

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

+ RC.REV. 102/2015 & CM 3958/2015 (stay)

% Decided on: 16th April, 2015

VINOD KUMAR SHARMA & ANR. Petitioner
Through Mr. Ravi Dev Sharma, Adv.

versus

VIJAY PAL KATHURIA Respondent
Through Mr. Satish Sharma, Adv.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. Aggrieved by the order dated 28th August, 2014 whereby leave to defend application filed by the petitioners in an eviction petition filed under Section 14(1)(e) DRC Act by the respondent was dismissed, the petitioners prefer the present petition.

2. In the eviction petition, Vijay Pal Kathuria sought eviction of the tenanted premises i.e. one shop in property bearing No.78, Baldev Park, Delhi-110051. It was stated that the petitioners are real brothers and joint tenants who were let out the tenanted premises at the monthly rent of Rs.325/- excluding electricity charges for commercial purposes on oral tenancy. The petitioners were running the business in the name and style of M/s Sharma Sanitations. After the death of father Vijay Pal Kathuria used to receive the rent and his mother, elder brother and two sisters have already

executed a general power of attorney and gift deed in his favour in respect of the suit property. Vijay Pal Kathuria was living with his wife Sunita Kathuria and two sons namely Nishant Kathuria and Ajay Kathuria aged 23 and 21 years old respectively and mother Smt. Sunita Kathuria. According to Vijay Pal Kathuria, there were three shops on the ground floor. In one shop his wife was doing business of ladies garment and under the name and style of M/s Famina and two shops were let out on tenancy one in the middle being with the petitioners. The two shops in tenancy were required to settle the two sons of Vijay Pal Kathuria as Nishant Kathuria wants to open an office of property dealing and Ajay Kathuria wants to start the business of sale-purchase of mobiles/small computer related electrical items/devices etc. It is claimed that the sons were unemployed, totally dependent on Vijay Pal Kathuria for their needs and that he had no other alternative suitable accommodation. Vijay Pal Kathuria was running a business of selling auto parts in partnership from a rented accommodation at 588, 1st Floor, Ganda Nala Bazar, Kashmiri Gate, Delhi-110006 and the manufacturing of auto parts were done from the industrial plot at B-1, Patparganj Industrial Area, DSIDC Complex, Delhi-92 which was in the ownership of partnership.

3. In the leave to defend application, the petitioners took the plea that the showroom of the wife of Vijay Pal Kathuria was just an eye wash. Further there is a gali on the side of the house from where any shop can be run. Vijay Pal Kathuria was living on the first floor of the premises and there was a separate staircase for entry to the first floor. Even on the ground floor of the property, plenty of unused area facing the gali was available as alternate sufficient place. Further the elder son Nishant was looking after the sale at

Kashmere Gate shop and was thus gainfully employed. Ajay Kathuria was studying somewhere. Moreover Nishant Kathuria has no experience in the property dealing and hence leave to defend be granted.

4. After hearing learned counsel for the parties, learned ARC came to the conclusion that landlord-tenant relationship was established. Vijay Pal Kathuria has proved that he bonafidely required the premises and that there was no other suitable accommodation available to him.

5. Before this Court, learned counsel for the petitioners urges that since the son of Vijay Pal Kathuria was gainfully employed with his father and getting salary, leave to defend ought to have been granted to prove that he was getting regular income. Moreover, back portion of the property could also be used. As noted in the facts above, the three shops in the suit property were on the main road with the petitioners having occupying the middle shop. On one corner the wife of Vijay Pal was running a garment showroom and Vijay Pal Kathuria has sought eviction from the other tenant also. Merely because till the time Nishant gets occupation of the premises, Nishant is working with his father would not be a ground to reject the bona fide requirement as no one would be sitting idle waiting for the vacation of the premises and effort would be made to some work till then. Vijay Pal Kathuria has placed on record the photographs of the shop run by his wife in the name and style of M/s Famina which shows that the same is not an eye-wash. At the back portion of the ground floor, Vijay Pal Kathuria along with his family is residing and also occupying the first floor of the premises for residence. Moreover if there is some space is available towards the gali side,

it cannot be said to be a suitable alternate accommodation as it is well settled that the shops on the main road have more value.

6. Consequently, I find no merit in the present petition. The same is dismissed. It may also be noted that in the eviction petition filed against other tenant Smt. Sadhana Gupta, the order declining leave to defend has also been upheld by this Court vide order dated 15th December, 2014 in RC.Rev.No.402/2014 wherein identical grounds were taken.

(MUKTA GUPTA)
JUDGE

APRIL 16, 2015
‘v mittal’