

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

+ **RC.REV. 155/2012 & CM 3995/2013**

% **Decided on: 27th January, 2015**

SARDAR SATWANT SINGH Petitioner
Through Mr. R.S. Juneja, Adv. for Mr.
S.Satwant Singh, Adv.

versus

LAKH RAJ SEHGAL & ORS Respondent
Through Mr. S.K. Sharma, Adv.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. Since 23rd January, 2015 was declared holiday, the matter is taken up today.
2. Aggrieved by the order dated 1st February, 2012 passed by the learned ARC dismissing the application for leave to defend filed by the petitioner in an eviction petition filed by the respondents under Section 14(1)(e) of the DRC Act, the petitioner prefers the present petition.
3. In the eviction petition, the respondents stated that the father of the respondents Shri Ram Lal Sehgal was the owner of property No. H-13, Bhagat Singh Road, Chander Nagar, Delhi (hereinafter referred to as the suit premises). He let out one shop measuring 15 feet x 7 feet 6 inches in the

year 1965 to the petitioner at a monthly rent of ₹75/- per month exclusive of electricity and water charges. After a few days he let out another shop measuring 15 feet x 7 feet 6 inches adjoining to the previous one to the petitioner wherein the petitioner is running a press in the name and style of M/s Satgur Press as its proprietor. There are total 4 shops in the suit property out of which two shops are in tenancy with the petitioner herein and two shops are in possession of respondents No.2&3. Both the shops in possession of respondents No.2&3 are also measuring 15 feet x 7 feet 6 inches each and are at both corners of the tenanted shop. In one shop the respondents No.2&3 are running the stationery shop in the name and style of Sehgal Printers and in the other sale of marriage cards in the name and style of Balaji Graphics. Shri Ram Lal Sehgal died on 25th September, 2002 and had executed a Will in favour of his three sons who are the respondents herein which was duly registered. Thus, the three respondents herein are the landlord and the owner of the entire suit property including the tenanted shop, and are jointly running old business from the other two shops in the suit premises which are at the two corners. The family of the respondents has grown up and they have sons and daughters who have attained majority. The respondent No.1 has one son. Since the respondent No.1 has been allotted a factory in Bawana Industrial Area by the Govt. of NCT of Delhi he would adjust his son in the said factory, however the respondent No.2 has one son namely Ankit Sehgal and respondent No.3 has two sons namely Neeraj Sehgal and Saurabh Sehgal all of whom are major and trained in computer and graphic work and designing and cannot be adjusted in the two existing shops of the size 15 feet x 7 feet 6 inches. They have no space to work and are unemployed and in case they have to arrange premises in

nearby location, they will have to pay heavy monthly rent of ₹10,000/- per month approximately besides security etc. The respondents have separated their business mutually. The respondent No.1 being proprietor of M/s Neetu Printers has got allotted a plot at Bawana Industrial Area. Respondent No.2 is running wedding card business in the name of M/s. Balaji Graphic and respondent No.3 is running stationery business in the name and style of M/s. Sehgal Printers.

4. In the eviction petition it is also pointed out that the petitioner has transferred the tenancy right in question by settlement deed dated 1st February 2005 and 26th May 2006 in favour of his elder son Shri Vikram Singh and his wife Manjeet Kaur who are in physical possession and still running their business from the tenanted shops. The petitioner had also filed a civil Suit bearing No.460/1999 for permanent and mandatory injunction wherein the interim application has been dismissed and the appeal filed against the same has also been dismissed. Vikram Singh, S/o respondent has also got changed the electricity connection which was earlier installed in the name of M/s. Satgur Press in his own name and is paying electricity charges without information and consent of the respondents, and thus eviction of the petitioner from the premises has been sought on the ground of bona-fide requirement.

5. In the leave to defend application filed by the petitioner herein he has not denied the factum of four shops in the ground floor of the suit premises but states that there is one more factory situated at the ground floor. He states that shop No.1 is being used by respondent No.3 in the name of M/s. Sehgal Printers, shop No.2 is in his possession, shop No.3 is in use and

occupation of Ankit Sehgal, S/o respondent No.2 and shop No.4 is in occupation of Neeraj Sehgal, elder S/o Sudhir Sehgal, respondent No.3. The factory shown in colour green in the site plan is being run by respondent No.2 who is running the business of printing job work from the machines namely two Offset and one Cutting Machine. It is stated that all the brothers are separately running their business. As regards respondent No.1 it is admitted that he is running his business in the name and style of M/s. Neetu Printers from Industrial plot at Bawana Industrial Area. Further Saurabh Sehgal S/o Sudhir Sehgal is doing the business of computer designing and wedding card from property bearing No.D-122, Dayanand Colony, Shakarpur under the name and style of M/s. Sehgal Cards and Arts.

6. Learned ARC considered all the rival contentions. As regards the dispute of ownership in the property was concerned, it noted that respondents No.2&3 had executed a power of attorney in favour of respondent No.1 and the petitioner has no right to challenge the ownership of the respondents as co-owners. Learned ARC also noted that the petitioner filed a wrong site plan of the entire property after admitting that there were four shops. In fact in the Civil Court or in the other proceedings the petitioner raised no objection to the similar site plan filed by the respondents. As per the site plans and photographs on record it is evident that there are four shops, the two corner shops are with respondent No.2&3 and the two shops in the centre are with the petitioner who treats them to be one shop despite admission in other litigation that he is in possession of both shops. Thus the petitioner has wrongly clubbed shop No.2&3 and is calling it as shop No.2 to take a false plea. Considering all the issues posed by the

petitioner it was held that the same was not relevant for the proceedings and the learned ARC was supposed to see the relationship of landlord tenant, bona-fide requirement and whether any alternate accommodation was available. From the admitted pleadings on record it was evident that the site plan filed by the petitioner was incorrect and held that tenanted shops were required for the bona-fide requirement of the respondents, as the sons of respondent No.2&3 were grown up and had to be settled in life. The petitioner had placed on record copy of the registration certificate in sales tax department in respect of a firm namely M/s. Sehgal Cards and Arts relating to one property D-122, Dayanand Colony as noted above, however the said document showed that the proprietor of the firm was one Sunil Sehgal and not Saurabh Sehgal.

7. I have heard learned counsel for the parties. The petitioner reiterates its contention and states that sufficient accommodation is available to the respondents and their claim is not bona-fide. Before this Court also the petitioner reiterates the site plan filed by him to show that the respondents No.2&3 are in possession of three shops whereas the petitioner has only one shop. He also challenges the Will and states that shares of the legal heirs are required to be clearly demarcated before the Court which ascertains the bona-fide requirement of any person. It is stated that there is a factory at the back and being a single story building the family members can construct it vertically in order to settle themselves. It is well-settled that tenant cannot dictate the terms that the landlord should spent more money and construct further in order to satisfy his bona-fide requirements and the tenant will not vacate the premises. It is the existing premises available with the tenant that

has to be looked into. In the suit for injunction where the grievance of the petitioner was with regard to lowering of the height of shutter by two feet and the level of the road getting higher, the petitioner has admitted that he is in occupation as tenant of two shops in the premises. From the photographs on record it is evident that the four shops are of equal in size and the site plan filed by the petitioner is wrong. The respondents in the site plan have shown some space available in the back from which the stairs go to the roof, however even assuming that some space is available it can well be comprehended that no shop can be run from the back side and a shop in the front always fetches more and is advantageous for business. The averment with regard to property at D-122 Dayanand Colony has already been found to be wrong as the same does not relate to the respondent's son Saurabh Sehgal. The factum that the respondent No.2 and the two sons of respondent No.3 have grown up is not disputed except that the petitioner is stating that they are settled by showing a wrong site plan.

8. Considering the fact that one son of respondent No.2, two sons of respondent No.3 are to be settled, I am of the considered opinion that the respondents have shown their bona-fide requirement and that they have no other alternate accommodation available. Hence there is no merit in the petition.

9. The petition and application are dismissed.

(MUKTA GUPTA)
JUDGE

JANUARY 27, 2015
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