

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

+ **RC. REV. No. 296/2013 & CM Nos. 12383-84/2013**

% **11th November , 2014**

SHRI SURAJ PRAKASH & ORS. Petitioners
Through: Mr. Alok Kumar, Advocate.

VERSUS

MS. NADRA BEGUM Respondent
Through: Mr. R.M.Bagai and Ms. Damani
Khair and Mr. Yasin, Advocates.

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 is filed under Section 25 B(8) of the Delhi Rent Control Act, 1958 (in short 'the DRC Act') impugning the judgment of the Additional Rent Controller (ARC) dated 17.4.2013 by which the ARC has dismissed the leave to defend application filed by the petitioners/tenants and has decreed the *bonafide* necessity eviction petition filed under Section 14(1)(e) of the DRC Act with respect to the tenanted premises being one shop no.1522 and godown no. 1536, Ground Floor, Ward No.1, Church Gate, Kashmere Gate, Delhi-110006

2. In a petition for *bonafide* necessity under Section 14(1)(e) of the DRC Act three aspects are required to be seen. Firstly, there exists a relationship of landlord and tenant between the parties and that the landlord is the owner of the property. The second aspect is that the requirement is there for the landlord of the tenanted premises or for the need of any of his family members. Thirdly, the landlord or his family members must not have any other alternative suitable accommodation.

3. Before this Court, the only ground which is vehemently and passionately urged on behalf of the petitioners/tenants is that leave to defend had to be granted on account of the triable issue that the respondent/landlady had in her possession alternative suitable accommodation being shop nos. 9 and 10, B-7/A, Vishal Market, Bhai Parmanand Colony, Kingsway Camp, Delhi-110009. Let us therefore examine this aspect that whether these shops are alternative suitable accommodation available to the respondent/landlady.

4. Before I give my reasoning, it is relevant to refer to the exhaustive discussion, and with which I agree, on this aspect given by the ARC in para 11 of the impugned judgment and which para reads as under:-

“11. The respondents have alleged that the petitioner has concealed the factum of her alternate commercial accommodations at Shop no. 9 and 10. According to them,

these shops are lying vacant and hence are suitable for the need of the petitioner's husband. They have further claimed that these shops are “*self occupied*” by the petitioner and have been so assessed with the property tax department.

The petitioner has refuted these assertions by stating that though these shops are owned by her being purchased in her name by her deceased father, but, they are not readily available being occupied by her tenant firm named “*M/s Harsons*”, which firm earlier belonged to her father & two brothers and is presently owned by her brother Shahid Atiq & his son Md. Mazid Atiq. She claims that this firm is now using these shops as a godown for storing artificial plastic flowers being sold at Chandni Chowk.

The petitioner has placed on record various documents pertaining to the occupation of her tenant “*M/s Harsons*” at these shops. She has placed on record a letter dated 01.06.1995 written on behalf of this firm to the Drug Controller seeking license for storing medicines at shop no. 9. This letter pertained to the period when the said firm was involved in medicine business. Likewise “*Form 21C*” issued by the GNCT on dated 27.06.1995 in favour of this firm has also been placed on record whereby license was granted to this firm to conduct its medicine business from the shop no. 9.

She has also placed on record the property tax assessment order dated 04.10.1988 and rectified property tax assessment order dated 15.11.1988 of these shops issued by the MCD. The perusal of these orders shows that the petitioner has throughout maintained that these shops had been under the occupation of her tenant “*M/s Harsons*”, which was a firm constituted by her father and two brothers.

The respondent has alleged that it has been held in these orders that these shops were self occupied by the petitioner and

hence the property tax assessed thereupon was on the basis of her self occupation. On the strength of this argument, the respondents alleges that these shops be considered to be under the exclusive occupation of the petitioner. This argument advanced on behalf of the respondents is totally meritless. Firstly, these assessment orders are merely tax documents whereby they cannot be relied for determining as to who is in the exclusive possession of these shops, particularly, when the property tax can be deposited either by the owner or the tenant even in the case of a leased out property. Secondly, the perusal of the assessment order dated 04.10.1988 shows that the property tax was levied on these shops by treating them as the self occupancy of the petitioner. The in depth reading of this assessment order shows that these shops were so treated not because they were self or exclusively occupied by the petitioner but because they were occupied by her close relatives and their firm "*M/s Harsons*" leading to an assumption that the rental income disclosed by her seemed to be concessional. Accordingly property tax on the basis of the prevailing rental value was levied thereupon. Similar observations were also made in the rectified assessment order dated 15.11.1988. In this rectified assessment order, it was categorically observed that these shops were treated as self occupancy of the petitioner since they were occupied by "*M/s Harsons*", which belonged to her father and brothers. Hence on the meaningful reading of these two orders, the levy of property tax over these shops on the basis of the self occupancy of the petitioner cannot be understood either as the exclusive possession of the petitioner or that "*M/s Harsons*" is not a tenant therein. Rather both these orders shows that these shops were in fact occupied by the petitioner's tenant "*M/s Harsons*".

The respondents have placed no other documentary proof either in the nature of photographs or otherwise suggesting that these shops are either lying vacant or are exclusively occupied by the petitioner or are not under the occupation of the tenant firm "*M/s Harsons*". The electricity bills dated 07.07.2005 and 29.03.2011 of these shops filed by the respondents though undoubtedly shows that the electricity consumption there is minimal. However this by itself cannot be determinative of the fact that these shops are lying totally vacant particularly when the petitioner has explained in her reply to leave to defend that these shops are being used as godown by "*M/s Harsons*" for storing artificial plastic flowers. This storage of artificial plastic flowers justifies the low consumption of electricity at these shops, As a matter of common knowledge, it is known that the storage of artificial plastic flowers does not require any electricity since they are not perishable.

Thus the record prima facie establishes that these shops are occupied by the petitioner's tenant "*M/s Harsons*", whereby they are neither lying vacant, nor exclusively occupied by the petitioner. Now when these shops are not readily available for the exclusive use of the petitioner, they can not be termed as an alternate or reasonable accommodation from her point of view whereby she was not required to disclose their factum in her petition.

Accordingly, the aforesaid plea of the respondents fails to impress this Court."

5. Counsel for the petitioners/tenants argued that actually the shops are not in tenancy of *M/s Harsons* and the respondent/landlady has physical possession of the same, and therefore, since the

respondent/landlady has alternative suitable accommodation, leave to defend was bound to be granted. I do not agree. The reasons for rejecting this argument of the petitioners/tenants are given hereinafter.

6. A reference to para 11 of the impugned judgment shows that the court below has referred to the various licences which were issued by the Drug Controller in the name of M/s Harsons for storing of medicines at shop no.9, and which are of the year 1995. ARC has also referred to the property tax assessment order dated 15.11.1988 which shows that even in the said assessment order the property is specifically shown to be tenanted with M/s Harsons at a rent of Rs.280/- per month w.e.f July, 1982. With respect to the electricity bills relied upon by the petitioners, ARC notes that since the shop numbers 9 and 10 are being used as a godown for storing of artificial plastic flowers, the issue with respect to nil electricity consumption becomes immaterial. Besides agreeing with the reasoning of the ARC the following additional reasoning in my opinion can be given to sustain and buttress the reasoning/conclusions in the judgment of the ARC.

7. Firstly, in my opinion, the argument urged on behalf of the petitioners/tenants that there is no tenancy in the name of M/s Harsons because admittedly rent is not being paid since the year 1997, is an argument

which may sound impressive at the first blush but this argument is without substance because rent is admittedly only Rs.280/- per month. Considering that the relations between the parties being of a sister and brothers, I do not think payment or non-payment of such minimal rent would in any manner make a difference to the issue of existence of tenancy. In fact, even between strangers as the landlords and tenants in many areas of walled city of Delhi where rent is minimal, landlords in fact in considerable number of cases do not evince interest to collect rent which is minimal. There is no doubt that the house tax assessment order dated 15.11.1988 specifically shows that shop nos. 9 and 10 has been let out to M/s Harsons, a partnership firm of the father of the respondent and the two brothers of the respondent and hence it is not correct to argue that shop nos. 9 & 10 are not in tenancy with M/s Harsons.

8. So far as the argument that the electricity bills show nil consumption, and consequently it should be held that the shops are not tenanted, is concerned, is not an argument which can create a triable issue because the respondent/landlord has already stated, and which obviously has not been effectively rebutted by the petitioners/tenants, that the shop nos. 9 and 10 are being used for storing of artificial plastic flowers and for storing

of artificial plastic flowers, there is no requirement of electricity, and therefore, I do not find it difficult to hold that mere non-existence of electricity can in any manner make a difference to the existence of tenancy in the shop nos. 9 and 10 by the partnership firm M/s Harsons in which originally the father of the respondent was a partner with his sons i.e the two brothers of respondent, and after the death of the father the business of the partnership firm M/s Harsons was being carried on by the two brothers of the respondent and is presently owned by only one brother of the respondent namely Shahid Atiq and his son Md. Mazid.

9. In my opinion, there is one other extremely important reason to hold that the premises being shop nos. 9 and 10 are not alternative suitable accommodation. This is because as per the pleadings which have been filed in this Court, and which are sworn by affidavits by both the parties, show that the total area of the shop nos. 9 and 10 would be around 150 sq. ft. Since the *bonafide* necessity eviction petition has been filed for opening of a super store by the husband of the respondent/landlady thus the area of 150 sq. ft. in my opinion (assuming it is available to the respondent/landlady) will surely be insufficient as compared to the tenanted premises which is at least around 575 sq. ft. as per the case of the petitioners and around 1700 sq.

ft. as per the case of the respondent/landlady. Therefore, since the area which is required is for opening of a super store, surely the premises being shop nos. 9 and 10 having an area of only 150 sq. ft. cannot be said to be an alternative suitable accommodation.

10. In view of the above, I do not find any merit in the petition and the same is therefore dismissed, leaving the parties to bear their own costs.

NOVEMBER 11, 2014
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VALMIKI J. MEHTA, J.