

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

+ **RC.REV. 108/2011**

% Reserved on: 2<sup>nd</sup> February, 2015

Decided on: 11<sup>th</sup> February, 2015

SURESH KUMAR KAUSHIK ..... Petitioner

Through: Mr. Rajiv Dewan, Advocate.

versus

RAJ BALA & ORS ..... Respondents

Through: Mr. Ashish Malhotra, Advocate.

**CORAM:**

**HON'BLE MS. JUSTICE MUKTA GUPTA**

1. Aggrieved by the order dated 11<sup>th</sup> February, 2010 dismissing the leave to defend application of the Petitioner and the order dated 7<sup>th</sup> December, 2010 whereby the review application of the Petitioner was dismissed, the Petitioner prefers the present petition.

2. In the eviction petition filed by the Respondents under Section 14 (1) (e) read with Section 25B of the Delhi Rent Control Act, 1958 (in short 'the DRC Act') the Respondents who are the wife and son of late Chaudhary Diwan Singh sought eviction of the Petitioner from the property Shop No.3, House No.105, Gali No.5, Krishna Nagar, Safdarjung Enclave, New Delhi (hereinafter referred as 'tenanted premises'). The Respondents sought eviction of the tenanted shop for the bona fide requirement for starting the business of Respondent No.2, Vikram Singh as the Respondents had no other reasonably suitable accommodation for starting the business. The Respondents further stated that the Respondent No.2 and 3 were at that time

working with their uncle Shri Preetam Singh in his shop and wanted to start their own business.

3. In the leave to defend application filed by the Petitioner, the Petitioner took pleas that the Respondents were not owner of the premises. The site plan filed was not correct. The Respondent Nos. 2 and 3 had not disclosed their present occupation and the nature of business which they wanted to start from the tenanted shop, the Respondent Nos. 2 and 3 were gainfully employed as they were working in sweet shop namely Anupam Sweet House, Krishna Nagar as partners with their uncle and no document has been placed to show that the property belongs to Balbir Singh, father of late Chaudhary Diwan Singh.

4. The learned Trial Court rejected the contentions of the Petitioner. It was held that the suit property was mutated in the name of Chaudhary Balbir Singh father-in-law of Respondent No.1 and grandfather of Respondent Nos. 2 and 3 and after the death of Chaudhary Balbir Singh on a family partition, the tenanted shop came to the share of Chaudhary Diwan Singh, husband of Respondent No.1 and father of Respondent Nos. 2 and 3. Though the Petitioner challenged the correctness of the site plan filed by the Respondents however, no site plan was filed and thus the site plan filed by the Respondents would be deemed to be correct. The Respondent Nos. 2 and 3 were partners with their uncle was not supported by any document and thus the same is a vague defence not giving rise to any triable issue.

5. The only ground urged before this Court is that the learned ARC failed to notice that in the leave to defend application the Petitioner pointed out that the Respondents had concealed facts and had not placed on record the complete site plan. As per the site plan annexed with the eviction petition

there are three shops in the front side and on one corner there is a Mandir but in the rear portion of the shop no construction has been shown in the site plan. However, the fact is that in the portion shown as remaining portion of the property in the site plan there exists construction of six rooms which can be appropriately used by Respondent Nos. 2 and 3 for running their business rather the portion could be used for making a complete market as there are six rooms constructed and there is a proper passage leading towards them. Since the entire ground floor is commercial in nature, the Respondents can use the portion for their business since the same is in their possession. Reliance is placed on Kishan Chand vs. Jagdish Pershad and others, 2003 (9) SCC 151.

6. In the reply to the leave to defend application the Respondents have reiterated their stand and stated that there are only three shops and a Mandir on the front side as shown in the site plan filed by the Respondents and on the rear portion there are three small rooms with verandah on one side and two rooms with small veranda with one room on the other side and all these constructions are very old and inhabitable thus the Respondents are not even residing in that portion. It is denied that the back portion could be used for shop or for any other business. Thus the plea of the Respondents was that since the back portion was dilapidated there was no material concealment of facts.

7. Before this Court learned counsel for the parties during the course of the arguments admitted that the suit property has since got demolished due to the dilapidation and no shop exists. The Petitioner has already vacated the premises and the same does not exist at the moment. The Petitioner in support of his contention that there were rooms on the backside which were

suitable has placed no material such as the photographs on record. Thus, it was mere bald assertion, which though admitted by the Respondents, but they have explained in the reply to the leave to defend application that the position of the property was dilapidated, which has been further fortified as the Petitioner himself admits that the structure on the suit property is no more in existence. Thus at this stage it cannot be said that due to concealment of facts the eviction order be set aside and the matter be remanded back for re-hearing after grant of leave to defend.

8. Petition is dismissed.

**(MUKTA GUPTA)**  
**JUDGE**

**FEBRUARY 11, 2015**

**‘vn’**