

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

+ **RC.REV. 367/2013 & CM 15391/2014 (stay)**

% **Decided on: 6th April, 2015**

VINOD KUMAR & ANR Petitioner
Through Mr. Hameed S. Shaikh, Mr. Nitin
Yadav, Advs.
versus

KHUSHI RAM MITTAL Respondent
Through Mr. Puneet Yadav, Adv.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. Aggrieved by the order dated 31st July, 2013 whereby leave to defend was declined to the petitioner in an eviction petition under Section 14(1)(e) of the DRC Act filed by the respondent, the petitioner prefers the present petition. The possession of the premises has already been taken over by Kushi Ram Mittal from Ishwar Singh in an execution petition.

2. Respondent Kushi Ram filed an eviction petition stating that the shop was let out to father of the Vinod Kumar and Ishwar Singh i.e. late Zile Singh who passed away on 22nd July, 2004 where after Vinod Kumar took over the tenanted premises. Vinod Kumar let out the premises to Ishwar Singh without the consent of Kushi Ram. It is stated that the tenanted premises was required bonafidely for the use of the son of Khushi Ram i.e. Ashwini Mittal. According to the eviction petitioner, Ashwani Mittal was

working as employee with Star Health Care (Star Imaging and Path Lab Pvt. Ltd.) and he wanted to open his own diagnostic/collection centre on the ground floor of tenanted premises for which he has sought permission from Star Health Care. Ashwani Mittal was presently residing at tenanted accommodation at house No. 262-263, Nawada Bazar, Najafgarh and was paying a rent of ₹6000/-. Ashwani Mittal would also construct one bedroom set on the first floor of the tenanted premises and reside there. In the eviction petition Khushi Ram stated that he owned (i) House No.274-275, Nawada Bazar, Main Najafgarh Road, New Delhi (ii) shop measuring about 9 ft x 12 ft located at 1675, Chhawla Bus Stand, Najafgarh New Delhi (the tenanted premises) (iii) shop measuring about 8 ft x 11 ft at 1675, Chhawla Bus Stand, Najafgarh, New Delhi (iv) Shop measuring about 3 ft x 8 ft at 1675, Chhawla Bus Stand, Najafgarh, New Delhi and (v) shop measuring 6 ft x 4 ft at 1675, Chhawla Bus Stand, Najafgarh, New Delhi. It was clarified that Kushi Ram was living with his other son at 274-275, Nawada Bazar, Main Najafgarh Road. Two shops apart from the tenanted premises had been let out to other tenants and third shop was being kept by Kushi Ram for himself as the same fetched a rent of ₹5500/- per month. It was stated that he has no other suitable alternative accommodation to settle his son. He also stated that an eviction petition was earlier filed by his son titled as “Ashwani Mittal Vs. Vinod Kumar” on the strength of general power of attorney dated 23rd November, 2011, however the same was withdrawn for technical reason.

3. In the leave to defend application, Vinod Kumar and Ishwar Singh took the plea that earlier eviction petition filed by Ashwani Mittal was on the ground that there was a family partition and thus he was forced to live in a

rented accommodation and since tenanted premises had fallen to his share he wanted to reconstruct the same and live on the first floor and open a diagnostic centre on the ground floor. Further the house No. 274-275, Nawada Bazar, Najafgarh was a 250 sq. yds. plot which was sufficient to house Khushi Ram and Ashwani Mittal. Since one of the shops has been given on rent admittedly, thus leave to defend be granted.

4. Learned counsels for the petitioners Vinod Kumar and Ishwar Singh contended before this Court, that in the suit filed Khushi Ram admitted that he had another property and hence leave to defend be granted.

5. After the present eviction order was passed and no stay of the impugned order was granted by this Court, Vinod Kumar and Ishwar Singh filed a suit before the learned Trial Court seeking injunction against Khushi Ram Mittal and his sons from carrying on illegal and unauthorized construction and to restore the electricity meter in the name of Vinod Kumar and Ishwar Singh. In the written statement filed Khushi Ram and his sons denied any unauthorized construction or any disconnection of electricity. In the said suit there is no admission that Khushi Ram Mittal owns any other property in his own right besides the ones mentioned in the eviction petition. Thus there is no merit in the additional plea taken before this Court.

6. Thus, the two pleas taken before this Court are that there is no bonafide requirement and there is sufficient space available. It is not disputed by Vinod Kumar and Ishwar Singh that even now Ashwani Mittal is residing separately in a tenanted premises and not in the joint family at House No.274-275, Nawada Bazar, Najafgarh. It is further not denied that Ashwani Mittal is working at Star Health Care. Thus, the fact that he wants

to open a Path Lab/collection centre at the tenanted premises and to construct a room for his residence above are bonafide requirement. Merely because Khushi Ram Mittal is receiving rent from one shop so that he could spend on himself cannot be a reason to grant leave to defend on the ground that a suitable alternative accommodation was available.

7. Further the earlier eviction petition filed by Ashwani Mittal having been withdrawn for the reason that he was not in a position to prove partition would not be a ground to oust the case of Kushi Ram Mittal in the present eviction petition. The eviction has been sought on the same ground i.e. for settling the Path Lab/collection centre by Ashwani Mittal and to reside on the first floor after construction.

8. I find no illegality or perversity in the impugned order. Petition and application are dismissed.

(MUKTA GUPTA)
JUDGE

APRIL 06, 2015
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