because the son will be shown to be completely unemployed. Therefore, if the petitioner/tenant takes up a stand that the son is unemployed i.e not working in the particular company as stated by the respondent/landlord, then surely this itself will show that the son will be entitled to the suit/tenanted premises for the purpose of carrying on his business.

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

VALMIKI J. MEHTA, J

NOVEMBER 20, 2014
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