

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

+ **RC.REV. 28/2015**

% Reserved on: 15th April, 2015

Decided on: 21st April, 2015

SUMITRA DEVI W/O LATE SH JIWAN DASS Petitioner

Through: Mr. Suresh Sharma, Advocate.

versus

AVTAR SINGH S/O RAGHUBIR SINGH Respondent

Through: Ms. K.B. Hina, Advocate.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. In an eviction petition filed by Sumitra Devi, the Petitioner herein under Section 14 (1) (e) of the Delhi Rent Control Act, 1958 (in short 'the DRC Act') leave to defend has been granted to the Respondent/tenant Avtar Singh vide the impugned order dated 13th October, 2014. Hence the present petition challenging the impugned order.

2. In the eviction petition Sumitra Devi stated that one Shop No. 4 in property No.B-1107, Shastri Nagar, Delhi (in short 'the tenanted premises') was let out to Avtar Singh by her deceased husband late Jiwan Dass, who was the owner and landlord of the suit property No.B-1107, Shastri Nagar, Delhi approximately 30 years ago with no written agreement. The rent of the premises was Rs.270/- per month excluding electricity charges and the shop was on the ground floor of the suit property. After the death of Jiwan Dass, Sumitra Devi became the owner and landlord of the tenanted premises which was accepted by Avtar Singh. The rent in respect of the tenanted

premises was being collected by Baldev Raj, son of Sumitra Devi and then paid to her and rent receipts were issued in this regard. Photocopies of some of the rent receipts were placed on record. It was stated that an earlier Eviction Petition No.16/2012 was filed under Section 14D of the DRC Act which was withdrawn with liberty to file a fresh eviction petition whereafter another eviction petition was filed which was also withdrawn with liberty to file a fresh eviction petition for bona fide requirement. As per Sumitra Devi, the tenanted premises was required by her to run a kiriyana shop in order to have independent, sufficient income for meeting the expenses of her daily needs and the money required for religious purpose, donation for charitable and religious purposes and to meet the expenses of her four married daughters who frequently visit her with their children. Sumitra Devi claimed that she had good experience of running the kiriyana shop as she used to help her deceased husband Jiwan Dass during his lifetime. It was stated that no other reasonable and suitable accommodation/shop to run kiriyana shop in the same area except the tenanted premises was available to Sumitra Devi. Sumitra Devi stated that she does not want to become any burden on any of her family members. Her son Baldev Raj was doing the business under the name and style of 'Standard Crockery and Gifts Shops'. Baldev Raj has his own responsibilities to meet the expenses of his son, marriageable daughter and thus Sumitra Devi does not want to burden him on the limited income he has. Replying to the leave to defend application it is stated that there are 6 shops on the main road in the suit property. Shop No.4 was with the respondent Avtar Singh, Shop No.3 was occupied by her late husband which is now being used as a godown by Baldev Raj besides Shop No.1. Two shops are in possession of her son from where he is doing

the business. It was further stated that Shop No.2 in the suit property was in possession of the tenant Satish Chand. The respondent/tenant and his family members are the owners of various properties and therefore, the respondent/tenant be directed to file affidavit disclosing the details of the properties either owned by the respondent/tenant or by any of his family members; the respondent/tenant recently purchased one shop and has sold the same on account of mala fide motive behind it.

3. In the leave to defend application, besides reiterating the earlier eviction petition and the withdrawal of the same Avtar Singh stated that there was no relationship of landlord-tenant between the parties. Avtar Singh never paid rent to Sumitra Devi and she has no locus standi to file the eviction petition. Further there were more than 11 shops besides the various rooms in the courtyard on the ground floor in the suit property which have been let out to different tenants. Sumitra Devi had in the earlier petition stated that she was aged, ailing and has to incur heavy expenditure on her medicines and thus she was not fit to run her own business. It was further stated that the shop in which her husband Jiwan Dass was carrying on the business is lying vacant for the last five years. Another shop has been got vacated from another tenant Dharambir by the son of Dharambir. The shop where hair salon was running is also lying vacant. There were seven shops on the Main Bazar out of which two shops were in possession of Baldev Raj in which he was doing the business of electronics, crockery, plastic items and other festival gift items. One shop was under the tenancy of Avtar Singh, one is occupied by tenant Subhash Kumar and the 7th shop with Satish Kumar. In the earlier petition Sumitra Devi did not state the fact about four shops in the second Gali which fact was disclosed by Avtar Singh. It was

pleaded that Sumitra Devi has more than sufficient vacant shops in her possession.

4. The learned ARC vide a cryptic order allowed to grant leave to defend primarily on the ground that prima facie the need of Sumitra Devi for an independent income for meeting the expenses of her daily needs and for religious purpose, donation for charitable and religious purposes and to meet the expenses of her four daughters was not a bona fide need. Though disagreeing with the conclusion of the learned ARC as the requirement to be independently earning at any age of the life cannot be said to be not a bona fide requirement however, still Avtar Singh is entitled to be granted leave to defend. Avtar Singh has pleaded about the number of shops being available in the suit property to Sumitra Devi triable issue has been raised which needs trial. Though there is force in argument of the learned counsel for Sumitra Devi that Avtar Singh has number of properties which he has let out and the tenanted premises is used merely as a godown however, the same would also be looked into during the trial.

5. The present petition is dismissed however, in the facts and circumstances of the case the learned ARC is requested to conclude the proceedings preferably within a period of one year.

(MUKTA GUPTA)
JUDGE

APRIL 21, 2015
‘vn’