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

\+ **RC.REV. 175/2014**

% Reserved on: 6th May, 2015

Decided on: 29th May, 2015

L.S.MONGA KARTA OF
L.S.MONGA & SONS HUF ..... Petitioner
Through: Mr. Vineet Chadha, Advocate.

versus

M/S HARVIK BROTHERS (INDIA) ..... Respondent
Through: Mr. B.L. Chawla, Advocate.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

1. Aggrieved by the order dated 19th February, 2014 dismissing the eviction petition filed by the Petitioner under Section 14 (1) (e) and Section 25B of the Delhi Rent Control Act, 1958 (in short 'the DRC Act) against the Respondent, the Petitioner prefers the present petition.

2. Shri L.S. Monga the Petitioner/Landlord and Karta of L.S. Monga and Sons HUF claims himself to be the owner of the premises Shop No. 73, South Patel Nagar, New Delhi-110008 which was let out to the Respondent M/s Harvik Brothers (India) Ltd., (in short 'M/s Harvik') a partnership firm for commercial purposes. The tenanted shop had been let out by the previous owner wherein car and scooter repair work was being done. The area of the tenanted shop was 650 sq. ft. approximately and it was let out on the monthly rent of Rs. 240/- excluding electricity and water charges.

3. L.S. Monga claims that he was doing the business of textile and required the tenanted shop for his bona fide use and occupation for running the business of cloth merchant for the benefit of his HUF. It is stated that he

has no other reasonably suitable commercial accommodation for running the business. L.S. Monga was residing at premises No.SFS Flats, 94, Mount Kailash, East of Kailash, New Delhi (in short 'the suit property') and he was running the said business from the suit property to support his family.

4. On the leave to defend being granted, written statement was filed by M/s Harvik wherein the fact that L.S. Monga was running the business of cloth merchant was denied. It was stated that L.S. Monga concealed material facts. The premises was let out to the partnership firm M/s Harvik with Rajinder Paul Gandhi and H.C. Gandhi as partners. Rajinder Paul Gandhi died on 11th June, 2001 leaving behind three legal heirs, that is, Sumesh Gandhi, Rajesh Gandhi and Mrs. Veeta Amardeep Sharma. H.C. Gandhi died in the year 2007 and after his death the business was carried out by the legal heirs of Rajinder Paul Gandhi. According to M/s Harvik, L.S. Monga was engaged in the business of bookings of cottages and accommodations in hotels under the name and style of 'Elite Infracton' at 7, Community Centre, First Floor, East of Kailash and thus the tenanted premises was not required for bona fide purpose. L.S. Monga has already admitted that he has two flats above the tenanted premises which were lying vacant and he was looking for new tenants to let out the said premises. L.S.Monga was permanently settled in Mumbai and engaged in the business of diamond jewellery and he visited Delhi occasionally for booking cottages and accommodations.

5. In the replication L.S. Monga denied that he was running any business in the name and style of 'Elite Infracton' at 7, Community Centre, First Floor, East of Kailash, New Delhi and stated that the flats above the tenanted premises were residential in nature and could not be used for commercial

purpose. L.S.Monga also denied that he was a resident of Mumbai or that he was engaged in the business of diamond jewellery.

6. After the parties led their evidence the learned ARC came to the conclusion that according to L.S.Monga he was running the business of textile for the last 20 years from his residential house, however, he has not been able to prove how suddenly his requirement for tenanted premises arose when his business was working properly for 20 years. To prove the business from the residential premises, L.S. Monga examined himself as PW-2 and one Ashish Jain as PW-3 and only exhibited two challans one of which Ex.PW-1/15 was dated 19th September, 2011 for a meager amount in favour of M/s A-One Suit and Sarees and the other one was dated 17th August, 2011 in favour of M/s Rishabh House Pvt. Ltd., whose Proprietor was PW-4 Ajay Jain. However, he did not place on record any bank account, books of account or any other material to show that he was running the business for 20 years or any income tax returns or any ledger howsoever small the scale of business may be. It was thus held that the need of L.S. Monga was not genuine and the eviction petition was dismissed.

7. M/s Harvik also pointed out by filing an application that L.S. Monga was co-owner in the shop No.6, G-8 Area, Rajouri Garden, New Delhi which fact was concealed in the eviction petition which was in the special knowledge of the Petitioner/landlord and having not mentioned the same in the pleadings, it amounts to material concealment and the Petitioner/landlord is liable to be non-suited on this ground alone.

8. Learned counsel for the Petitioner contends that merely because the Petitioner did not produce all the documents and material to show his business for the last 20 years or that his business was on a small scale can

lead to no inference that the requirement of the Petitioner was not bona fide. Even persons, whose business are not flourishing have a right to grow and thus the need was bona fide. As regard the co-ownership of the shop at Rajouri Garden is concerned, the said plea was not taken by the Respondent in the written statement and for the first time in his evidence he took the plea thus the Petitioner had no opportunity to explain how the shop at Rajouri Garden was not in his possession. The impugned order being perverse and illegal the same be set aside and an eviction order be passed.

9. Learned counsel for M/s Harvik states that it is not the case of the Petitioner that he was not doing the business for the last 20 years rather his case was that he was doing the business of textile from the residential premises however, on small scale. Howsoever negligible the business may be, some documents ought to have been placed on record to prove the same. The eviction petition was filed in the year 2010 and manipulative invoices of the year 2011 for negligible amounts were produced which will not prove that the Petitioner was carrying on the business of textile for the last 20 years and he wanted to expand the same. The Petitioner concealed material fact of co-ownership of the shop of Rajouri Garden and the moment the Respondent got the documents thereof he filed an application to which the Petitioner filed the reply. Petitioner did not deny the fact that he was the owner of the shop at Rajouri Garden rather on the consent of the Petitioner vide order dated 6th December, 2013, the Assessment Order dated 28th March, 2001 showing co-ownership of the Petitioner in respect of the shop at Rajouri Garden was placed on record. Hence the Petitioner cannot now challenge the validity of the same. Since the Petitioner is the co-owner of the commercial shop which is not with any tenant but in his possession, the same

amounts to material concealment. Hence no perversity or illegality can be attached to the impugned order.

10. I have heard learned counsel for the parties.

11. Two issues which arise for consideration are whether the finding of the learned Trial Court that the requirement of the Petitioner is not bona fide is justified and whether by concealing the fact that the Petitioner was co-owner of the shop at Rajouri Garden, the Petitioner is required to be non-suited for concealment of material facts.

12. To prove his case that he was doing the business of sale of textile from his residential premises for the last 20 years, the Petitioner examined three witnesses, that is, himself as PW-1, Ashish Jain as PW-3 and Ajay Jain as PW-4. In his evidence by way of affidavit L.S. Monga PW-1 stated that he was residing at SFS Flats, 94, Mount Kailash, East of Kailash, New Delhi along with his wife, his two sons and daughter-in-law and two grandsons. From the said premises he was running the business. He exhibited the copy of the purchase challan No.210 dated 19th September, 2011 for a sum of Rs.26,250/- of M/s A-One Suit & Saree, 1991/1, Shop No.2 & 3 Basement, Sh. Balaji Market, Gali Paranthe Wali, Chandni Chowk, Delhi-110006 in faovur of L.S. Monga & Sons (HUF) as Ex.PW-1/5. Copy of the Sale invoice of L.S. Monga and Sons (HUF) bearing No. LSM (HUF)/11-12/081701 dated 17th August, 2011 for Rs.88,188/- in favour of Rishabh House Pvt. Ltd., F-3/9, Phase-I, Okhla Industrial Area, New Delhi was exhibited as Ex.PW-1/6. L.S. Monga stated that he was running the business as Karta of the HUF and was not engaged in the business of booking cottages and accommodation in the Hotels nor was a resident of Mumbai nor engaged in the business of diamond jewellary.

13. In the cross-examination L.S. Monga further admitted that he has not taken any Sale Tax Number for the business since the same was not legally required. The business was being run in the name and style of L.S. Monga and Sons (HUF) from the residential premises however, he was not maintaining any ledger or books of accounts. He volunteered that the earning of his business were not substantial to maintain any ledger or books of accounts. He was showing the income from the textile business in the income tax return however, he was not aware since when the said income has been shown in the income tax return. He did not even know the year when for the first time the said income was shown in his income tax return. He did not place on record any income tax return. He also did not produce any document to show the purchase or sale of clothes before filing of the petition and the two invoices/sales produced were dated after the filing of the eviction petition, as noted above. He stated that whenever he supplied the goods to the customers he issued bill however, he has not placed on record any bill prior to the date of filing of the eviction petition. He admitted that he was an income tax assessee and had not filed any income tax return before the Court.

14. Similarly PW-3 and PW-4 as noted above only deposed with regard to one transaction each that too after the filing of the eviction petition. In the cross-examination PW-3 stated that the Petitioner used to purchase fabric from him in cash and as such no bill was issued and only challan was issued in case the fabrics were required to be returned. He however, did not bring to the Court any challan books or books of account maintained by him. As regards PW-4 he also did not bring the original invoice dated 17th August, 2011 nor could he show any record of payment made by the Petitioner.

15. Admittedly the Petitioner is an income tax assessee. Even if negligible, some income must have accrued to him from the sale of textile. As per the Petitioner he was not carrying on any other business. For non production of material documents to show that he was carrying on the business of textile for the last 20 years, that is, the income tax returns etc. the learned ARC rightly drew an adverse inference and it cannot be said that the view taken by the learned ARC is not a plausible view.

16. Learned counsel for the Petitioner has vehemently contended that people whose business is not flourishing also have right to expand. There is no dispute to this proposition however, expansion can be of an existing business and L.S. Monga failed to establish that he had an existing business of textile by not producing even a single document before the filing of the eviction petition. It is not the case of the Petitioner that he wants to start the business now in which case no proof of the earlier business transaction is required. Section 101 Evidence Act provides that a party who asserts the fact must prove it. In the present case it is the assertion of the Petitioner that he had been running the textile business from his residential premises for the last 20 years and thus he was required to prove the same, which he has utterly failed to prove as no document to show the business prior to filing of the eviction petition has been placed.

17. Reliance is placed by the learned counsel for the Petitioner on *Mahant Shri Srinivasa Ramanuj Das vs. Surajnarayan Dass and another, AIR 1967 SC 256* to contend that withholding of documentary evidence by a party is not enough to draw adverse inference against him, the other party must ask the party in possession of such evidence to produce the same and if then, the party in possession does not produce it, an adverse inference can be drawn.

In this decision Supreme Court laid down that the onus loses its importance when the parties have led evidence sufficient to determine the matter in dispute. However, it also held that there was heavy burden on the plaintiff to establish affirmatively that the institution was private property of the Mahant and the plaintiff must prove the fact he asserts.

18. As regards the second contention of concealment of material fact of being co-owner of the shop No.6, G-8 Area, Rajouri Garden, New Delhi, a perusal of the Trial Court record would reveal that this fact of being a co-owner in the said shop was not disclosed by the Petitioner in the eviction petition rather it was specifically asserted that there is no other suitable commercial accommodation available for the Petitioner to run his business as cloth merchant. After the Petitioner led the evidence, the Respondent came in possession of the copy of the Assessment Order dated 28th March, 2001 passed by the Municipal Corporation of Delhi in respect of shop No.6, G-8 Area, Rajouri Garden, New Delhi-110002 owned by the Petitioner and his brother Shri Prem Nath Monga. Thus an application under Order XVI Rule 1 (3) read with Section 151 CPC was filed by the Respondent in this regard. Reply to the said application was filed by the Petitioner wherein he did not dispute the co-ownership of the shop at Rajouri Garden. He however, stated that due to disputes and differences between the Petitioner and his brother, the said shop was lying closed since last 25 years and there was neither any electricity nor water connection in the shop. It was further stated that after the death of his brother the difference between him and the legal heirs of his brother have amplified. Further the shop was approximately 125 sq. ft and in a residential colony which was not suitable for whole sale business. Vide order dated 6th December, 2013 while deciding

this application of the respondent under Order XVI Rule 1(3) read with Section 151 CPC, the RC (West) recorded the statement of the Petitioner where he stated that he has no objection to the copy of the Assessment Order dated 28th March, 2001 being exhibited as Ex.RW-1/X1.

19. Thus the contention of the learned counsel for the Petitioner that he was given no opportunity to rebut the plea regarding alternative accommodation deserves to be rejected. The fact that the Petitioner is the co-owner of the commercial space ought to have been brought to the notice in the eviction petition. Admittedly, the same is lying vacant. The Petitioner could have explained the non-suitability of the said shop. Thus observation of the lower Court that the non-disclosure of the shop at Rajouri Garden amounts to material concealment of the fact cannot be said to be perverse.

20. Reliance of learned counsel for the Petitioner on *Baldev Singh Bajwa vs. Monish Saini, 2005 (12) SCC 778* to contend that heavy burden lies on the tenant to prove that the requirement of the landlord is not genuine and mere assertion would not be sufficient is misconceived. In the present case the parties have led their evidence and the facts asserted by the Petitioner were required to be proved by him and the Petitioner would not be absolved of his initial burden to discharge that his requirement of the tenanted premises was bona fide.

21. On the facts noted above the view taken by the RC (West) cannot be held to be illegal or perverse warranting interference. Consequently, the petition is dismissed.

(MUKTA GUPTA)
JUDGE

MAY 29, 2015/'vn'