

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

+ RC.Rev.524/2012 & CM No. 18285/2012

% **10th July, 2014**

KASHMIRI LAL KATARIA Appellant
Through: Mr. Arvind Chaudhary, Adv.

VERSUS

NAVNEET GUPTA Respondent
Through: Mr. Ankan Suri, Advocate.

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This petition under Section 25-B (viii) of the Delhi Rent Control Act, 1958 impugns the judgment of the Additional Rent Controller dated 21.5.2012 by which the eviction petition filed by the respondent/landlord has been decreed. The respondent/landlord had filed an eviction petition for bonafide necessity for the shop situated on the ground floor and in which shop on the ground floor the respondent wanted his sons to start business.
2. The eviction petition has been decreed after evidence was led by both the parties.

3. There is no dispute with respect to the ownership and the purpose of letting is immaterial in view of the Supreme Court judgment in the case of ***Satya Wati Sharma (Dead) by L.Rs. Vs. Union of India & Anr. (2008) 5 SCC 287.*** The only issue required to be considered in this case is whether the tenanted shop on the ground floor i.e Shop Nos. 2002 towards Bank Street and 2051, towards Naiwalan, Gali No.39, Karol Bagh, New Delhi-110005 is bonafidely required by the respondent/landlord.

4. The relevant portions of the impugned judgment which specifically and directly deal with this issue of bonafide need are paras 16 to 20 which read as under:-

“16. After going through the deposition of PW-1, it is proved that the petitioner has only a shop measuring 37 sq. yards on the ground floor in the suit property. The shop no. 1431, Gowardhan Das Trust has already been vacated by the petitioner. The respondent has not brought anything on record to show any other suitable available accommodation with the petitioner. The suit property cannot be used for doing the business activities. RW-1 also admitted that the customers always prefer the shop situated at ground floor instead of the upper two floors. We all are aware that a shop or any business activity is always run better on the ground floor then upper floors. The petitioner does not want to start the business of his son from upper floor and he wants to provide accommodation to his son on the ground floor. It is well settled law that a tenant cannot dictate terms to the landlord to which floor the landlord should use for his business activities. It is held in Smt. Viran Wali Vs. Sh. Kuldeep Rai Kochhar, Rev. NO. 124/2010 & C.M No. 10165/2010 decided on 12.11.2010 that any business which is being run from the ground floor of the premises, will

obviously attract more customers than the business being run from the basement. It is settled law, that a tenant cannot dictate the landlord as to how and in what manner the landlord should use his own property.

17. *It is held in Hon'ble Supreme Court in Uday Shankar Upadhyay & Ors. Vs. Naveen Maheshwari, VIII (2009) SLT 429 that once it is not disputed that landlord is in bona fide need of premises, it is not for courts to say that he should shift to first floor or any higher floor. Shops and businesses are usually conducted on ground floor, because customers can reach there easily. Court cannot dictate to landlord which floor he should use for his business.*

18. The petitioner has two sons of aged about 25 and 24 years. The elder son of the petitioner is working with the petitioner and the younger son is unemployed. The petitioner wants to get start the business for his two sons and for this he needs the shop in question. As the petitioner has no other alternative accommodation, therefore, his requirement of the suit premises to get vacate from the respondent is bona fide one. It is a social duty of a father to provide accommodation to his grown up children, if he can afford. The contention of the respondent that the petitioner had let out the first, second and third floor for commercial purposes has no substance because the petitioner wants to provide accommodation for his son for business purposes on the ground floor and not on the upper floors. It is not in dispute that when the petitioner filed the present eviction petitioner he was residing on the upper floors of the suit property. The further contention of the respondent that the petitioner wants to let out the suit premises on higher rent or sell it on higher rate have no substance as there is a protection to the tenant u/s 19 of DRC Act that in case the landlord let out or sell the property within three year of its acquisition, tenant can file a petition to get back the possession.

19. Considering all these aspects, both these ingredients are decided in favour of the petitioner and against the respondent. The ruling relied upon by the Ld. Counsel for the respondent are not applicable to the facts of the present case as the ruling i.e O.P.Gupta Vs. R.K.Sharma (supra) is regarding the residential requirement of the landlord whereas

in the case in hand the petitioner needs the suit premises for commercial purposes.

20. In view of the above discussions, petitioner has proved all the ingredients of section 14 (1) (e) of DRC Act and respondent failed to show that the petitioner has any other alternative accommodation. Accordingly, the petitioner is entitled for an eviction order u/s 14 (1) (e) of DRC Act. Hence an eviction order is passed in respect of the tenanted premises i.e shop no. 2002, towards bank street and 2051 towards Naiwalan, Gali No. 39, Karol Bagh, New Delhi, more specifically shown in red color in the site plan Ex. PW-1/4. It is made clear that the petitioner shall not be entitled to execute this execution order before expiry of six months from today.”

5. The aforesaid paras rightly conclude that shops on the ground floor are more feasible for doing business instead of commercial premises in the basement or on the first floor and above. The court below has in this regard referred to the Supreme Court judgment in the case of ***Uday Shankar Upadhyay & Ors. Vs. Naveen Maheshwari, VIII (2009) SLT 429*** in para 17 of its judgment. The court below has also on this aspect referred to the judgment passed by a learned Single Judge of this Court in the case of ***Viran Wali Vs. Sh. Kuldeep Rai Kochhar***, Rev. No. 124/2010 decided on 12.11.2010. This is the position prevailing in law because a tenant cannot dictate to the landlord from where he should conduct his business once the shop on the ground floor is more suitable than the premises other than the one in the basement or the first floor and above.

6(i) Learned counsel for the appellant has argued that the respondent/landlord had with him an alternative premises being the shop no. 1431, Goverdhan Dass Trust, Near Jain Mandir, Karol Bagh, New Delhi in his tenancy which he wrongly vacated, and which would be thus an alternative accommodation. It is argued that since the landlord-respondent was a tenant in another premises he should not have vacated, and therefore, there would be alternative premises.

(ii) I fail to understand this argument because this in fact means that if landlord is a tenant in another premises which the other landlord wants, the landlord who is a tenant in that another premises must turn dishonest, should not vacate the tenanted premises, should force the landlord of another premises to file eviction petition, that eviction petition should be contested by further harassing the other landlord right to the Supreme Court. Obviously, this cannot be and is not the position in law.

7. In view of the above, this petition is clearly misconceived and is an endeavour by the tenant to illegally hold on to the premises of the landlord/respondent. The petition is therefore dismissed with costs of Rs. 50,000/- which shall be paid within a period of six weeks. The respondent-landlord has incurred legal costs in defending this petition. Supreme Court

has observed in the case of *Ram Rameshwari Devi & Ors. Vs. Nirmala Devi & Ors. (2011) 8 SCC 249* that it is high time that in certain litigations appropriate actual costs must be imposed. I am also empowered to impose actual costs in exercise of powers under *Volume V* of the *Punjab High Court Rules and Orders (as applicable to Delhi) Chapter VI Part I Rule 15*.

JULY 10, 2014
ib

VALMIKI J. MEHTA, J.