

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

+ **RC.REV. 349/2012 and CM No.12857/2012 (Stay)**

% Reserved on: 10th March, 2015
Decided on: 17th March, 2015

GOBIND LAL

..... Petitioner

Through: Mr. Pramod Ahuja with Mr. Abhishek
Mishra, Advocates.

versus

AKSHAY

..... Respondent

Through Mr. Ashish Lal with Ms. Neha Garg,
Advocates.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. The Petitioner challenges the order dated 29th February, 2012 whereby the leave to defend application filed by the Petitioner in an eviction petition under Section 14(1)(e) of the Delhi Rent Control Act, 1958 (in short 'the DRC Act') filed by the Respondent was disallowed and the eviction order was passed.

2. In the eviction petition the Respondent stated that he was the owner of Property bearing No.4698 and 4700 having area of 17.5 sq.yards on the ground floor, 34 sq.yards on the first floor, second floor and third floor. The third floor of the property No.4698 was purchased from Ram Chander Bhawsar vide Sale Deed dated 19th September, 1994 when the Respondent was a minor. At the time of purchase of the property the Petitioner's father Kartar Mal was the tenant at the ground floor on a monthly rent of Rs.175/- per month. After the death of his father, the Petitioner is in possession of the ground floor and is paying a rent of Rs.600/- per month. The father of the Respondent was doing small business from second floor and the third floor

since he is now ill and not in a position to climb the stairs and also because the Respondent has completed BBA and wants to establish his own business he requires the tenanted premises bearing No.4698, First Floor bona fide as no other property is available.

3. In the leave to defend application the Petitioner claimed that his firm M/s Radhey Shyam Ramesh Chander was inducted as a tenant in the suit property much before the birth of the Respondent by old landlord and given the entire first floor and terrace floor of the Property No.4698, Laxmi Nagar, Cloth Market, Delhi and as M/s Radhey Shyam Ramesh Chander has not been impleaded as Respondent no eviction can be carried out. It was stated that no valid cause of action arose in favour of the Respondent to seek eviction. Reference was made to the earlier eviction petition wherein non-payment of rent was pleaded. It is further stated that the Respondent is not the owner of the suit property as he was a minor at the time of purchase of the suit property. The notice dated 29th April, 2010 was defective and no bona fide requirement was mentioned therein. Further the respondent was studying in Pune when the notice was issued. The tenancy being commercial, the same is not covered under Section 14 (1) (e) of the DRC Act.

4. In the light of the decision in Satyawati Sharma (Dead) By Lrs vs Union Of India & Another, 2008 (5) SCC 287 the learned Trial Court held that the premises let out for commercial purpose was also included under Section 14 (1) (e) of the DRC Act and that even if the Respondent was not an absolute owner an eviction petition was maintainable and from the evidence on record the landlord tenant relationship is established. Further the Sale Deed in favour of the Respondent clearly showed that he owned the

premises and there was no bar on purchasing any property in the name of minor if the agreement was for the benefit of the minor. As regards the notice issued when respondent was studying in Pune it was held that instructions could have been given by the Respondent even on telephone and the notice was duly signed by the counsel for the Respondent. The Court also held that the Respondent had a bona fide requirement and the Court could not dictate in which manner the landlord should live. The Respondent required the premises to start his business as he was pursuing his BBA Course and was about to complete the course and as the father of the Respondent had fallen ill, he could not climb the stairs as advised by the Doctor.

5. Before this Court learned counsel for the Petitioner urges that though no notice was required to be issued for seeking eviction under Section 14 (1) (e) of the DRC Act however, since the notice was issued the Respondent could not have taken a different plea in the eviction petition. It is further stated that the Respondent is a tenant on the first floor and the entire second floor is in vacant possession of the Respondent. Thus there was no bona fide requirement. Learned counsel for the Respondent on the other hand states that the stand taken in the eviction petition is same as taken in the legal notice. The order of the learned ARC is a reasoned order and hence cannot be interfered with as there is no illegality.

6. I have heard learned counsel for the parties.

7. Firstly there is no requirement of sending a legal notice for seeking eviction under Section 14 (1) (e) of the DRC Act. Further the plea taken in the notice besides non-payment of rent is also that the Respondent is unemployed person who needs to start his business to earn his livelihood and

thus he requires the tenanted premises for his personal establishment. There is no difference in the plea taken in the leave to defend application and the legal notice. In the leave to defend application the Petitioner has reiterated that the Respondent is a student carrying on his studies at Pune. This fortifies what the Respondent had stated that after his education the Respondent needs to settle. No plea has been taken that the entire second floor is lying vacant or there is any alternative accommodation available in the leave to defend application and it is only stated that the respondent has enough accommodation in his possession. Thus no triable issue having been raised by the Petitioner, there is no infirmity in the impugned order declining to grant leave to defend to the petitioner.

7. Petition and application are dismissed.

(MUKTA GUPTA)
JUDGE

MARCH 17, 2015
‘vn’