

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

+ **RC.REV.No.461/2013 & C.M.No.19778/2013 (Stay)**

% **05th November, 2014**

SH. TARJEET SINGH WALIA Petitioner

Through: Mr.Anil Sapra, Sr.Advocate with
Mr.Sandeep Sharma and Mr.Vikas
Sharma, Advocates.

VERSUS

SMT. NIRMALA DEVI Respondent

Through: Mr.Shiv Charan Garg with Mr.Vinay
Sharma and Mr.Imran Khan,
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 25B(8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act') impugning the judgment of the Additional Rent Controller dated 30.9.2013 by which the Additional Rent Controller has dismissed the leave to defend

application and has decreed the *bonafide* necessity eviction petition filed by the respondent/landlady under Section 14(1)(e) of the Act with respect to one shop on the ground floor of property bearing no.WZ-854, Rani Bagh, Delhi-34.

2. Before me the only aspect which is very strenuously urged on behalf of the petitioner/tenant is that since the projected need as per the eviction petition is for the elder son Sh.Sushil Kumar Sharma, who is stated to be unemployed and who wants to carry on business from the suit/tenanted shop, but this son is already running a coaching centre with respect to study of students in the first floor of the same property, and therefore the suit/tenanted premises cannot be said to be required for the *bonafide* necessity of this son of the respondent/landlady.

3. As per the pleadings which exist on record, the admitted position which emerges is that on the first floor of the property, there are three rooms, two kitchens, two stores and two bathrooms and two toilets. The family of the respondent/landlady consists of three sons, out of which two sons are married. There are a total of six adult family members and two children, and all of which as per the pleadings are residing in the first floor.

4. The petitioner/tenant before the Additional Rent Controller and even before this Court drew the attention of this Court to the photographs filed at page nos. 93 and 94 of the paper book which show a small board under the name of 'Educative Study Centre', which is for school students as also for graduate and post-graduate studies. It is accordingly vehemently argued on behalf of the petitioner/tenant that once the son of the respondent/landlady is already working by running of a coaching centre, the projected *bonafide* need for the son to carry on his own business is quite clearly not a *bonafide* ground for seeking eviction of the petitioner/tenant.

5. The Additional Rent Controller in the impugned judgment to reject the contention that the son Sh. Sushil Kumar Sharma is running a coaching centre at the first floor has firstly doubted the photographs as to whether the same are with respect to the first floor of the property and whether they at all pertain to any coaching centre being run by the son Sh. Sushil Kumar Sharma of the respondent/landlady. The Additional Rent Controller has in the alternative concluded that even if allegedly a coaching centre is being run from the first floor of the property as stated on behalf of the petitioner/tenant, the shop on the ground floor is much more suitable for

carrying on the business, and therefore it cannot be said that the premises on the first floor is an alternative suitable accommodation.

6 (i) In my opinion, in addition to the reasoning given by the Additional Rent Controller, there exist the following additional reasons which I state on the principle of Order XLI Rule 24 of the Code of Civil Procedure Act, 1908 (CPC), and which will show that the projected need of the respondent/landlady with respect to the suit/tenanted premises for carrying on the business of her son Sh.Sushil Kumar Sharma cannot be said to be a non-*bonafide* act.

(ii) Firstly the family members of the respondent/landlady comprise of three sons, of whom two are married, and the family members of the respondent/landlady are not disputed on behalf of the petitioner/tenant. Secondly, it is not disputed on behalf of the petitioner/tenant as per the pleadings which existed before the Additional Rent Controller, that the first floor comprises of only three rooms, two kitchens, two stores, two bathrooms and two toilets. Therefore, even assuming that even the first floor as per the notification issued by the MCD can be used for commercial purpose, I do not think that in an area comprising of three rooms with two stores and the amenities of kitchens, bathrooms and toilets, it can be held

that the same is a sufficient accommodation for the residence of the family of the respondent/landlady comprising besides herself of two married sons and one unmarried son. Also, the two married sons have two children and who would also require accommodation. Therefore, for six adult family members and two children, three rooms on the first floor are clearly insufficient even for residential purposes leave aside use of part of the first floor for commercial purposes, and therefore even for the sake of arguments if presumed that a coaching centre is being run on the first floor, in my opinion the Additional Rent Controller had rightly concluded that in fact the ground floor suit/tenanted property would be more suitable for carrying on the business besides the fact that really a cramped portion on the first floor cannot be said to be suitable alternative accommodation for carrying on the business by the son of the respondent/landlady.

(iii) An another important aspect which is required to be noted is that counsel appearing for the respondent/landlady on a pointed query put by this Court has specifically stated that the respondent/landlady and her son Sh. Sushil Kumar Sharma is ready to give an affidavit in this Court and be prosecuted for perjury if it is found that Sh.Sushil Kumar Sharma is in any manner associated with or carrying on the business of a coaching centre in the

first floor of the property. I may also note that even in the photographs which are filed by the petitioner/tenant to contend that Sh.Sushil Kumar Sharma is carrying on the business on the first floor of the property, there is no reference whatsoever in the same to show that 'Educative Study Centre' is being run by Sh.Sushil Kumar Sharma. Though this Court cannot in law make an educated and informed guess, assuming this is done, the position would be that some amount of small tuitions would be given by some of the family members of the respondent/landlady on the first floor, though not Sh. Sushil Kumar Sharma, and giving of such small tuitions in a residential portion of a premises in which lives a family comprising of six adult family members and two children, the three small rooms cannot in my opinion in law be said to be alternative suitable accommodation for the son of the respondent/landlady Sh. Sushil Kumar Sharma to carry on his business therefrom.

7. During the course of hearing, counsel for the respondent made an offer to the petitioner that the petitioner may, if he is interested, take reasonable time for vacating the suit/tenanted premises, and to which, the learned senior counsel for the petitioner on instructions from the petitioner through his son who is present in Court stated that the petitioner wants a

period of seven years to vacate the suit/tenanted premises, and which period in my opinion is quite clearly an astounding claim to say the very least.

8. In view of the above, there is no merit in this petition, and the same is therefore dismissed, leaving the parties to bear their own costs.

VALMIKI J. MEHTA, J

NOVEMBER 05, 2014
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