

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

+ **RC.REV. 79/2015 & CM 2938/2015 (stay)**

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Reserved on: 20th April, 2015

Decided on: 19th May, 2015

KAMLESH CHAND

..... Petitioner

Through Mr. J.P. Singh, Mr. Shyam Dev Lal,
Advs.

versus

RAJINDER SINGH AHLAWAT

..... Respondent

Through Mr. D.K. Jain, Mohd. Ahmed, Advs.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. An eviction petition was filed by the respondent Rajinder Singh Ahlawat under Section 14(1)(e) of the Delhi Rent Control Act (in short the DRC Act) against Mahesh Chand and Kamlesh Chand. On service of summons Kamlesh Chand filed a leave to defend application and no leave to defend application was filed by Mahesh Chand.

2. In the eviction petition Rajinder Singh stated that he was the owner of shop No. 4446 Main Road, Pahari Dhiraj which was on tenancy with Mahesh Chand and Kamlesh Chand, both sons of Lala Makhan Lal. Besides Rajinder Singh was also the owner of property No. 4447 and 4448 Main Road, Pahari Dhiraj. Property No. 4447 was in occupation of another tenant and property No. 4448 which was above properties No. 4446 and 4447 was used by Rajinder Singh as residence. On the ground that elder son of

Rajinder Singh was presently jobless and intends to start business, eviction of the tenanted premises was sought.

3. In the leave to defend application filed by Kamlesh Chand he stated that the eviction petition was bad for non-impleadment of all the LR's of late Shri Har Narain who was the original owner of the property, however he did not deny that the rent of the tenanted premises was being paid to Rajinder Singh though it was stated that the rent was being collected as a rent collector and not as a landlord. Kamlesh Chand further pointed out that Rajinder Singh also owns property bearing No. 4441 Pahari Dhiraj which consists of four shops and thus there was no bonafide need of Rajinder Singh for the tenanted premises. It was further stated that Rajinder Singh wants to capitalize the goodwill made by Kamlesh Chand in the business of readymade garments as he intends to start the same business from the tenanted premises.

4. Learned ARC vide the impugned order held that one of the co-owners was competent to file the eviction petition. As regards the bonafide requirement it was held that Rajinder Singh's son was jobless and that he was dependent on Rajinder Singh was not disputed. Regarding the availability of alternate accommodation i.e. 4441 it was noted by the learned ARC that a sale deed had been executed in respect of the said property by Rajinder Singh way back in the year 2008 with regard to sale of one of the shops and the remaining three shops were under the occupation of various tenants. Hence there being no alternate accommodation available, no leave to defend could be granted.

5. Learned counsel for the petitioner challenging the order contends that material concealments were made by Rajinder Singh by not mentioning

property No. 4441 Pahari Dhiraj comprising of four shops which was in the vicinity of the tenanted premises. Besides reiterating the grounds, the issues raised in the leave to defend are re-agitated and it is stated that the intention of Rajinder Singh was not bonafide. Relying on Santosh Devi Soni Vs. Chand Kiran JT 2000 (3) SC 397 it is stated that in a case of additional accommodation leave to defend ought to be granted.

6. In the eviction petition Rajinder Singh has clarified that property No. 4447 consists of only one shop which is with an old tenant and residential property No. 4448 was just above shops No. 4446 and 4447 wherein Rajinder Singh was residing with his family. In the leave to defend application Kamlesh Chand has not denied property bearing No. 4447 being in possession of another tenant and Rajinder Singh and his family residing in property No. 4448. The only objection is concealment of property bearing No. 4441 which contains four shops.

7. In the reply to the leave to defend application petitioner has placed on record copy of sale deed relating to private shop No. 4441/1 which was executed in the year 2008. It is further stated the three shops in property bearing No. 4441 were in possession of various tenants. It is further stated that the premises No. 4441 was located in the narrow street at the back side of the tenanted premises and hence was not suitable for running a shop. In the rejoinder to the reply of Rajinder Singh the fact that three shops in property No. 4441 were with old tenants is not denied. Thus, the issue which arise for consideration is whether leave to defend is required to be granted to the petitioner in view of non-mentioning of property No. 4441 owned by Rajinder wherein three shops are occupied by old tenant and one shop has been sold. It is trite law that a property which is not suitable

alternate accommodation is not required to be stated in the eviction petition.

In Surinder Singh vs. Jasbir Singh 172 (2010) DLT 611 this Court held:

“25. The mere fact that, respondent did not disclose the accommodation of basement and first floor available with him in the eviction petition, would not prove fatal to the present case, since the same cannot be said to be an alternative suitable accommodation for the purpose of business.”

8. Thus on this count alone that there is concealment of another property which admittedly is not vacant and available, no leave to defend can be granted. Reliance on Santosh Devi Soni (supra) by learned counsel for the petitioner is misconceived as he has not been able to show that Rajinder Singh is in possession of any other premises which is vacant and suitable for carrying on the business. Consequently, I find no merit in the petition.

9. Petition and application are dismissed.

(MUKTA GUPTA)
JUDGE

MAY 19, 2015
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