

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

+ RC. REV. No. 595/2012

% **5th November, 2014**
SATISH JAIN & ORS. Petitioners

Through: Mr. Ravi Dahiya, proxy counsel for
Mr. Amit Jain, Advocate.

VERSUS

TARO DEVI Respondent

Through: Mr. Atul Bandhu and Mr. Varun
Kumar, Advocates.

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. At the outset, counsel Mr. Ravi Dahiya, Advocate who appears for the petitioners sought adjournment on the ground that the arguing counsel Mr. Amit Jain, Advocate is not available. A reference to the memo of parties filed in the present petition shows that there is not one but two Advocates namely Sh. Amit Jain and Sh. Ashok Jain for the petitioners. Non-availability of only one counsel is therefore not a good ground for adjournment especially because adjournment is very vehemently opposed on behalf of the respondent as petitioners enjoy the benefit of an interim order dated 12.12.2012 staying eviction. I also note that at the end of the petition

the two advocates who are shown in the memo of parties are different ie whereas in the memo of parties Advocates Mr. Amit Jain and Mr. Ashok Jain are shown but in the end of the petition the Advocates who are shown to have filed the petition on behalf of the petitioners and who have signed the petition are Sh. Amit Jain and Sh. Rajender Gupta. Since petitioners/tenants are enjoying the benefit of an interim order staying operation of the impugned judgment and decree dated 30.8.2012 which ordered eviction of the petitioners/tenants and on account of the opposition of the respondent to any adjournment, this Court has refused to adjourn the case in the facts of the present case when more than one advocates are representing the petitioners. The present counsel for the petitioners has, after adjournment was refused, argued the case.

2. This rent control revision petition under Section 25-B(8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act') is filed by the petitioners/tenants impugning the judgment of the Additional Rent Controller dismissing the leave to defend application and decreeing the *bonafide* necessity eviction petition filed under Section 14(1)(e) of the Act. The eviction petition was filed seeking eviction of the petitioners/tenants from one shop on the ground floor admeasuring 7.6ft.X12.6 ft. situated in

the property bearing no. 2951/41, Beadonpura, Karol Bagh, New Delhi on the ground that the tenanted premises are required by the widowed daughter-in-law of the respondent/landlady namely Smt. Tanuja wife of Sh. Naresh (deceased son of the respondent/landlady), for opening of a beauty parlour. The family of the respondent/landlady comprises of three sons namely Sh. Nand Kishore, Sh. Krishan, Sh. Naresh and two daughters. As stated above, Sh. Naresh has expired leaving behind his widow Smt. Tanuja and one son. The son Sh. Naresh expired at a young age on 1.3.2003. In the property on the ground floor there are four shops of which two shops are in Gali No. 41 and two shops are in Gali No. 42. The suit shop is in Gali No. 41. Out of the four shops one shop has been sold way back in the year 2004. One shop in Gali No. 41 is being used by the daughter-in-law of the respondent/landlady Smt. Durga as a tea and coffee shop. The fourth shop and which is a third shop inasmuch as the fourth shop is sold, is in tenancy with the tenant Sh. Pritpal Singh and his father Sh. Inderjeet Singh. The portions above the ground floor i.e the first floor, second floor and third floor are used in the following manner as stated in the impugned judgment.

“ It is further averred that at the first floor of the property, there are three rooms out of which in two rooms son of the petitioner namely Krishan alongwith his wife and children is residing and one room is being used by the petitioner herself.

It is further averred that at the second floor of the property, there are three rooms out of which in two rooms son of the petitioner namely Nand Kishore alongwith his wife and children is residing and one room is being used by the Smt. Tanuja and her son, who is widow of son of the petitioner.

It is further averred that at the third floor of the property, there are two rooms which are not in good conditions out of which one room is under occupation of a tenant and other room is being used as store by the whole family of the petitioner.

It is further averred that half portion of fourth floor is containing two small rooms out of which one is in possession of a tenant and other room is being used by the elder son of the petitioner Nand Kishore who used to stitch carrying bags for earning his livelihood.”

3. Petitioners/tenants contested the eviction petition by filing the leave to defend application. Before me, the following grounds are urged for setting aside of the impugned judgment:-

(i) The widow of Smt. Naresh is already carrying on a beauty parlour from the first floor of the property and therefore it cannot be argued by the respondent/landlady that the suit shop is required as a beauty parlour.

(ii) The respondent/landlady received pagri/premium of Rs.3,55,000/- in the year 1993 and therefore on receiving of such premium the petitioners/tenants became entitled not to be evicted from the suit/tenanted shop.

(iii) Respondent/landlady has sold a shop, and if which shop was not sold would have been available to the respondent/landlady and hence that shop would be alternative suitable accommodation and therefore leave to defend

was bound to be granted and which would ultimately result in dismissing of the eviction petition.

4. All the grounds urged by the petitioners/tenants in my opinion lack substance and the petition is liable to be dismissed and is accordingly dismissed. The reasons are given hereinafter.

5.(i) The argument of the petitioners/tenants that the widow Smt.Tanuja is carrying on a beauty parlour at the first floor, and therefore she does not need the ground floor shop, is an argument which flies in the face of catena of judgments of the Supreme Court which hold that a tenant cannot dictate to the landlord that business/work should not be carried out from a better location and should be carried out from an inconvenient location. The visiting card relied upon by the petitioners/tenants shows that the beauty parlour business is being carried out in the first floor and therefore it is perfectly legitimate for the respondent/landlady to claim the shop on the ground floor and which shop premises on the ground floor are undoubtedly more suitable for carrying on the beauty parlour business. A reference in this behalf can be made to a recent judgment of the Supreme Court in the case of *Anil Bajaj and Anr. Vs. Vinod Ahuja 2014 (6) SCALE*

572, in which the Supreme Court has held that tenants cannot prevent the landlord from carrying on his business from a more suitable accommodation.

(ii) Another reason for holding that the widow Smt. Tanuja is entitled to the suit shop and need not carry on the business from the first floor of the property, inasmuch as, the first floor of the property has three rooms out of which two rooms are in possession of one son of the respondent/landlady namely Sh. Krishan and who is living in the same premises alongwith his wife and children. The third room on the first floor is being used by the respondent/landlady herself. Therefore carrying on business of a beauty parlour from some portion of the first floor would obviously be not only from a cramped and/or inconvenient place but this place on the first floor would not be of such a nature which could be better for carrying on the business than as from a commercial shop on the ground floor of the property. I therefore reject the contention that the suit/tenanted premises on the ground floor are not required by the widow daughter-in-law of the respondent/landlady for carrying on her beauty parlour business.

6. So far as the argument that petitioners/tenants had paid pagri/premium of Rs.3,55,000/-, besides the fact that there is no proof to show this payment, is concerned, Section 13 of the Act provides that if a

landlord has illegally received any monies in the form of premium, then within one year of making the payment, the tenant can seek recovery of the same and not thereafter. Admittedly, in the present case, period of one year stands expired long back because the tenancy commenced in July, 1993. In any case, even for the sake of argument we presume that the pagri/premium was paid, nowhere does the law provide that after payment of such an amount the tenant cannot be evicted from the suit premises if there is found a *bonafide* need for the tenanted premises. The second argument urged on behalf of the petitioners/tenants is also therefore rejected.

7(i) The third argument of the petitioners/tenants is that one shop being the fourth shop was sold and which if available would have been an alternative suitable accommodation, is again a misconceived argument because even as per the petitioners/tenants the said shop was sold on 14.6.2004 ie more than 7 years prior to the filing of the petition. Selling of a shop around 7 years prior to filing of the petition cannot be held to create a triable issue for the petitioners/tenants to be granted leave to defend.

(ii) A related argument which is raised was that there was a fourth shop on the ground floor which was vacant and is available to the respondent/landlady but as already stated above and as per the site plan filed

by the respondent/landlady, there were only four shops on the ground floor; two shops in Gali No. 41 and two shops in Gali No. 42 and out of the four shops one shop having been sold in the year 2004 thus only three shops remain out of which one shop is with the petitioners/tenants, one shop is with Smt. Durga the daughter-in-law of the respondent/landlady who is running a tea and coffee shop and the third shop is with the tenant Sh. Pritpal Singh and his father Sh. Inderjeet Singh. Therefore, it is incorrect for the petitioners/tenants to contend that there is a vacant shop available to the respondent/landlady for being available to the daughter-in-law Smt. Tanuja.

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.

9. Interim order of user charges which has been passed by a learned Single Judge of this Court on 20.5.2014 is confirmed and in case the petitioners/tenants have not made payment under this order, the respondent/landlady will be entitled to execute this order for recovery of this amount of unpaid user charges.

VALMIKI J. MEHTA, J

NOVEMBER 05, 2014
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