

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

+ **RC.REV. 218/2013 & CM 9674/2013 (stay), CM 698/2015(direction)**

% **Reserved on: 16th January, 2015**
Decided on: 29th January, 2015

SH YASHPAL ARORA Petitioner

Through: **Dr. Ashutosh, Advocate.**

versus

MAMTA SHARMA Respondent

Through: **Mr. C.M. Sharma, Advocate.**

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. The Petitioner is aggrieved by the order dated 20th February, 2013 whereby the leave to defend application of the Petitioner was dismissed and eviction order was passed.

2. In the eviction petition the Respondent claimed eviction of the Petitioner from the shop on the ground floor measuring 9.5 ft. x 7.5 ft., i.e.71.1 sq.ft. approximately (6.60 sq. mtrs) which was given on rent at Rs.133.10 per month excluding electricity and other charges at premises bearing No. 5620, Katra Jamun, Nai Sarak of which the Respondent is a co-owner/landlady. Premises bearing No.5620, Katra Jamun, Nai Sarak of which the tenanted premises, that is, 5620/3, Ground Floor was a portion contained 10 shops bearing Nos.5620/1 to 5620/10 which were in occupation and under tenancy of different tenants. The Respondent became the owner of the premises by virtue of a Registered Gift Deed in the year 2003 and was issuing rent receipts in respect of the suit premises to the tenants. The husband of the Respondent was running his business from the tenanted shop and the Respondent was residing on the third floor of the suit premises along

with her family members consisting of her husband, two young sons namely Rahul Sharma aged 22 years and Kapil Sharma aged 19 years, who were unemployed and were having keen interest to run the business from the suit premises. It is claimed that on the one hand the husband of the Respondent was doing the business from the rented shop and on the other hand the children, that is, the sons who were dependent upon the Respondent were unemployed for want of space. It was further stated that the Petitioner was not using the said shop for his business and the tenanted shop was lying locked since several years as the Petitioner was running his business at IX/600, Krishna Gali No. 2, Subhash Road, Gandhi Nagar, Delhi-31 whereas Yogender Kumar was running his shop bearing No. 5620/2, Ground Floor, Katra Jamun, Nai Sarak. Even the Respondent was not doing any job or business though she was competent to run her own business from her tenanted suit shops which were more suitable being at the ground floor of the residence. Thus the family having limited source of income the Respondent wanted to support her family financially by running her own business. It was stated that the Respondent does not own or possess any other property in Delhi suitable for running their business.

3. In the leave to defend application, the Petitioner claimed that the shop in question was let out by Mahavir Prasad to Yogender Kumar and Yashpal carrying on the business in the name of M/s B.D. & Company. Yogender Kumar left the firm and Yashpal took over the assets and liabilities of the said firm and thus became the proprietor of the Firm and single tenant in respect of shop No.3620/2, Katra Jamun, Nai Sarak, Delhi. The shop in question was being used actually for commercial purpose and Yashpal was carrying on the business under the name and style of M/s Bombay Velvet

Trading Company being its proprietor after dissolution of M/s B.D. & Company. The Respondent had been receiving rent in respect of the shop in question from Yashpal. Though the Petitioner was regular in sending the rent however, the Respondent stopped accepting the same with mala fide intention. It is alleged that the Respondent got executed the alleged gift deed in her favour to get the shop in question vacated. The rate of rent was also challenged stating that the rent receipt filed by the Respondent showed rate of rent @Rs.121/-. The Respondent has deliberately concealed the actual accommodation available with her and the factum of sale of commercial property bearing No.4292, Gali Bhairon Wali, Nai Sarak, Jogiware, Delhi which was executed in the month of November, 2011. It is further claimed that though bona fide requirement of the tenanted shop as stated by the Respondent is that her sons Rahul and Kapil were allegedly unemployed however, as per the Gift Deed the son of the Respondent, Rahul Sharma was having one shop bearing No.5620/7. The said son of the Respondent has been shown as tenant in respect of one shop allegedly gifted to Respondent by said Mahavir Prasad. It is further stated that shop No.5620/8 is occupied by Devender Kumar as tenant, who is the husband of the co-landlady. The husband of the Respondent is carrying on flourishing business of cloth merchant and the sons of the Respondent were working with him. It is further stated that the husband of the Respondent is not carrying on his business from any tenanted premises.

4. The grounds urged before this Court by learned counsel for the Petitioner are that as per the Gift Deed placed on record by the Respondent, her son Rahul Sharma is in possession of Shop No. 5620/7 in the capacity of tenant, the respondent sold one shop in the year 2011, and that the sons of

the respondent were not unemployed and they were doing the business with their father and thus the respondent cannot claim bona fide requirement.

5. Dealing with the issues, the learned Trial Court held that the jural relationship of landlord and tenant had been established which issue has also not been pressed before this Court in view of the admitted rent receipts. As regards the bona fide requirement, learned ARC noted that merely because the sons of the Respondent were helping their father in earning their business the same would not disentitle the Respondent to seek eviction of the tenant for establishing separate business for her sons. Though the Respondent claimed that the husband of the Respondent was doing business from the rented accommodation however, the Petitioner denied the same. The learned ARC held that even if the contention of the Petitioner is accepted that the husband of the Respondent was running the business from his own shop the Respondent was still entitle to claim the possession of the tenanted premises for starting business of her sons. No illegality or perversity can be attributed to the findings of the learned ARC as even if the respondent's husband was doing business from his own shop or that the sons were presently doing business with their father the requirement of shop for the sons was a bona fide requirement.

6. The learned ARC held that the gift deed was executed in 2003 when admittedly Rahul Sharma was aged 12-13 years which fact was not disputed and no material has been placed on record by the Petitioner to show that the son of the Respondent was running an independent shop in the year 2003. Even assuming that as noted in the gift deed one shop was given to Rahul Sharma on tenancy the respondent still has the bona fide requirement of a shop for her other son Kapil Sharma.

7. Learned counsel for the petitioner has relied upon a decision of this court in Nitin Garg Vs. Naresh Kumar Arora & Anr. (CM(M) 1164/2009 decided on 23rd October, 2009) wherein an order of grant of leave to defend was challenged. This Court noted that in the eviction petition, the landlord stated that he needs urgent finances because of his growing family but not as to his need/requirement of tenancy premises for commercial purposes, further whether use of the first floor premises in possession with the tenant was suitable therein for commercial purposes was itself a triable issue. Thus, the said decision has no application to the facts of the present case.

8. In the present case there is no dispute regarding the user of premises for commercial purpose and the respondent has clearly pleaded the bona fide requirement of the tenanted premises. The view taken by the learned ARC is a plausible view and warrants no interference.

9. Consequently, the petition and applications are dismissed.

(MUKTA GUPTA)
JUDGE

JANUARY 29, 2015
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