

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

+ RC Rev. No. 286/2013 & C.M.No.12062/2013 (stay)

% **05th August, 2014**

GHANSHYAM Petitioner

Through: Mr.S.K.Duggal with Mr.Rajiv
Duggal, Advocates.

VERSUS

VIJENDER Respondent

Through: Mr.Devinder Singh Khatana,
Advocate.

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This revision petition is filed under Section 25B(8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act') impugning the judgment of the Additional Rent Controller dated 31.5.2013 by which the leave to defend application filed by the petitioner/tenant has been dismissed and the *bonafide* necessity eviction petition filed under Section 14(1)(e) of the Act has been decreed with respect to one shop on the ground floor of

property no.A-13, Main Market, Village Garhi, Near Sheetla Mata mandir, East of Kailash, New Delhi as shown in red colour in the site plan filed along with the eviction petition.

2. The facts of the case are that the respondent/landlord filed the eviction petition for *bonafide* necessity stating that the petitioner/tenant was inducted as a tenant in the shop by his father Sh.Hari Ram. The respondent/landlord further pleaded that the father had distributed his property amongst his two sons by means of a family settlement and the suit shop fell to the share of the respondent/landlord and the adjacent shop fell to the share of his brother. The respondent/landlord stated that he wanted to open an office of tour and travels, and for which business he has no vacant shop, and therefore the tenanted premises are required, and consequently the *bonafide* necessity eviction petition was filed.

3. The petitioner/tenant contested the eviction petition and pleaded in the leave to defend application that the respondent was neither the owner nor the landlord of the suit premises. The petitioner/tenant, however, admitted that the premises were given on rent by the father of the

respondent, Sh.Hari Ram. The petitioner/tenant, however, contested that not only he was the tenant in the suit premises but also his two brothers, namely, Choth Ram and Balram were the co-tenants with him. In support of the arguments that Choth Ram and Balram are the co-tenants, reliance was placed upon the rent agreement dated 07.3.1989. On the aspect of alternative suitable premises, it was pleaded by the petitioner/tenant that the adjoining shop had fallen vacant, and therefore the respondent/landlord can use the same.

4. The issues which were argued before the Additional Rent Controller have also been argued before this Court. I do not find that the impugned order of the Additional Rent Controller is in any manner illegal or unreasonable, and therefore the leave to defend application was rightly rejected. The reasons are stated hereinafter

5. So far as the aspect that whether the respondent is the owner/landlord of the suit premises is concerned, it is noted that the petitioner/tenant does not dispute that the premises were owned by the father of the respondent, Sh.Hari Ram. The respondent/landlord has stated that

there was an understanding between the family members whereby the father distributed the property and gave the suit/tenanted shop to the respondent/landlord and the adjacent shop to the brother of the respondent/landlord. In my opinion, merely pleading that the respondent is not the owner or landlord of the premises does not create any triable issue because the factum with respect to ownership of the suit shop could only have been disputed by the father of the respondent/landlord or by the brother of the respondent/landlord, but none of these two persons are disputing the ownership of the respondent/landlord qua the suit tenanted shop. Therefore, I hold that the petitioner/tenant has no *locus standi* to question the family settlement, and that is more so because two other interested parties i.e the father and the brother of the respondent/landlord, are not questioning the ownership of the suit/tenanted shop as belonging to the respondent/landlord. This argument of the petitioner is, therefore, rejected.

6. The second argument which was urged on behalf of the petitioner/tenant was that besides the petitioner/tenant, there were two other co-tenants and who were his two brothers Choth Ram and Balram. Reliance

in support of this argument by the petitioner/tenant was placed upon a rent agreement dated 07.3.1989. However, when we see the rent agreement dated 07.3.1989, it is clear that it is a rent agreement only between the father of the respondent/landlord, Sh.Hari Ram and brothers of the petitioner/tenant, Choth Ram and Balram, and that the petitioner Ghanshyam is not shown as a co-tenant in the shop which was given on tenancy to Choth Ram and Balram. Also, the shop which was given on rent vide rent agreement dated 07.3.1989 is not the suit/tenanted shop, but it is the adjacent shop to the tenanted premises. This adjacent shop has been got vacated by the brother of the respondent/landlord in the year 1995, and the brother of the respondent/landlord is doing his business of mobile phones from that adjacent shop, and which had fallen to his share on partition and not to the share of the respondent/landlord.

7(i). The case of the petitioner/tenant lacks credibility that the suit shop and the adjacent shop are allegedly one premises, inasmuch as, the petitioner/tenant himself has contended that there is an alternative premises being the adjacent shop, and therefore once the petitioner/tenant admits that

there are two separate shops and allegedly, the second shop is lying vacant in which the respondent/landlord can carry on his business (actually it is the adjacent shop of the brother as stated above), it does not lie in the mouth of the petitioner/tenant to contend that the two shops were in fact one tenanted premises.

(ii) Also, the Additional Rent Controller has exhaustively dealt with the aspect that the rent agreement dated 07.3.1989 was with respect to the shop adjacent to the tenanted premises, and in which shop the brother of the respondent is carrying on his business of mobile phones, and that shop fell to the share of the brother by way of settlement amongst the family.

(iii) It is also further required to be stated that there are two separate shops and the tenanted premises does not comprise of two shops together because the respondent/landlord along with the eviction petition filed a site plan showing two separate shops. The petitioner/tenant did not file his own site plan to contend that the two shops were in fact one tenanted premises. Therefore, the site plan filed by the respondent/landlord had to be believed and which shows that the tenanted premises is a shop of a particular

dimension, which is so specifically stated in the eviction petition and shown in red colour in the site plan, and which tenanted shop has as its adjacent another shop which has fallen to the share of the brother of the respondent/landlord. I, therefore, reject the argument that the two brothers of the petitioner/tenant, Choth Ram and Balram are co-tenants with him either by virtue of the rent agreement dated 07.3.1989 or even otherwise and that there was only one tenanted shop and not two shops.

8(i) The last argument which was urged before this Court was with respect to existence of alternative premises qua and to this aspect I have already made observations above and which is the adjacent shop of the brother. The petitioner cannot blow hot and cold by stating that there is a second shop which was vacated and is available to the respondent/landlord, and at the same time state that the said shop is not vacant and is part of the tenanted premises and is in tenancy of the petitioner with his brothers.

(ii) Also, at this stage itself, I state that simultaneously an argument was urged that the petitioner is not at all a tenant in the suit tenanted shop but only his two brothers Choth Ram and Balram are the tenants, however,

not only this argument lacks substance, in fact, the argument is liable to be rejected also because if the petitioner/tenant had nothing to do with the tenanted premises and his two brothers Choth Ram and Balram are the tenants and not the petitioner, then there was no reason for the petitioner/tenant to contest this petition. Therefore, the petitioner/tenant is resorting to speaking falsehood at his own convenience.

9. In view of the above, I do not find any illegality in the impugned judgment, and the petition is therefore dismissed, leaving the parties to bear their own costs.

VALMIKI J. MEHTA, J.

AUGUST 05, 2014
KA