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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RC. REV.Nos.474/2013,107/2014, 108/2014 & 110/2014

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27th November, 2014

1. RC. REV. No.474/2013

RAJ KUMAR PAHWA

..... Petitioner

Through: Mr. G.P. Thareja, Advocate.

Versus

SHRI RAJIV GUPTA

..... Respondent

Through: Mr. Shahid Ali, Advocate with Mr.
Mohd. Shariq, Advocate and Mr.
Rishi Vohra, Advocate.

2. RC. REV. No.107/2014

SH. LALIT KUMAR ARORA

..... Petitioner

Through: Mr. Aly Mirza, Advocate.

Versus

SHRI RAJEEV GUPTA

..... Respondent

Through: Mr. Shahid Ali, Advocate with Mr.
Mohd. Shariq, Advocate and Mr.
Rishi Vohra, Advocate.

3. RC. REV. No.108/2014

SH. AJAY CHOPRA

..... Petitioner

Through: Mr. Aly Mirza, Advocate.

Versus

SHRI RAJEEV GUPTA Respondent
Through: Mr. Shahid Ali, Advocate with Mr.
Mohd. Shariq, Advocate and Mr.
Rishi Vohra, Advocate.

4. **RC. REV. No.110/2014**

SH. DALIP CHOPRA Petitioner
Through: Mr. Aly Mirza, Advocate.

Versus

SHRI RAJEEV GUPTA Respondent
Through: Mr. Shahid Ali, Advocate with Mr.
Mohd. Shariq, Advocate and Mr.
Rishi Vohra, Advocate.

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

RC. REV Nos. 107/2014, 108/2014 & 110/2014

1. These rent control revision petitions have been filed under Section 25B(8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act') impugning the judgments of the Additional Rent Controller

dated 21.10.2013 by which the Additional Rent Controller has dismissed the leave to defend applications filed by the petitioners and has decreed the *bonafide* necessity eviction petitions with respect to the tenanted shops situated in property no.1, Krishna Market, Lajpat Nagar-I, New Delhi-24. This common judgment will dispose of all the petitions because the landlord in all the cases is same and though tenants are different, they are tenants of adjoining shops and the need projected in the *bonafide* necessity eviction petitions is for all the shops simultaneously.

2(i) The case of the respondent/landlord in the eviction petitions was that he used to earlier carry on the business of dry cleaning with his father in one shop in the very same premises bearing shop no.1, however subsequently the business was closed. Respondent/landlord stated that he thereafter started assisting his wife in ladies clothing and tailoring business which is being carried on at the second floor of the same premises and over the years he has received experience for doing the business of ladies clothing and tailoring. It is pleaded that for carrying on the business of ladies clothing and tailoring i.e a ladies boutique shop which will contain a glass facade, a lady's trial room, space for peeco machine, space for over locking machine and three stitching tailors space with sewing machines as also a wooden counter necessary for fabrication of clothing and dress material are

required. All the aforesaid activities are required for a ladies boutique shop and which will be satisfied by eviction of the petitioners from the three shops bearing nos.1/2, 1/4 and 1/5 in the premises.

(ii) Respondent/landlord in the eviction petitions also pleaded that the finances which were received from rent were not sufficient for his family which comprises besides himself, his wife and two minor school going children. Though the eviction petitions, in the opinion of this Court, could have been drafted better by giving more details, however, in the replies to leave to defend applications which were filed by the respondent/landlord it was clarified that the rent which was received from shop no.1 on the ground floor from where original dry cleaning business was carried out, and which has been let out to Apollo Pharmacy at a rent of Rs. 53,000/- /Rs.55,000/- per month, is not enough for his family comprising of himself, his wife and two minor school going children and for due maintenance of the family and hence a business has to be carried out of a ladies boutique in the shops in question. Respondent/landlord also stated that the business is being presently carried out in the second floor of the property with his wife and surely therefore the shops on the ground floor, and which are on the main road, would be much more suitable for carrying on the business of the ladies boutique.

3. In an eviction petition for *bonafide* necessity which is filed under Section 14(1)(e) of the Act, three aspects are required to be seen viz firstly there is a relationship of landlord and tenant between the parties and that the landlord is the owner of the property, secondly it has to be seen that the premises are *bonafidely* required by the landlord and/or his family members and finally/thirdly it is required to be seen that landlord has no other alternative suitable accommodation.

4. Before me, on behalf of the petitioners/tenants the following aspects are argued:-

(i) The respondent is not the owner-landlord of the premises inasmuch as the registered Will of the grand-father of the respondent/landlord dated 21.9.2005 has been cancelled by a subsequent registered cancellation deed dated 9.11.2005. It is argued that hence the respondent is not the owner of the suit/tenanted shops. Petitioners also denied that the respondent is the landlord of the premises and they denied that any rent has ever been paid by them to the respondent/landlord.

(ii) The need of the respondent/landlord is not *bonafide* because just in the previous year prior to the filing of the eviction petition, the respondent/landlord has let out the shop no.1 to Apollo Pharmacy and is earning rent of Rs. 53,000/- /Rs.55,000/- per month and if the

respondent/landlord really had *bonafide* need for commercial purposes, he should not have let out the shop no.1 to Apollo Pharmacy.

(iii) The respondent/landlord has various other properties and these properties can satisfy the *bonafide* need of the respondent/landlord.

5. The first argument which is urged on behalf of the petitioners does not have any merit because admittedly the respondent is one of the co-owners of the property. The suit property was owned by the grand-father of the respondent/Sh. Rajeev Gupta and Sh. Bharat Bhushan, the father of the respondent/landlord/Sh. Rajeev Gupta has already expired. Therefore, the respondent/landlord is one of the co-owners of the suit property and it is settled law by a catena of judgments of the Supreme Court that one of the co-owners can always file the *bonafide* necessity eviction petition unless it is established on record that other co-owners are objecting to the same. In the present case, no objections of any other co-owners have been filed on record to show that the other co-owners are objecting to the *bonafide* necessity eviction petition. I may also state that the Additional Rent Controller has noted in the impugned judgments that the petitioners/tenants themselves had filed petitions for deposit of rent under Section 27 of the Act and in which petitions the respondent is shown to be one of the co-owners and landlord

of the property. The first argument urged on behalf of the petitioners is therefore rejected.

6. The second argument which is urged on behalf of the petitioners is also without any merit inasmuch as surely in today's date and age to live in a city of Delhi it cannot be said that a sum of Rs. 53,000/- /Rs.55,000/- per month received from the tenant Apollo Pharmacy is good enough for the landlord and his family members. No tenant can deny the right of the landlord and his family to progress and live a better life by starting the business in a more convenient location viz on the ground floor tenanted shops. The respondent/landlord alongwith his wife from the second floor of the property is already doing ladies clothing work and therefore the respondent/landlord is entitled to open a boutique once he has received the necessary experience with respect to ladies clothing. Of course, I must hasten to add that the Supreme Court has held in a catena of judgments that the landlord need not have even a single day of prior experience in case he wants to carry on business because experience is derived after the business is carried out. Therefore, even the second argument urged on behalf of the petitioners is rejected.

7. The third argument which is urged on behalf of the petitioners is that the respondent/landlord has many properties, but, this argument is a

most vague argument and is only a bald assertion inasmuch as in the leave to defend application no details have been given of any of the alleged properties which were owned by the respondent/landlord. Also, it has been held by the Supreme Court in the judgment in the case of ***Prithipal Singh Vs. Satpal Singh (dead) through LRs. (2010) 2 SCC 15*** that whatever has to be stated for grant of leave to defend has to be necessarily stated within 15 days prescribed statutory period for filing of the leave to defend application and there cannot be extension of even one day i.e there cannot be condonation of even one day's delay in filing of the leave to defend application. Therefore, effectively the Supreme Court has stated that after the statutory period of 15 days, no ground or facts in the form of an additional affidavit etc. can be stated for seeking leave to defend and whatever has to be stated for grant of leave to defend, and which arise before the expiry of 15 days statutory period, has to be necessarily stated in the leave to defend application. Relying upon the judgment of the Supreme Court in the case of ***Prithipal Singh (supra)*** a learned Single Judge of this Court in the case of ***Madhu Gupta Vs. Gardenia Estates (P) Ltd. 184 (2011) DLT 103*** has held that after the 15 days statutory period of filing the leave to defend application, amendment cannot be granted to leave to defend application for adding additional facts or grounds for seeking leave to

defend. Therefore, once no details of the properties have been mentioned in the leave to defend applications, subsequently thereafter the petitioners/tenants cannot now add allegations of any properties to claim that the respondent/landlord has alternative suitable properties and therefore leave to defend should be granted.

8. In view of the above, there are no merits in the petitions which are therefore dismissed. No costs.

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9. All the facts as stated while dismissing the aforesaid eviction petitions will apply so far as the present petition is concerned with the variation that the respondent/landlord had not stated in the eviction petition in this case that there was still a financial constraint even after letting out of the shop to Apollo Pharmacy at Rs. 53,000/-/Rs.55,000/- per month. The issue is whether lack of such an averment is sufficient for grant of leave to defend. In the peculiar facts of this case, and which is connected with other cases, and since in all the cases the respondent/landlord has taken up a specific case of requiring on the ground floor shops, sufficient space for a lady's trial room, space for peeco machine, space for over locking machine and three stitching tailors space with sewing machines as also a wooden counter necessary for fabrication of clothing and dress material etc etc

actually therefore the need of the respondent/landlord will be for all the shops together on the ground floor including the shop in this case. I may state that though the eviction petition could have been drafted better, however, in my opinion, whatever lacuna has been left out in the same is in a way made up by filing reply to the leave to defend application by the respondent/landlord wherein it is specifically mentioned that there is financial constraint in spite of a sum of Rs. 53,000/-/ Rs.55,000/- per month being received from the tenant. Considering therefore the peculiar facts of this case and which is connected with other petitions which have been dismissed, the present petition is also therefore dismissed. No costs.

VALMIKI J. MEHTA, J

NOVEMBER 27, 2014

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