

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

+ RC.REV. No. 501/2011 & RC. Rev. No.505/2011

% **26th November , 2014**

RC.Rev. No. 501/2011

SHRI C.P.SEHGAL Petitioner
Through: Mr. Bharat Bhushan Bhatia, Advocate.

VERSUS

SMT. ARCHANA GUPTA Respondent

Through: Mr. S.D.Dixit, Advocate.

RC.Rev. No. 505/2011

SHRI C.P.SEHGAL Petitioner
Through: Mr. Bharat Bhushan Bhatia, Advocate.

VERSUS

SMT. ARCHANA GUPTA Respondent

Through: Mr. S.D.Dixit, Advocate.

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

RC.Rev. No. 501/2011

1. This rent control revision petition is filed under Section 25B(8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the DRC Act') impugning the judgment of the Rent Controller dated 29.10.2011 by which the Rent Controller 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 property no. 12 and 13, in the property bearing no. A-14/3, Asaf Ali Road, New Delhi (also mentioned as R.No.12, 13, Block No.3, Plot No.14(A), Municipal No.2523, Ward No.10, Asaf Ali Road, New Delhi) and as shown in red colour in the site plan Ex.C-1.

2. Respondent/landlady had filed the subject *bonafide* necessity eviction petition stating that she wants to start her own business of fashion designing cum boutique but on account of paucity of space she could not start the business and hence the tenanted premises are required for the aforesaid business purpose. Respondent/landlady has done MSC (Chemistry) and she also has a diploma in fashion designing from Saubhagya Polytechnic for Women and in Systems Management from NIIT.

Respondent/landlady has also done a one year course of an Office Assistant. It is stated by the respondent/landlady that except the suit premises she had no other premises from where the business could be carried out and hence suit/tenanted premises was *bonafidely* required.

3. In a petition under Section 14(1)(e) of the DRC Act, three aspects are required to be seen by the court for decreeing of the petition. Firstly, there has to exist a relationship of landlord and tenant between the parties and that the landlord is the owner of the suit/tenanted premises. Second aspect to be seen is that the tenanted premises are required *bonafidely* by the landlord and/or his family members and the third aspect is that the landlord has no other alternative suitable accommodation.

4. Before this Court, there is no dispute with respect to the relationship of landlord and tenant between the parties and that the landlady is the owner. What is essentially argued by the petitioner/tenant is that the eviction petition is not *bonafide* because the respondent has alternative suitable accommodation. One alternative suitable accommodation which is stated to exist is property no. 3/4, Top Floor, Asaf Ali Road, New Delhi. Petitioner contended that respondent/landlady and her family members owned various properties, namely, property bearing no. 3/4, Top Floor, Asaf

Ali Road, New Delhi, property bearing no.3/8, Asaf Ali Road (entire property), New Delhi, property bearing no.3/12, Second Floor (two floors), Asaf Ali Road, New Delhi, property bearing no.3/17, One floor, Asaf Ali Road, New Delhi and property bearing no.4/5B, first and second floor, Asaf Ali Road, New Delhi. It is stated that out of these, some properties are lying vacant and they are therefore suitable alternative accommodation.

5. So far as the property bearing no. 3/4, Asaf Ali Road, New Delhi is concerned, the respondent/landlady has stated that the same is owned by her mother-in-law and in fact the same is in possession of an old tenant. Whereas the property bearing no. 3/12, Asaf Ali Road, New Delhi, is stated to be in possession of an old tenant with respect to whom litigation is said to be pending due to non-payment of rent. Rent Controller has therefore held that this property is not an alternative suitable accommodation because petitioner did not place anything on record to show that the property bearing no.3/4 is owned by the respondent/landlady or is vacant and therefore available to the respondent/landlady.

6. So far as the entire list of other properties as stated above which according to the petitioner/tenant are owned by the respondent/landlady is concerned, respondent/landlady has taken up a specific stand that she has

nothing whatsoever to do with any of the properties as those properties are not owned by her. Therefore, bald assertions that respondent/landlady owns various properties cannot create a triable issue. The second argument urged on behalf of the petitioner/tenant is also therefore without any substance and is accordingly rejected.

7. Once the respondent/landlady has no alternative suitable accommodation and she wants the suit/tenanted premises for opening of a business, then, a tenant cannot dictate to the landlady that she should not open a business which she wants to carry on from the tenanted premises.

8. In view of the above, there is no merit in the petition and the same is therefore dismissed, leaving the parties to bear their own costs. At the time of dismissing the petition the interim order of user charges passed by this Court on 9.12.2011 of the petitioner/tenant to pay to the respondent a sum of Rs.20,000/- per month from the date of the eviction order, is confirmed and in case the petitioner has not made any payment under the same, the respondent can always execute the said order with respect to payment.

9(i) Counsel for the petitioner, after the judgment was dictated, argued two other points being that the respondent/landlady has alternative premises being a mezzanine floor of the same premises as also the basement.

(ii) So far as basement is concerned, the same is less suitable than the tenanted premises on the ground floor and it is settled law that a tenant cannot dictate to the landlord to carry on business from a less convenient/profitable place once a more suitable place is available. Reference in this behalf can be made to a recent judgment of the Supreme Court in the case of *Anil Bajaj & Anr. Vs. Vinod Ahuja 2014 (6) SCALE 572* which holds that a landlord is entitled to evict his tenant if the landlord is carrying on business from a less convenient location and wants to shift to a more convenient location.

(iii). So far as the mezzanine floor is concerned, the said premises cannot be an alternative suitable premises because the same is with the legal heirs of the original tenant Sh. S.P.Gupta and once that is so, surely this mezzanine floor is also not an available vacant property for the respondent/landlady to carry on her business from the same.

10. In view of the above, there is no merit in the petition and the same is therefore dismissed, leaving the parties to bear their own costs. All pending applications stand disposed of accordingly.

RC.Rev. No. 505/2011

This petition will also stand dismissed in view of the reasoning given in RCR 501/2011. All pending applications stand disposed of accordingly.

NOVEMBER 26, 2014
ib

VALMIKI J. MEHTA, J.