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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RC.REV. 96/2015

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Decided on: March 26, 2015

M/S CHADHA PAN CORNER

..... Petitioner

Through: Mr. Virender Rawat and Mr.Devender
Singh, Advocates.

versus

SHANTI DEVI @ SHANTI CHHABRA

..... Respondent

Through: Mr. Mohit Chaudhary and Ms.
Anubha Surana, Advocates.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J (ORAL)

RC.REV. 96/2015 and CM Nos. 3729/2015 (stay), 5651/2015 (Additional documents) and 5652/2015 (appointment of Local Commissioner)

1. Aggrieved by the order dated 24th September, 2014 whereby the leave to defend application filed by the Petitioner in an eviction petition filed by Respondent under Section 14 (1) (e) of the Delhi Rent Control Act, 1958 (in short 'the Act') was dismissed, the Petitioner prefers the present petition.

2. In the eviction petition the Respondent claimed herself to be the widow of late Shri Ishar Chhabra who was allotted Plot No. C-1, Lajpat Nagar, New Delhi wherein the Petitioner was inducted as a tenant around the year 1960 at a monthly rent of Rs. 200/-. After the death of Shri Ishar Chhabra, the Respondent became the owner of the property. In the suit property on the ground floor the son of the Respondent opened a property dealer's shop and store to keep the construction material. The

Respondent stated that she needs the tenanted premises, that is, the shop bona fide for opening an animation studio for the granddaughter and that she has no other commercial accommodation available.

3. In the leave to defend application the Petitioner took pleas that the Petitioner had no other alternative accommodation for carrying on the business except the tenanted shop and the shop was 4 x 5 sq. ft and not 8 x 5 ft. as stated by the Respondent in the eviction petition and that the Respondent has sufficient accommodation at C-1, Lajpat Nagar which is built upto four floors. There are two big shops on the ground floor in which animation studio of the granddaughter could be open. The Respondent had removed the shutter of the two shops.

4. The learned ARC held that no triable issue was raised as the plea that the Petitioner has no other alternative accommodation and that the area of the shop was different are not triable issues. As regards the two shops on the ground floor, the Respondent in the eviction petition herself stated that there are two shops one in which her son is carrying on the business of property dealing and the other in which he is storing construction material. In the leave to defend application, there is no denial of the fact that the Respondent has a granddaughter or that she wants to open an animation studio hence the need was genuine and bona fide.

5. Vide CM Nos. 5651/2015 and 5652/2015 the Petitioner seeks to place on record the additional documents in the form of photographs and site plan and also seeks appointment of Local Commissioner. It is trite law that only subsequent facts that to cautiously can be permitted to be urged beyond the issues raised in the leave to defend application. The material sought to be placed before this Court was not placed before the learned Trial Court. The

same are not subsequent facts and this Court thus cannot consider the said material. The only subsequent fact Petitioner has sought to place on record is that the granddaughter of the Respondent has got married on 15th February, 2015. Even if the said subsequent fact is taken into consideration, the granddaughter of the Respondent does not lose her right to open the animation studio in her parental home at the tenanted premises.

6. As noted above the fact that the granddaughter of the Respondent has done the course in Animation is not disputed and thus her requirement to open the animation studio cannot be held to be not a genuine requirement. The fact that the Petitioner/tenant has no other suitable accommodation is not relevant while considering an eviction petition under Section 14 (1) (e) of the DRC Act. The requirement of Section 14 (1) (e) is that the Eviction Petitioner is the owner/landlord of the premises, the his/her requirement for the tenanted premises is bona fide and that he or she has no other reasonable suitable residential/commercial accommodation.

7. In Madhu Gupta vs. Gardenia Estates (P) Ltd. 184 (2011) DLT 103 this Court held that if the facts which were pre-existing, that is, existing at the time when the leave to defend application was filed are permitted to be added the same would defeat the whole purpose and intent of provisions of Section 25B (4) of the DRC Act and the statutory period for filing the application for leave to defend within 15 days would be given a go by as by permitted amendments there would be an automatic extension of time for filing the leave to defend application.

8. Similar view was taken by this Court in M/s. Ruparel & Company (Delhi) Vs. S. Avtar Singh Puri (Decd.) Thr. Lrs. & Ors., 159 (2009) DLT

101 and the special leave petition filed against the said decision has been dismissed by the Supreme Court.

9. In Mohd. Ayub and another vs. Mukesh Chand, 2012 (2) SCC 155 the Supreme Court noted that whenever a tenant is asked to move out of the premises some hardship is inherent. However, the said circumstance cannot be the sole determinative factor. That hardship can be mitigated by granting him longer period to move out of the premises in his occupation so that in the meantime he can make alternative arrangement and length of tenancy of the tenant ought not to have weighed with the courts below.

10. I find no merit in the petition. The petition and the applications are dismissed.

(MUKTA GUPTA)
JUDGE

MARCH 26, 2015
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