

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

+ **RC.REV. 464/2012 & CMs. 16028/2012 & 15346/2014**

%

Reserved on: 8th April, 2015
Decided on: 15th April, 2015

RAVI KUMAR

..... Petitioner

Through Mr. T.S. Ahuja, Adv.

versus

BRIJ BEHARI HANDA

..... Respondent

Through Mr. Ajant Kumar, Adv.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

CM 15346/2014

By this application the respondent prays for directions to pay interim user charges. Since this Court is disposing of the revision petition the application is disposed off as infructuous.

RC.REV. 464/2012 & CM 16028/2012 (stay)

1. The respondent Brij Bihari Handa filed an eviction petition under Section 14(1)(e) for eviction of the respondent Ravi Kumar from the tenanted premises which is a shop in premises No. F-7/8, Model Town-II, Delhi owned by Brij Bihari Handa.

2. In the eviction petition Brij Bihari claimed that the property was built by his father and after the death of his father the same has devolved on him. Ravi Kumar was doing the business of catering in the name and style of

‘Pappu Catering’ in the tenanted premises. Brij Bihari was a medical distributor doing business under the name of ‘Jai Pharma’ residing at 38/6, Shakti Nagar. At the time of filing of the eviction petition Brij Bihari was 56 years old and orthopedically disabled person. Due to the growing age the disability was increasing and thus he wanted to open a shop and the tenanted premises was required for his bonafide requirement.

3. After leave to defend was granted, Ravi Kumar filed the written statement reiterating the pleas taken in the leave to defend application that Brij Bihari was not the owner of the tenanted premises. Brij Bihari was not doing any business and that he has wrongly claimed himself to be a medical distributor working in the name and style of ‘M/s. Jai Pharma’. Brij Bihari was only dependent upon rental income received from the tenants for his livelihood and was staying alone. The tenanted premises was earlier with Jugal Kishore Dhawan with whom Ravi Kumar entered into a deal and paid a sum of ₹2 lakhs and became the tenant of the premises. Ravi Kumar was informed that half the money had been paid to Brij Bihari. It is further stated that besides the tenanted premises there is another shop in the suit property wherein Om Prakash was carrying on the business in the name of ‘Sonu Dupatta’. The said shop was let out three years ago. Further Brij Bihari had another portion in the nature of a shop which he termed as a godown which was let out to M/s. Gambhir Pustak Bhandar.

4. After the parties led their evidence the learned ARC allowed the eviction petition in favour of Brij Bihari and directed Ravi Kumar to vacate the premises. The learned ARC held that even as per Ravi Kumar the other tenanted premises were occupied and thus were not vacant and thus it cannot be said that reasonably suitable accommodation was available. Ravi Kumar

admitted that the locality where Brij Bihari was staying was residential premises and in a closed gali and thus the same was not an alternate suitable accommodation. It was also contended by Ravi Kumar that to open a chemist shop mandatory license is required and since Brij Bihari does not have the said license, he cannot run the medical store. The said contention was negated by the learned ARC that even as per Ravi Kumar, Brij Bihari was doing the business from premises No. 38/6 under the name and style of 'Jai Pharma' and thus he had experience in doing the said business and he can eventually take the license. As regards the landlord tenant relationship in view of the fact that Ravi Kumar admitted that tenanted premises was let out by Brij Bihari it was held that landlord tenant relationship stood proved.

5. Before this Court the main ground urged by learned counsel for Ravi Kumar is that Brij Bihari needs the premises for opening his own medical shop. The tenanted premises was only 30 sq.ft. and thus in terms of Rule 64 of the Drugs and Cosmetics Rules, 1945 a chemist shop could not be opened in the tenanted premises. Learned counsel for Brij Bihari on the other hand contends that there are a number of items which can be sold in a medical shop like bandages etc., and even if Brij Bihari cannot sell scheduled drugs he can always sell the allied items.

6. A perusal of the eviction petition and the evidence by way of affidavit of Brij Bihari would show that he did not seek the eviction of the tenanted premises for opening a chemist shop but for a medical shop. It is not denied by Ravi Kumar that Brij Bihari was running a medical store in the name of 'Jai Pharma' and the license was renewed after every 5 years. Brij Bihari has placed on record the wholesale medical distributor license No. 6(433)20B and 21B and that for the renewal of the same he has deposited the

fee. In the cross-examination of Brij Bihari there is no suggestion that he was not running the medical pharma business. The only suggestion was that in the passbook placed on record there was no transaction of any business in relation to Jai Pharma which Brij Bihari clarified that he had another account with Karnataka Bank. He stated that the business of Jai Pharma was being done in the name of his father from premises No. 38/6 Shakti Nagar since 1973 and he was looking after the business with him from 1980 and he was one of the joint owners of property No. 38/6 Shakti Nagar being the legal heir of his mother. They owned only the ground floor and the upper floors had already been sold.

7. Rule 64 Sub-Rule 2 provides that a premises for a chemist shop where medicines are to be sold on retail basis should have an area not less than 15 sq. mtrs, however the contention of Brij Bihari is that he has not sought the permission for opening a chemist shop but a medical store where he cannot sell schedule drugs but sell the allied items for which no size of the shop is prescribed. Since Brij Bihari Handa has experience in medical store business it cannot be said that he is not in a position to open a medical store and merely because the size of the shop is small which is not mandatory for allied items he should not be denied the premises which he requires bonafidely. No other plea has been urged before this Court. Consequently, I find no merit in the petition.

8. Petition and application are dismissed.

(MUKTA GUPTA)
JUDGE

APRIL 15, 2015 /‘ga’