

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

+ **RC.REV. 118/2015 & CM 4377/2015 (stay)**

% Decided on: 21st May, 2015

GOPAL KRISHAN CHANDNA Petitioner
Through Mr. Himanshu Buttan, Adv.

versus

GURMEET KAUR Respondent
Through Mr. R.D. Mahant, Mr. Anuj Mahant,
Adv.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. Aggrieved by the order dated 15th January, 2015 whereby leave to defend was declined to the petitioner in an eviction petition filed by the respondent the petitioner prefers the present petition.
2. Gurmeet Kaur, the respondent herein filed the eviction petition seeking eviction of Gopal Krishan Chandna from a portion of the ground floor of premises No. 122/2A, Govindpuri, Kalkaji Extension, New Delhi. It was stated that the tenanted shop had been let out by late Shri Mahinder Singh husband of Gurmeet Kaur on an oral agreement at a rent of ₹3300/- per month exclusive of other charges. Gopal Krishan was carrying out the business of electrical equipments from the tenanted shop along with his brother and two other employees. Mahinder Singh who owned the suit property had converted the basement into shops and sold the said basement

to various parties in the year 1995 who are in possession of the different shops since then. Thereafter Mahinder Singh sold some portions of the suit property and further constructions were raised on the first, second and third floor of the suit property where Mahinder Singh resided with his family along with his wife, son and daughter. Elder daughter of Mahinder Singh was married and Mahinder Singh died on 14th October, 2003. After the death of Mahinder Singh, Gurmeet Kaur became the owner of the premises and required the shop for running the business with the help of her daughter and son who were dependent on her. It was also stated that an earlier eviction petition was filed by Baljeet Singh against Gopal Krishan and his brother Praveen Kumar which was withdrawn on 16th May, 2012 and Gurmeet Kaur also had filed an eviction petition under Section 14(D) read with Section 25B DRC Act which was withdrawn with liberty to file a fresh petition vide order dated 21st February, 2013.

3. In the leave to defend application Gopal Krishan claimed that on the same material in the earlier eviction petition filed by the son of the petitioner Baljeet Singh, leave to defend was granted and after the leave to defend was granted and written statement was filed, Baljeet Singh withdrew the eviction petition. It is stated that after the death of Mahinder Singh, Gurmeet Kaur sold half of the first floor and full roof rights of the property to the builder and thus she has no bonafide requirement. Further son of Gurmeet Kaur recently sold 15 shops out of 16 shops on the ground floor of the property and purchased commercial property in Ludhiana with a view to settle there. Gurmeet Kaur has also sold 4 flats out of 5 flats and thus now she and her family intends to sell the one flat and the tenanted shop which are remaining. The son of Gurmeet Kaur was a drug addict.

4. The learned ARC after considering the rival contentions declined to grant leave to defend.
5. A perusal of the earlier eviction petition filed by Baljeet Singh against Gopal Krishan and Praveen Kumar would reveal that the same facts were pleaded and the tenanted shop was sought to be evicted on the bonafide requirement. Even there in the leave to defend application Gopal Krishan took the plea that the suit property consists of basement, ground floor, first floor, second floor and third floor. Baljeet Singh had recently sold 15 shops out of 16 shops and purchased commercial property in Ludhiana. Further out of 5 flats, 4 flats have been sold and Baljeet Singh, his unmarried sister and mother were residing in one flat. Now Baljeet Singh and his family wanted to sell one flat and remaining tenanted shop with a view to settle in Ludhiana. The claim of the rent of ₹3300/- was denied.
6. Baljeet Singh in his reply to the leave to defend application specifically controverted the facts stated in the leave to defend application and especially the fact that out of 16 shops 15 shops have been sold and out of 5 flats 4 flats have been sold and Baljeet Singh and his family wanted to sell the remaining portion and settle in Ludhiana where they have bought properties.
7. On the same set of facts pleaded by the two parties, the learned ARC had vide its order dated 5th April, 2011 granted leave to defend. On the same facts when the petitioner was once granted the relief of leave to defend and the written statement was filed the same cannot be scuttled by permitting Baljeet Singh to withdraw the petition and filing a fresh petition in the name of Gurmeet Kaur. By the impugned order the learned ARC failed to notice the earlier order passed by the predecessor.

8. Consequently, the petitioner is entitled to the grant of leave to defend. List the matter before the learned Trial Court on 9th July, 2015 by which date written statement be filed, when the parties will be present before the Trial Court.

9. Petition and application are disposed of.

(MUKTA GUPTA)
JUDGE

MAY 21, 2015
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