

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

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Decided on: January 08, 2015

+ RC.REV. 226/2012

NAND KISHORE DECD THR LRS & ORS Petitioners

Through: Mr. Ajit Dayal, Mr. M.K. Bansal and
Mr. Lohit Bimal, Advocates

versus

YASHPAL BHATIA & ORS

..... Respondents

Through: Ms. Gyan Mitra, Adv.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. The petitioners are aggrieved by the impugned order dated 20.03.2012 whereby their leave to defend application in the eviction petition under Section 14(1) (e) of the Delhi Rent Control Act, 1958 (in short DRC Act) has been dismissed.

2. The case of the respondents in the eviction petition is that they are the landlord and owner of the property bearing no. 9/2185, Gali No. 8, Kailash Nagar, Delhi, being the only legal heirs of late Bhagat Vallabh Dass who had let out shop measuring 6' x 9', situated on the ground floor of this property, to Ramesh Chand and Nand Kishore on 28.04.1996. Both Nand Kishore and Ramesh Chand have since died and hence their legal heirs who are in occupation of the said shop are the petitioners before this Court. According to the respondents, the property comprises of two shops, one room, toilet, bathroom under the staircase and the veranda on the ground floor and two rooms and one kitchen on the first floor. Respondents no. 1 and 2 are

bothers and living in joint family. Respondent nos. 2, 4 and 5 are their sisters who are married.

3. According to the respondents, the shop in tenancy with the petitioners is required for the son of respondent no. 1, namely, Vipin who was aged 24 years at the time of filing of the eviction petition i.e. on 24.09.2010 and was unemployed and unmarried. It is further stated that though the respondents no. 3 to 5 are residing in their matrimonial house but they frequently visit their parental house but due to paucity of accommodation they cannot be entertained. Respondents have further stated that respondents no. 1 and 2 have no other property in Delhi.

4. On behalf of petitioners in the leave to defend application, the locus of the respondents no. 1 and 2 to file the eviction petition without any Letters of Administration was challenged and that petition under the Delhi Rent Control Act was not maintainable. It was also stated that respondents no. 1 and 2 have filed a wrong site plan and have accommodations other than the tenanted premises which are sufficient for the requirement. It is further contended that the requirement of Section 14(1) (e) of the DRC Act is that the eviction petition should be filed by the owner of the property, however, as per the documents filed by respondents no. 1 and 2 they are only rent collectors and no document has been filed showing their ownership in the property. The main contention of the petitioners in the leave to defend application was that though it is contended by the respondents no. 1 and 2 that there is one shop measuring 16.6 x 9 ft. as per the site plan, however, there are two shops, one being run by Jawahar Bhatia and the corner shop being run by Yashpal Bhatia and his son. The bonafide requirement of the

respondents is contested and it is stated that the shop in question is the only source of income for the petitioners.

5. In the reply affidavit to the leave to defend application, the respondents no. 1 and 2 reiterated that their ownership and bonafide need and stated that the property in question is situated in revenue estate of Shahdara which area is covered within the DRC Act vide Notification No. F/9/5/59R & S dated 28.12.1959 and F-9(2) 66 dated 28.05.1956. They denied having filed any wrong site plan. They filed the relinquishment deeds, copies of the death certificates of Bhagat Vallabh Dass and his wife Smt. Krishna Devi, Special Power of Attorney in favour of Jawahar Bhatia, etc.

6. Vide the impugned order learned Addl. Rent Controller came to the conclusion that the petitioners have not disputed that respondents are the legal heirs of late Bhagat Vallabh Dass. It was further noted that the petitioners deposited rent by impleading respondent no. 1 in the proceedings under Section 27 of the DRC Act and that after the death of late Bhagat Vallabh Dass, the petitioners tendered the rent and demanded for repair of the shop of the respondent no. 1. Thus the jural relationship of the landlord and tenant has been admitted and the objection cannot be sustained. As regards correctness of the site plan, learned Addl. Rent Controller noted that there was no material difference between the two site plans and both were similar.

7. The only contention raised by the learned counsel for the petitioners before this Court is that the respondents' averment that they have one shop only on the ground floor is incorrect because there are in fact two shops

which fact has been admitted by the respondents in their reply affidavit to the leave to defend application. In the reply affidavit to the leave to defend application, the respondents have reiterated that there is one shop in possession of the two brothers, however, there are two shutters of the said shop. No material has been placed by the petitioners to show that there is a partition in the shop. Be that as it may, the said issue is not relevant because the respondents have claimed the tenanted premises with the petitioners on the ground that the son of respondent no. 1 aged 24 years in 2010 was unemployed and unmarried and had to be settled. The age or the unemployment of the son of respondent no. 1 is not disputed by the petitioners. It is also not stated by the petitioners that the son of respondent no. 1 is gainfully employed somewhere. The only contention is that son is running the shop with his father. A perusal of the averments of the respondents in the eviction petition would show that both the brothers are running a shop together and in such a situation if a separate shop is required for engaging the son of respondent no. 1 in business, it cannot be said that the same is not a bonafide requirement. No material has been placed on record to show that the respondents have alternative suitable accommodation. .

8. in view of the facts noted above, I find no perversity, much less, any illegality in the impugned order dated 20.03.2012 declining to grant to leave to defend to the petitioners and allowing the eviction petition. Petition is accordingly dismissed.

(MUKTA GUPTA)
JUDGE

JANUARY 08 2015/‘rs’