

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

+ **CM(M) 206/2015**

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Decided on: 11th March, 2015

ABDUL HAFIZ

..... Petitioner

Through Mr. Jabbar Hussain, Adv.

versus

MOHD ZAKI

..... Respondent

Through

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. Aggrieved by the order dated 31st January, 2015 whereby leave to defend application filed by the respondent in an eviction petition filed by the petitioner under Section 14(1)(e) of the Delhi Rent Control Act, 1958 in short the DRC Act was allowed, the petitioner prefers the present petition.

2. In the eviction petition, the petitioner stated that property bearing No.113-114, Masjid Tehwar Khan, Naya Bans, Delhi was purchased by one Shri Habib Ahmed, son of Shri Kallu from its previous owners by virtue of a registered sale deed dated 2nd December, 1981. The premises was being managed by the petitioner and two sons of Shri Habib Ahmed in his life time on the authority of Shri Habib Ahmed. The tenanted shop in the said property was let out by the petitioner to respondent in the year 1986 for commercial use and the rent was collected by the petitioner and his uncles

against the rent receipts. After the death of Shri Habib Ahmed, the property devolved on his wife, three sons, and the daughters, however one son of Shri Habib Ahmed died on 6th March, 2003 and the petitioner being the son of the said deceased son became the co-owner of the said property. The petitioner is running the business of manufacturing of lady purses from property bearing No. 1607, Gali Veer, Sadar Nala Road, Sadar Bazar, Delhi-06 which is under the tenancy of brother of the petitioner Abdul Rehman. The landlord of the said premises has expired and the legal heirs are putting pressure on the petitioner to vacate the said premises. The elder three sons of the petitioner are married and settled, however the fourth son is a student of 12th standard and wants to settle in his own business. The petitioner also wants to shift his business to his own property which is situated in a commercial market. The suit property consists of ground floor, first floor and second floor. The first and second floor are used for residential purposes by the various tenants and have been sold by the petitioner and the other co-owners. The respondent is a tenant is in occupation of the shop bearing Private No.14 of the property from where he is running the business under the name and style of M/s. Sangam Plastics and using the tenanted shop bearing Private No.8 for go-down purposes. Since the petitioner requires the tenanted premises bonafidely the same be got evicted.

3. In the leave to defend application the respondent pointed out the availability of additional vacant shops with the petitioner which could be used to start the business of his son. It was stated that one son of the petitioner was doing the business of sale and purchase of luxury vehicles at Ashok Vihar. On the pleas of availability of additional vacant shops and the

disputed site plans, the learned Trial Court granted leave to defend to the petitioner.

4. Learned counsel for the petitioner urges that the respondent took the plea of various business but no documents regarding the vacant shops were filed. The petitioner filed counterfoils of the rent receipts to show that the various premises were occupied by different tenants and that the petitioner was running his business from a tenanted shop which was on rent in the name of his brother and thus leave to defend ought to have been rejected.

5. I have heard learned counsel for the petitioner. By the site plan the respondent has disputed the assertion of the petitioner that there were only 7 shops in the suit property. It is stated that in fact there are 9 shops. Thus the respondent has pointed out that additional vacant shops are available. It is admitted that first and second floor of suit property were sold in 2000. Further the petitioner has property No. 440, Shehzada Bagh, Inderlok, Delhi measuring 80 sq. meters in the name of his wife which is in a commercial area wherein they have two big halls on the first and the second floor which are lying vacant. The petitioner and his sons are partners and have set up a factory of manufacturing Zip locks in the name and style of M/s. R.K. Industries at 526, Shehzada Bagh which is a three side property. They have a showroom of selling leather and metal goods in the name and style of M/s. R.K. Sales Corp. at first and second floor of property No. 4873, Opposite Westend Cinema, Bara Tooti Chowk, Delhi-06 and a factory of manufacturing leather purses in the name and style of M/s. R.K. Products at D-9/2, DDA Flats, Sarai Bhalil, Delhi-06. Besides the elder son of the petitioner Abdul Majid was running a business of sale and purchase of

luxury vehicles at Ashok Vihar. The denial of the petitioner on these facts is vague.

6. In view of the availability of alternative accommodation pointed out by the respondent, I find no error in the impugned judgment granting leave to defend to the respondent for the respondent has raised triable issues.

7. Consequently the petition is dismissed.

(MUKTA GUPTA)
JUDGE

MARCH 11, 2015
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